

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 29, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. John F. Ribble III and James D. Pammel were absent from the meeting.

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

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. CECELIA C. PANICH, TRUSTEE, DEORMAN L. ROBEY, JR., TRUSTEE AND FREIDA E. ROBEY, TRUSTEE, VC 2004-PR-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2524 Avcn La. and 2525 Ogden St. on approx. 6.21 ac. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 166, 167A, 167B and 168.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Lawrence, the applicants' agent, replied that it was. He requested a deferral in light of the Supreme Court decision in the Cochran case.

Mr. Hammock moved to defer VC 2004-PR-058 to September 14, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 2004-MA-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 9.0 ft. from one side lot line and 12.0 ft. with eave 11.0 ft. from other side lot line. Located at 6449 Holyoke Dr. on approx. 9,413 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 31. (Admin. moved from 6/22/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium.

Lori R. Greenlief, the applicant's agent, Greenlief Consulting, LLC, requested a deferral.

Mr. Hart moved to defer VC 2004-MA-061 to October 5, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. JOHN F. KELLY, VC 2004-MV-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6.5 ft. with eave 5.5 ft., deck 4.0 ft. and chimney 4.5 ft. with eave 3.5 ft. from side lot line and porch 26.8 ft. with stairs 21.8 ft. from front lot line. Located at 6423 Thirteenth St. on approx. 14,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John F. Kelly, 6423 Thirteenth Street, Alexandria, Virginia, replied that it was.

Cathy Belgin, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 6.5 feet with an eave 5.5 feet, an open deck 4.0 feet, and a chimney 4.5 feet with an eave 3.5 feet from the southern side lot line, and a porch 26.8 feet with stairs 21.8 feet from the front lot line. A minimum side yard of 12 feet and a minimum front yard of 30 feet

are required; however, eaves and chimneys are permitted to extend 3.0 feet into the minimum side yard, and stairs are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 5.5 feet, 3.5 feet, 8.0 feet, 4.5 feet, 5.5 feet, 3.2 feet, and 3.2 feet, respectively, were requested. Ms. Belgin said that the variance request for the front porch with stairs had been amended because the applicant was shifting the house to a location where the porch and stairs were not located within the required setbacks. She explained that the applicant was proposing a dwelling with nearly the same footprint as had previously been on the property with the exception of the addition of the front porch, which was needed in part due to the required increased elevation of the dwelling within the floodplain. She said the side of the dwelling on which the variances were requested was adjacent to open space. Ms. Belgin stated that a special exception application to permit the construction of the home had been recommended for approval by the Planning Commission to the Board of Supervisors and was to be heard on July 12, 2004.

Mr. Hammack asked whether the footprint of the proposed dwelling would be larger or extend further into the setbacks than the dwelling that was being replaced. Ms. Belgin said the only location where the footprint was larger was the addition of the front porch, and the applicant had recently amended the plans to shift the house to the rear so the front porch would not require a variance. She said the side yard setback would be the same as had previously existed, including the eave.

Mr. Hart noted that the staff report indicated that although the dwelling could be built in a different location on the lot without a variance, the applicant wanted to reuse some or all of the original foundation, which Ms. Belgin said was correct. She said that additionally if the dwelling was shifted to be more centrally located on the property, some significantly sized and aged trees would be affected. She confirmed for Mr. Hart that the porch was no longer a part of the application because it would not be located within the required setbacks. Ms. Belgin said that because the dwelling would be shifted to the rear to accommodate the porch, a portion of the rear of the house would need a few feet of new foundation.

Mr. Hart asked whether the Zoning Administrator had been asked to make a determination about nonconforming rights for properties affected by hurricane Isabel. Ms. Belgin said the Zoning Administrator had determined that if an existing house was reconstructed without being removed, then variances were not required and did not apply, but in the subject case, the request was to take the house down and reconstruct it rather than making repairs because the house had to be built at a higher elevation. Mr. Hart asked whether anyone had appealed the determination, and Ms. Belgin said she was not aware of any appeal.

In response to Mr. Beard's question regarding whether the house had originally been built by right, Ms. Belgin said the house was constructed in 1939 and predated the Zoning Ordinance.

Mr. Hammack asked whether there was a reason that the house could not be reconstructed without demolishing it so a variance would not be required. Ms. Belgin said she would defer to the applicant for a response.

Mr. Kelly presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kelly said he had met with Gerry Hyland, who informed him that if the house was more than 50 percent damaged, he would be required to elevate it above the floodplain in order to meet the current Zoning Ordinance, and rebuilding the house on the existing foundation or footprint and elevating it above the floodplain without moving the house would be the easiest way. Mr. Kelly said he had two people tell him that if he moved the house to the north, the tree located approximately 16 feet from the existing house would likely not survive the re-grading that would affect the root system. He said his house was built next to a vacated 80-foot easement for a street which did not appear would ever be built, and the next property to the south was approximately 140 feet away. Mr. Kelly said the footings underneath the house were approximately 17 inches, and he planned to do some major rework structurally to create more substantial footings that could carry the load of the house. He presented photographs of the trees to the Board.

Mr. Hammack stated that under the old Ordinance, trees were not a reason for the Board to grant a variance, and under the Cochran decision, there was no latitude given for trees.

Mr. Kelly said he did not understand why Section 15-101 regarding nonconforming uses did not apply. Mr. Hart said it might be another procedural way to resolve this and was something to address with the Zoning Administrator.

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

Mr. Hammack said the issue of some kind of nonconforming use that might allow the reconstruction of

damaged dwellings had not been addressed by the Zoning Administrator, and he thought a motion to defer would be in order to give the applicant time to explore that option.

Mr. Beard moved to defer decision on VC 2004-MV-054 to July 13, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH, SP 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit site modifications and trailers to remain. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (In association with SE 2004-MV-001) (Admin. moved from 6/1/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-MV-025 had been administratively moved to October 26, 2004, at 9:00 a.m.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. CHARLES J. AND BARBARA E. PARKER, VC 2004-SP-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.6 ff. from rear lot line. Located at 9609 Chapel Hill Dr. on approx. 9,267 sq. ff. of land zoned R-3 (Cluster). Springfield District. Tax Map 38-1 ((16)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles J. Parker, 9609 Chapel Hill Drive, Burke, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 14.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.4 feet was requested.

Mr. Parker presented the variance request as outlined in the statement of justification submitted with the application. He said the application met the nine standards for a variance, and two of his neighbors had applied for variances for additions to their homes, which had been approved and the additions built, one located 13 feet from the rear lot line and the other 9.2 feet from the side lot line. He said the homeowners' association had approved the construction, and the purpose was to add a larger living area on the first floor of the house, to construct a new and remodeled kitchen, and build a potential apartment on the bottom level of the house to provide an option for his mether-in-law when she became incapable of living on her own.

Mr. Hammack asked whethor the applicant could improve the kitchen and enlarge the living space without requiring a variance. Mr. Parkor said it would not be adequate, and his and his wife's intention was to remain in the house because to sell and move up was not an option in the neighborhood at the current time. He said the addition would improve the property value of the entire neighborhood.

Mr. Hammack asked whether the addition could have been approved as part of the original developmont without a variance because it was zoned R-3 Cluster. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it could not because the Cluster had minimum yard requirements, and it was the PDH Districts that did not have set yards.

Mr. Hart said the property had a pipestem for ingress/egress, and somotimes those generated a front yard. He asked why in the subject case it did not. Ms. Langdon replied that the determination was made prior to receipt of the application, but she believed it was because the driveway did not come out in that direction, and it was for another subdivision.

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

Ms. Gibb moved to deny VC 2004-SP-065 for the reasons stated in the Resolution.

Mr. Hammack seconded the motion and commented that the principles set forth in the Cochran case stated that if there was reasonable beneficial use of the property, until the point of confiscation is reached, the BZA could not grant variances. He said he found Cochran to be a very harsh decision, because it frustrated citizens' investments in their neighborhoods and improvements to their property. Mr. Hammack added that the County was generally opposed to variances. He recommended that the applicants contact their elected representatives about getting something more reasonable.

Mr. Beard indicated he would support the motion. He said the granting of the variances for the neighbors of the applicants who had made improvements had occurred prior to the Cochran decision, but the Board's hands were currently tied.

Mr. Hart said there ought to be a legislative solution, and up until April 23, 2004, the Board had been able to consider whether the Ordinance unreasonably restricted a piece of property. He said that in the subject case, a relatively modest homeowner improvement was proposed on an oddly shaped lot where the house was set at an angle, and the allowable building envelope was a ring of triangles, for which any extension from the existing dwelling oriented in the same grid was going to have corners protruding into the minimum yards. Mr. Hart said situations such as that should be considered on a case-by-case basis as to whether there was a negative impact on anyone, but the Court had told the Board that if there was a house on the lot, the Board would not get to that point and would not be able to grant variances. He stated that the Board of Supervisors could do things with the Ordinance to allow certain things that were not allowed without a variance through some other procedure or the General Assembly might be able to do something. He said citizens needed to take the problems to their elected officials and explain that there was no relief valve anymore, it was one size fits all, and anyone with a house can no longer get a variance, and if enough contacts occurred, there might be some movement to put things back the way they were before the Cochran decision.

Mr. Beard asked whether staff was still accepting variance applications and if there were some in the pipeline. Ms. Langdon replied that the subject application had been accepted before the Cochran ruling, but staff could not deny anyone the right to submit an application. Mr. Beard asked whether the situation with regard to variances was being explained to applicants. Ms. Langdon said copies of the variance standards were given to applicants, and the nine standards had not changed. She said staff had always explained to applicants that all nine standards had to be met and had recently begun highlighting the ones relating to all reasonable use and confiscation of property.

Chairman DiGiulian said the situation was different, and staff should inform the applicants that the Board would not be able to grant any variances before money was paid for application fees. Ms. Langdon said it was not staff's place to tell anyone whether their application would be approved or not, but staff could thoroughly explain the situation regarding the Supreme Court decision.

In response to Mr. Beard's question regarding the cost of a variance application, Ms. Langdon said the application fee was \$190, which was nonrefundable once an application had been accepted.

Ms. Gibb suggested that applicants be informed that the Board previously granted variances on a case-by-case basis, but none had been granted since the Cochran decision.

In response to Mr. Hart's suggestion that staff provide applicants information regarding the Cochran decision, Ms. Langdon replied that staff had been providing that information and advising the applicants that the Board had not approved any variances after the Cochran decision, and would continue to do so.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES J. AND BARBARA E. PARKER, VC 2004-SP-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.6 ft. from rear lot line. Located at 9609 Chapel Hill Dr. on approx. 9,267 sq. ft. of land zoned R-3 (Clustar). Springfield District. Tax Map 88-1 ((16)) 16. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have not met the required standards set forth in the Cochran Supreme Court case and have reasonable and beneficial use of the property because there is a house on the property.

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

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

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

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 2004.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. BRUCE A. CISKE & MARY D. CISKE, VC 2004-MV-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from rear lot line. Located at 3705 Maryland St. on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District.

Tax Map 101-4 ((21)) 3. (Decision deferred from 6/1/04)

The applicants were not present when Chairman DiGiulian called the case. Susan Langdon, Chief, Special Permit and Variance Branch, noted that the case had been deferred for decision only.

Deborah Hedrick, Staff Coordinator, stated that she had called the applicants and left messages, but had not been able to reach them to determine whether they would be attending the hearing.

Chairman DiGiulian said the case would be called again later in the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. BRUCE AND BARBARA STALCUP, VC 2004-BR-064 Appl. under Sect(s). 18-401 of the Zoning Ordinanca to permit construction of carport 14.3 ft. from front lot line of a corner lot. Located at 5620 Heming Ave. on approx. 13,772 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (70) 1A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Stalcup, 5620 Heming Avenue, Springfield, Virginia, replied that it was, and introduced her husband, Bruce Stalcup.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a varianco to permit the construction of a carpert 14.3 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 15.7 feet was requested.

Mr. Stalcup presented the variance request as outlined in the statement of justification submitted with the application. He said he and his wife had added an in-law suite to take care of his wife's parents and wanted to add a carport for them to use in inclement weather because they were handicapped.

Ms. Stalcup inquired whether anything was being done regarding the Cochran case holding up variances, and she asked whether deferring the hearing was a possibility to avoid having to reapply and go through the proccoss a second time. Chairman DiGiulian said he was unaware of anything in the works, and the decision could be deferred to a later time. In response to Ms. Stalcup's question regarding which elected officials the Board recommended applicants contact, Chairman DiGiulian said the Board of Supervisors. Mr. Hammack said the members of the General Assembly could also be contacted. Mr. Hart said Sharon Bulova was the applicants' Supervisor.

Chairman DiGiulian called for speakers.

William Driscoll, 5648 Heming Avenue, Springfield, Virginia, came forward to speak in opposition to the application. He stated that he disagreed that the application met the requirements of the recent Supreme Court decision. He said there was already a carport and garage on the property, and if the entrance was at the back instead of being at the front of the property facing the street, it would also provide access to the existing carport and garage. He said he was concerned it would happen throughout the neighborhood.

In their rebuttal, Mr. Stalcup said there was an entranco at the rear, but it entailed going up and down steps or walking over rough terrain because of the topography of the property, and his wife's parents could not do that. He said there was an existing driveway constructed off the side of the lot that led to the front door of the in-law suite. He explained that the garage was used as a shed and held garden tools and a workshop. Ms. Stalcup said her mother was legally blind and unable to walk unassisted, and her father was arthritic and used two canes, but was still able to drive. She said the carport would allow them to get in and out of their house and provide cover against the elements, and the architect recommended the proposed as the best design for them.

Mr. Hammack asked whether the applicants preferred the Board make a decision or defer. Mr. Stalcup said he understood the decision would be a denial because of the Supreme Court issue, so a deferral would be preferred.

Mr. Hammack moved to continue VC 2004-BR-064 to December 7, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. BRENT R. AND JENNIFER L. GUERNSEY, VC 2004-SP-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 square feet or less. Located at 6722 Holford La. on appr. 16,565 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 222. (Decision deferred from 6/29/04)

Chairman DiGiulian noted that VC 2004-SP-042 had been deferred for decision.

Mr. Hart moved to deny VC 2004-SP-042 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRENT R. AND JENNIFER L. GUERNSEY, VC 2004-SP-042 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 square feet or less. Located at 6722 Holford La. on approx. 16,565 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 222. (Decision deferred from 8/29/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have not met the required standards for a variance following the Cochran decision.
3. On a situation like this, the lot is unusual. The applicants wanted to have some play structures remain in the front yard for a variety of reasons. Ordinarily this would be considered on case-by-case basis, but the owners already have reasonable beneficial use of the lot. There is a house with a carport, and a variance cannot be granted under those circumstances.
4. The applicants have not satisfied the board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would deprive the user of all reasonable use of the land and/or buildings involved.

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

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

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

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

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 2004.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. JASON HAMPEL AND SARAH MALERICH, VC 2004-SU-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 12108 Wayland St. on approx. 20,515 of land zoned R-2. Sully District. Tax Map 46-1((8)) 55. (Decision deferred from 6/29/04)

Chairman DiGiulian noted that VC 2004-SU-043 had been deferred for decision.

Ms. Gibb moved to deny VC 2004-SU-043 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JASON HAMPEL AND SARAH MALERICH, VC 2004-SU-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 12108 Wayland St. on approx. 20,515 of land zoned R-2. Sully District. Tax Map 46-1((8)) 55. (Decision deferred from 6/29/04)
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2004; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have reasonable beneficial use of the property because there is an existing house, and under the standards set forth in the Cochran decision, a variance cannot be granted.

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

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

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

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

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 12-month waiting period for refileing an application. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 2004.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. BRAD CZIKA, SP 2004-BR-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit shed to remain 5.5 ft. with eave 5.3 ft. from rear lot line and accessory structure to remain 0.0 ft. from rear lot line. Located at 10411 Pearl St. on approx. 10,789 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with VC 2004-BR-063) (Admin. moved from 8/22/04 at appl. req.)

9:00 A.M. BRAD CZIKA, VC 2004-BR-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30 percent and fence greater than 7.0 ft. in height to remain in rear yard and side yards. Located at 10411 Pearl St. on approx. 10,739 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with SP 2004-BR-020) (Admin. moved from 6/22/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brad Czika, 10411 Pearl Street, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow a fence 7.5 feet in height to remain in the rear and side yards and rear yard coverage of 33 percent. The Zoning Ordinance prohibits fence height greater than 7.0 feet in the side and rear yards and does not permit rear yard coverage greater than 30 percent; therefore, variances of 0.5 feet for the fence and three percent for the rear yard coverage were requested.

In addition, the applicant requested a special permit to allow reductions to the minimum yard requirements based on an error in building location to permit a shed/pool house 12 feet in height to remain 5.5 feet with eave 5.3 feet from the rear lot line and a trellis 8.5 feet in height to remain 0.0 feet from the rear lot line. A minimum rear yard of 12 feet for the shed/pool house and a minimum rear yard of 8.5 feet for the trellis are required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, modifications of 6.5 feet, 3.7 feet and 8.5 feet, respectively, were requested.

Mr. Hart asked whether there was a complaint filed regarding the subject property or how the applications came about. Ms. Stanfield replied that the applicant had applied for an addition to the home, and during the process the problems were discovered. She said she understood the items involved in the applications were constructed prior to the applicant obtaining ownership of the property.

Mr. Hart asked if a special permit could not be done for the fence or the yard coverage because it was existing. Ms. Stanfield explained that the error in building location was for the location of a building or structure and did not cover fence height or yard coverage. She said the trellis was considered an accessory structure.

A discussion ensued regarding what issues could be resolved with a special permit as opposed to a variance. Susan Langdon, Chief, Special Permit and Variance Branch, explained that special permits for errors in building location involved structures built where the distance from the lot line was incorrect. She said the fence and yard coverage did not involve distances from lot lines.

Ms. Gibb asked what the deck would be considered if it was not attached to the house. Ms. Langdon said that if the deck was not attached to the house, it would be considered an accessory structure, and if it was under seven feet in height, it could be located anywhere in the side or rear yard, but if it was greater than seven feet in height, it would have to meet the yard requirements. She said that regardless of its location, it would still contribute to the 30 percent yard coverage calculation.

A discussion ensued regarding the rationale for the rule against more than 30 percent rear coverage, and if it involved the increase of impervious surfaces, whether it would apply to something that consisted of slats. Ms. Langdon said that in the subject case, the pool, the decking around the pool, the sidewalks, and the shed contributed to the 30 percent coverage. In response to Ms. Gibb's question regarding building materials, Ms. Langdon indicated that the materials the structures were made from did not matter. Ms. Gibb stated that the pool acted as a retention pond.

Mr. Czika presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He said the beauty of backyard was a large reason for his decision to purchase the property. He stated that from the Zoning Department's documentation, he had learned that the deck had been approved in 1982, and the pool and fence were approved in 1984, but there had been no mention of the pool house or the trellis attached to the fence, which were important features of the home because they greatly added to its appeal and increased its value. Mr. Czika said the pool house was a practical necessity for the storage of the pool and yard equipment, and given the size, shape, and uneven terrain of the lot, it could not be well situated in another location. He said he did not believe the structures negatively impacted any of the neighbors, and most of his adjacent and abutting neighbors had signed a petition in support of the Board's approval of the special permit and variance requests, which he submitted to the Board. Mr. Czika said he believed that an approval of a special permit for the pool house would also cover the requested variance because the pool house caused the rear coverage of 33 percent instead of the allowed 30 percent. He said that the fence height exceeded the allowed seven feet in only a couple places where the posts of the gates were situated, and the structures had been in existence for several years, enhanced the home's beauty and value, and were not a detriment to the neighbors.

In response to Mr. Beard's questions regarding whether the pool house was electrified and a building permit

was obtained for the structure, Mr. Czika said it did contain electricity, and he could not find any record of a building permit.

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

Mr. Beard moved to approve SP 2004-BR-020 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRAD CZIKA, SP 2004-BR-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit shed to remain 5.5 ft. with eave 5.3 ft. from rear lot line and accessory structure to remain 0.0 ft. from rear lot line. Located at 10411 Pearl St. on approx. 10,739 sq. ft. of land zoned R-2 (Cluster), Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with VC 2004-BR-063) (Admin. moved from 6/22/04 at appl. rcq.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant bought the house in good faith with the pre-existing condition.

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

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

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

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

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

1. This Special Permit is approved for the location of a shed/pool house and trellis, as shown on the plat prepared by B.W. Smith and Associates, Inc., dated January 22, 2004, as revised through February 24, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Beard moved to deny VC 2004-BR-063 pursuant to the Cochran decision. Ms. Gibb seconded the motion.

Mr. Hart stated that there ought to be a legislative solution and a way to have a public hearing and a case-by-case review of a situation where someone is not building anything. They bought the property, and the condition had been there for years with no complaint filed, where the difference in yard coverage is three percent more than allowed, with a house turned almost 45 degrees to the lot line and the backyard affected in the placement of the structures in it. The Board can approve a trellis that is 8.5 feet in height, but cannot approve a fence that is 7.5 feet in height. The Board can approve a pool house for its location, but cannot approve the percentage of the coverage of it. He said there ought to be a special permit in some fashion that did not require a total taking.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0. Mr. Beard moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

Following the next application on the agenda, the Board returned to VC 2004-BR-063 as follows:

Ms. Langdon advised the Board that Mr. Czika did not realize a decision on the variance would be made at the hearing, and he requested a deferral of the decision on the variance.

Mr. Hammack said the application involved a three percent variance to rear yard coverage and a five-inch variance for a fence which was constructed years prior, and under the Cochran decision, the Board would be precluded from granting those types of variances, but because of the minimal impact and the fact there were some issues raised as to whether they could be considered accessory structures or might be subject to a special permit rather than a variance, Mr. Hammack moved to reopen the hearing on VC 2004-BR-063 and reconsider the Board's decision. Mr. Beard seconded the motion.

Mr. Beard asked whether all of the participants were still in the room. Chairman DiGiulian said there were no speakers to the case other than the applicant.

Mr. Hammack said he thought there might be some other resolution short of a variance, and the deferral of the decision would give the applicant an opportunity to explore that, because other than that, the only real recourse the applicant had was to file a petition to appeal to preserve his rights and then explore it.

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

Mr. Hammack moved to defer decision on VC 2004-BR-063 to October 5, 2004, at 9:00 a.m. Ms. Gibb seconded the motion.

Mr. Hart said his thinking was that a building permit was issued for the pool at some time, and more than 60 days had passed, so if the pool was last in the sequence, the building permit approval for the pool plus the

passage of 60 days triggered the statute where staff cannot change its mind after 60 days. Ms. Langdon said it was unknown whether the building permit was for only the pool or if it included any of the decking or sidewalk, and all of that counted in the percentage.

Mr. Hart said that if someone reviewed it, the chronology might be such that the Zoning Administrator would agree that while they might be three percent over, the 60-day statute fixes it, and then they would not need a variance at all. Ms. Langdon said staff would explore the options.

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

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. THE CHURCH OF GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD SCHOOL, SPA 85-C-003-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church to permit a private school of general education. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 25A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pamela W. Priester, 1917 Abbotsford, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 85-C-003, previously approved for a church, to permit the addition of a private school of general education for a maximum of 80 students to be located in the existing church building. Staff recommended approval of SPA 85-C-003-03 subject to the proposed development conditions.

Mr. Hart asked whether the issues regarding interparcel connection and cross easements had been resolved. He said he did not see anything on the drawing. Ms. Stanfield said the plat requirement had been waived, and the plat the Board had was one submitted previously. She said there were to be no physical changes to the building, and that was why it was not shown on the plan.

Mr. Hart asked whether it was known where the point of the interparcel access would be located. Ms. Stanfield said the site plan had been prepared by the Zoroastrian Center, which showed where the interparcel location was, and there was still the required number of parking spaces. Mr. Hart asked whether functionally the connection would create problems for the traffic flow. Ms. Stanfield said she was not aware of any problems. She said they had the right to close their existing entrance and restripe the area through the development condition if they wished to, but if they lost the parking spaces, they would still meet all their parking requirements.

Ms. Priester presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained that there was some time sensitivity to the request because 20 students had been admitted to begin school on September 8th in kindergarten, first, and second grades, and offers of employment had been made to two faculty. She said terms had been reached for a three-year lease between the school and church.

Chairman DiGiulian called for speakers.

Keith Martin, representative of the Zoroastrian Center, no address given, came forward to speak. He said he wanted to request the Board's assistance in the satisfaction of Development Condition 12, which was being reaffirmed in the subject case. He stated that he had sent the Church of the Good Shepherd the deed of easement and the not for recordation plat two years prior for their execution in satisfaction of the development condition, and no action had been taken on their behalf. Mr. Martin explained that the Zoroastrian Center would be going into bonding and hoped to commence construction of their project in one month and did not understand why the church was not cooperating in the fulfillment of the development condition.

Mr. Hart asked, if the Board approved the application with the modified Development Condition 12, whether church had to accomplish what was mentioned by Mr. Martin about the easement prior to the school opening

its doors in September or could the church continue to wait. Susan Langdon, Chief, Special Permit and Variance Branch, said the development condition gave two time frames, either when Hunter Mill Road was widened to a four-lane divided section or when the lot to the north developed, so it would not necessarily have to be prior to the school opening. Mr. Hart read from a document which said at such time as Lot 26 redevelops, and he said it sounded like it was already redeveloping. Ms. Langdon said construction had not started, and the conditions for Zoroastrian would lay out when it would need to be done, and it would normally have to be done before issuance of the non-RUPs.

Further discussion ensued regarding the issue of the easement, and it was suggested that the decision be deferred for one week in order to have someone present at the hearing from the church to address the issue.

Fahad Shiari (phonetic), with the Zoroastrian Center, no address given, came forward to speak. He said that when the Zoroastrian Center applied for daycare with their special permit application, it was forced to remove that portion because of opposition, and he presented a letter that the Church of the Good Shepherd had provided to the Board at the time.

Chairman DiGiulian noted that in the letter it said that the Church of the Good Shepherd agreed not to operate a childcare facility. Ms. Langdon said that although it was a small distinction, the subject application was for a school of general education, not childcare, and there would be a difference in the ages of the children and the operating hours.

Ms. Gibb stated that the issues were always cars. Ms. Langdon said the reason the Department of Transportation had supported the subject application was because the operating hours were not during the peak morning and afternoon traffic hours.

Mr. Shiari said he did not think staff or the Department of Transportation had opposed the Zoroastrian Center's application regarding daycare. He said it was rejected because of the opposition, and his purpose of attending the subject hearing was because if the Board was going to allow a school to be operated, the Zoroastrian Center would like to operate a daycare. He said the easements were needed in order for the Zoroastrian Center to get its permit.

Mr. Beard said he thought it was imperative that someone be present from the Church of the Good Shepherd to explain the letter and the easement issue.

Mr. Hammack asked what staff considered to be peak traffic hours. He said the school would be operating from 8:45 a.m., and people would be arriving before. Ms. Langdon said no one from transportation was present to answer, but she believed it was from 7:00 to 8:00 a.m. and 4:00 to 6:00 p.m. or those approximate ranges.

Mr. Hammack said he had been to the properties, and the entrances were not aligned across from the streets. He said there would be irregular and possibly hazardous turning movements, and one of the reasons for approving the Zoroastrian Center with the conditions that were attached was to attempt to eliminate the hazardous turning movements. He said that if the Board allowed a school for children, it would be allowing more of the hazardous movements to take place, and Hunter Mill Road was heavily utilized with fast moving traffic. Mr. Hammack said he would like to hear from the Church of the Good Shepherd and try to resolve the issue of interparcel access before voting on the subject application.

Ms. Gibb stated that she would not be at the meeting the following week and did not want to hold things up, but she thought the word "development" in the condition could be interpreted very broadly and meant to her when someone got their plans in and started the process with the County. She said she did not have enough information in front of her to say who was obligated to do what, but she would argue that the Church of the Good Shepherd was obligated now to sign an easement if their development condition said they had to when the other parcel was being developed. Ms. Gibb said the construction was not essential, and digging the dirt was not the beginning of development.

Mr. Hart said he thought that the Board did not deny the childcare for the Zoroastrian Center, but rather the Center withdrew that portion because there was so much opposition. He asked staff to check the minutes to find out what the Church's position had been. Ms. Langdon said she was sure that there were also verbatim transcripts, which Mr. Hart asked the Board be given copies.

In her rebuttal, Ms. Priester said the school had committed to there not being any before or after school care related to the school and was advised by transportation that if they did not have students arriving before 8:45

a.m., that was not considered peak hours, and the school had picked their hours based on that guidance. She said the school was planning to open with two teachers and 20 students, and the understanding she had from transportation was that when numbers were over 80 was when things would significantly change in terms of traffic impact. Ms. Priester said the church and the school were in agreement that after a three-year term when the school would most likely be approaching the number of 80, the space would no longer be appropriate for the school.

Mr. Beard asked whether the school had any affiliation with the church or was more or less subletting the property. Ms. Priester said the school would be a lessee. Mr. Beard said he was interested in hearing from the church because he thought agreeing not to have daycare, but turning around and having a school might be splitting hairs. Ms. Priester said she was told that daycare related to children under the age of five, and the regulations surrounding that were very different. She said there would never be anyone under the age of five enrolled in the school.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision on SPA 85-C-003-03 to July 6, 2004, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants, and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Cede Sec. 2.1-344 A-7, with specific reference to the Lee case. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

The meeting recessed at 10:39 a.m. and reconvened at 12:19 p.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session, specifically the Lee case and the West Lewinsville Park decision. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

Mr. Beard moved to adopt a resolution in the appeal of Young K. Lea and Young A. Lee, A 2003-PR-042, that the decision letter dated February 11, 2004, reflects the decision by the Board of Zoning Appeals at its January 20, 2004 meeting, and the March 4, 2004 letter was unauthorized. Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:30 A.M. MARK WISEMAN, A 2004-SP-009 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on residential property in the R-C District in violation of Zoning Ordinance provisions. Located at 12512 Braddock Rd. on approx. 0.89 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 15.

Mike Adams, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 18, 2004. The appeal was of a determination that the appellant had established a junkyard and storage yard on residential property in the R-C District in violation of Zoning Ordinance provisions. The appellant was the owner of the property, but did not reside on the property. Upon receipt of a complaint and following an inspection by Zoning Enforcement Branch staff which identified miscellaneous storage consisting of a bathtub, a cooling unit, a log splitter, a bobcat, a wood chipper, a watering truck, three piles of wood, five piles of miscellaneous covered storage, and two sheets of plywood, staff issued the notice of violation which is the subject of the appeal. The appellant had established a junkyard and storage yard on

a residential property which is not a permitted use in the R-C District, and the appellant was in violation of the accessory outdoor storage provision because the outside storage exceeded 100 square feet, was not confined to the rear half of the lot, and was not screened from the view of the first story of a neighboring property. Staff requested that the Board uphold the Zoning Administrator's determination.

The appellant, Mark Wiseman, presented the arguments forming the basis for the appeal. He said he and his neighbors were doing some major construction that would be complete in approximately four months. He said he did not recognize the other items mentioned, and he did not have a junkyard.

Mr. Hart said many of the items identified by staff did not seem to fit a common sense understanding of the kinds of things that would be involved with construction. He asked the appellant if his position was that he had no knowledge of the items being on his property, and Mr. Wiseman said that was correct. He said the items he had was a pile of wood, which was being used for an addition on the house, and a pile of gravel from recently pouring a concrete slab. He said the construction would have been completed had it not been for the rainy weather, and the construction was delayed because the Fairfax County Government had broken into his house and done some damage. Mr. Hart asked the appellant what was being built in the construction project. Mr. Wiseman said that the excavation was done and slab poured for the porch, and some of the studs were put in that needed to be framed and finished. He said that for the 50-by-40-foot concrete slab in the backyard, the excavation had been done and the rebar put in, and it needed to be formed up and poured. Mr. Hart said the bathtub, cooling unit, log splitter, wood chipper, watering truck, and perhaps the bobcat did not seem related to the construction project. Mr. Wiseman said he did not have a log splitter or firewood and had not seen a watering truck. He said the bobcat was needed for the excavation.

Mr. Hart said that from reading the appeal application, he understood that the appellant was not taking the position that he did not have knowledge of the items, but instead said that to him it was artwork, and labeling the artwork as junk harmed his reputation and notoriety and was slander. He asked the appellant if he was saying it was artwork and that made it somehow different when he said he did not have knowledge of the items or were there two different types of things being discussed. Mr. Wiseman said it was two different things. Mr. Hart asked the appellant to describe the artwork. Mr. Wiseman said he did jewelry work, and any kind of accusation that he had junk damaged his hobby business.

Chairman DiGiulian called for speakers and noted that the Board had received two letters in support of the Zoning Administrator's position.

The appellant stated that prior to receiving a letter, he had no idea there was an issue, and his neighbors had told him they did not have a problem with what they saw. He said one of his neighbors was doing some major house construction, which looked like a major operation was going on, and there was a huge mountain of used tires on their property. Mr. Wiseman said a neighbor across the street had an 18-wheel tractor-trailer that comes and goes.

Chairman DiGiulian asked the appellant whether he denied that the items listed in the March 8 letter from the zoning inspector were on his property. Mr. Wiseman said he did not recognize the items mentioned. He said he did have a bathtub that had been taken out of the house because he was doing some work in the house, and he had a tractor with a lawn mower that he used to cut the grass, but he did not have a wood chipper.

Mr. Hammack asked the appellant whether he had reviewed the staff report and seen the photographs attached as exhibits. Mr. Wiseman said he had reviewed the report, but the photographs were not taken by him and did not recognize them. Mr. Hammack asked whether the photographs were pictures of the appellant's property. Mr. Wiseman said he did not recognize it. Mr. Hammack said the 8 ½-by-11 photographs were fairly clear, and he asked whether the appellant was saying the photographs did not depict the appellant's property. Mr. Wiseman said it could be his property, but he did not recognize any of the items in the photographs. Mr. Hammack asked whether the appellant lived at the residence, and Mr. Wiseman said he had his stuff in the buildings, was in the process of trying to fix it up, and was usually there every night. Mr. Hammack asked whether the appellant owned the truck and the bobcat in the photographs, and Mr. Wiseman said he did not. Mr. Hammack asked whether the appellant leased his property to anyone for the storage of vehicles, and Mr. Wiseman said he did not.

Mr. Beard asked whether the prior building permits on the subject property, including one in 1996 for foundation reinforcement, remained open or had there been inspections and approvals. Mr. Adams said the records showed there had been a series of inspections, but no final inspection. Mr. Wiseman said he had active permits that he was presently working on, and some of the permits had never been closed out by the

people he had purchased the property from. Mr. Beard said the 1996 permit for foundation reinforcement was issued to the appellant. Mr. Wiseman said the work had been done, and it needed a final inspection, but he had not called for the inspection because his priority was to finish the outside projects.

Mr. Hart asked whether staff could confirm that the photographs in the staff report were the subject property and when they were taken. Margaret Stehman, Deputy Zoning Administrator for Appeals, said the photographs were taken on February 25th, 2004, during the inspection by John Zemlan, Senior Zoning Inspector.

Mr. Hart asked Mr. Zemlan to confirm the circumstances under which the photographs were taken. Mr. Zemlan said that when he went to the property, the house had the number 12512 on it, the property stretched back behind the house, and the items were on the property that the house was on. In response to Mr. Hart's question, Mr. Zemlan indicated that the photographs accurately reflected the conditions he had observed.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion.

Mr. Hart said that based on the record before the Board, there was abundant evidence to conclude that the Zoning Administrator's determination was correct as of the point in time of the inspection, there was too much stuff outside, and within the meaning of the definitions, the property would constitute a junkyard or storage yard. The material on the outside exceeded the permitted limitations, and the Board had not been given anything credible that showed the determination was in any way incorrect. He said the argument made regarding other properties with problems was at odds with the scope of the issues in the appeal, and those were not issues that would result in the determination of the Zoning Administrator being overturned because they were separate enforcement problems.

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

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:00 A.M. BRUCE A. CISKE & MARY D. CISKE, VC 2004-MV-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from rear lot line. Located at 3705 Maryland St. on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 101-4 ((21)) 3. (Decision deferred from 6/1/04)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that staff had been able to contact the applicants, and they had not planned to attend because the hearing was deferred for decision only.

Mr. Hammack moved to deny VC 2004-MV-040 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRUCE A. CISKE & MARY D. CISKE, VC 2004-MV-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.9 ft. from rear lot line. Located at 3705 Maryland St. on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 101-4 ((21)) 3. (Decision deferred from 6/1/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 2004; and

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

1. The applicants are the owners of the land.
2. The house is positioned at an angle on the property thereby making it a very shallow rear yard.
3. There is a two-story brick and frame dwelling on the property which would give reasonable beneficial use to the property.
4. The location of the proposed screened porch would warrant a variance, but is not allowable under the standards set forth in the Cochran decision.
5. The applicants have not satisfied the requirements for variances to be granted.

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

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack moved to waive the 12-month waiting period for refileing an application. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 2004.

//

~ ~ ~ June 29, 2004, Scheduled case of:

9:30 A.M. ESTATE OF SCOTT P. CRAMPTON, A 2003-MV-032 Appl. under Sect(s). 13-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot width requirements of the Zoning Ordinance when created, does not meet current

minimum lot width requirements of the R-E District, and is not buildable under Zoning Ordinance provisions. Located at 11709 River Dr. on approx. 29,860 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((3)) 3. (Admin moved from 12-2-03 at appl. req.)

²⁰⁰³

Chairman DiGiulian noted that A ~~2004~~-MV-032 had been administratively moved to December 21, 2004, at 9:30 a.m.

//

~ ~ ~ June 29, 2004, After Agenda Item:

Approval of September 9, 2003; October 28, 2003; January 20, 2004; and March 23, 2004 Minutes for Young K. Lee and Young A. Lee, A 2003-PR-042, for inclusion into the Return of Record.

Mr. Hart moved to approve the Minutes with one spelling change. Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

~ ~ ~ June 29, 2004, After Agenda Item:

Request for Reconsideration from Jenifer L. Hornback
Regarding Jerry L. Winchester, VC 2004-MV-055

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that a representative of the applicant was present and wanted to talk about the possibility of having time to discuss the issues with the Zoning Administrator.

The applicant's son, no name or address given, came forward to speak. He referred the Board to Sect. 15-101, article of nonconformities, single-family dwelling that is destroyed or damaged by any casualty and said the subject home was damaged or destroyed by a hurricane and should be afforded the rights under nonconforming to be rebuilt so it occupied the same space that it occupied before it was destroyed. He said the proposed construction would not go any closer to and would actually be much farther from the property line. He said he hoped the Board had the authority to give the applicant the authority to move forward with the project so his parents could rebuild their house and their lives.

Chairman DiGiulian said the best the Board could do was to defer the decision and allow the applicant time to go to the Zoning Administrator to see if he could get some kind of nonconforming use decision.

Mr. Hart said the Board did not have any independent authority to make determinations such as Sect. 15-101 would give the applicant some nonconforming rights. He said that if the Zoning Administrator agreed with that, the applicant would not need a variance. Mr. Hart said that the reason the Board could not grant the variance was not because there were not very good reasons to do so, but because the Court said the Board could not.

Mr. Hammack said he had made the original motion and felt the Cochran case had tied the hands of the Board to grant any requests for variances, and a variance was requested rather than rebuilding on a nonconforming foundation because a modular building was proposed. He said he had no objection to reconsidering because the decision was a harsh decision on the applicant, and he took no pride in making the motion except that the Board was observing the law as it understood it to exist. He said he had no problem with reconsidering the decision to allow the applicant to explore other possibilities.

Mr. Hammack moved to approve the request for reconsideration in VC 2004-MV-055. Mr. Beard seconded the motion.

Ms. Gibb stated that did not mean the Board would be able to do anything differently until something else changed. The applicant's son said he understood, but the way he read the article, it could not fit a better case than someone who had a property for 65 years and through no fault of their own, it was destroyed. According to his reading of the article, you are allowed to rebuild as long as you do not build larger.

Mr. Beard said that was a great argument for the Zoning Administrator. The applicant's son said the

question the applicant had asked from day one was whether a variance was needed, and Supervisor Hyland and staff said it was.

Mr. Hart said the Board of Supervisors controlled what was in the Zoning Ordinance and what was allowed in different ways, and they could make something like the subject situation a special permit instead of a variance application. The applicant's son said Supervisor Hyland's office had been recently contacted, but had not received a response. He said he had previously called and advised them that the Board had said there should be some remedy through the legislative process, but were told it might be months down the road.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting. The new hearing was set for September 21, 2004.

Mr. Beard said that in the interim, if the applicant was successful with the Zoning Administrator, the variance application would go away.

Mr. Hart said that an unfavorable determination by the Zoning Administrator could be appealed.

//

~ ~ ~ June 29, 2004, After Agenda Item:

Approval of June 22, 2004 Resolutions

Mr. Beard moved to approve the Resolutions, excluding VC 2004-MV-055, on which a request for reconsideration was granted. Mr. Hammack and Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:58 p.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: January 6, 2009

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 6, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Paul W. Hammack Jr.; James R. Hart; James D. Pammel; and John F. Ribble III. Nancy E. Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:08 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian announced that he would call a case out of the Agenda order.

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. THE CHURCH OF GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD SCHOOL, SPA 85-C-003-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church to permit a private school of general education. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Decision deferred from 6/29/04)

Chairman DiGiulian said this application had been deferred for decision from June 29th.

The representative for the applicant, Pam Priester, 1917 Abbotsford Drive, Vienna, Virginia, reaffirmed the affidavit. She requested a deferral to the following Tuesday, July 13th, in order to provide information the Board requested concerning the interparcel access road, and to clarify statements regarding a childcare center. Ms. Priester said the easement issue would be addressed in the near future by Keith Martin, Esquire, representative for the Zoroastrian Center, and a meeting was scheduled with those parishioners with information on the childcare center upon their return from the holiday weekend.

Regarding the easement matter, Chairman DiGiulian said he believed a letter of intent for the interparcel access agreement was insufficient and requested documentation of its resolution for the July 13th hearing.

Mr. Hart moved to defer decision on SPA 85-C-003-03 to July 13, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. THOMAS & SUZANNE O'BOYLE, VC 2004-MV-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. with eave 7.0 ft. from side lot line. Located at 8202 Chancery Ct. on approx. 12,685 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((12)) (1) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas and Suzanne O'Boyle, 8202 Chancery Court, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicants sought approval to permit construction of an addition, the enclosure of an existing carport, to be located 8.0 feet with eave 7.0 feet from the side lot line. She stated variances of 4.0 and 2.0 feet were requested.

Thomas O'Boyle presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to enclose their existing carport into a garage to park their vehicles and secure valuables. He pointed out that his lot was exceptionally narrow, there was no other place to construct a garage, and enclosing the existing carport within the same footprint made sense and was the most economical. Mr. O'Boyle said the neighborhood was from the mid-1960s, and many of his neighbors had already enclosed their carports. He submitted a letter of support from his neighbor.

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

Mr. Hammack moved to deny VC 2004-MV-070. He explained that the Supreme Court Cochran case severely restricted the Board's ability to grant variances. Mr. Hammack voiced his regret over the inability to

approve their request.

Mr. Hart seconded the motion. He explained that formerly to enclose a carport was routine, but with the Cochran decision, it essentially abolished variances on lots that already had a house. He suggested that perhaps a Board of Supervisors' legislative solution to create a category of special permit might allow the BZA to grant relief for such cases. Mr. Hart stated that their hands were tied at this point.

Mr. Ribble commented that, before the Cochran case, an application like the O'Boyles' ordinarily was granted without difficulty. He said he would like to see the case deferred. He mentioned a special session to be held in Richmond over another matter, but was uncertain whether the legislative body would entertain this type of situation. He stated, however, that there was an awareness of the difficulty.

Chairman DiGiulian called for a vote on Mr. Ribble's substitute motion to defer VC 2004-MV-070 to January 11, 2005, at 9:00 a.m.

Discussion followed among the Board members concerning deferral and denial of applications and the merit of waiving the one-year refiling restriction.

In response to a question from Mr. Hart question, Mr. O'Boyle requested a deferral of the decision.

Chairman DiGiulian called for a vote on Mr. Ribble's motion to defer to January 11, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. JOE A. HATCHER, VC 2004-LE-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. with eave 7.3 ft. from side lot line. Located at 6102 Leewood Dr. on approx. 10,662 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((12)) 28. (Decision deferred from 5/18/04)

Chairman DiGiulian announced that the case was deferred from May 18th for decision.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant was not present at the hearing.

Mr. Pammel moved to deny VC 2004-LE-032 for the reasons stated in the Resolution.

Mr. Hammack seconded the motion and noted that the application involved fairly minimal variances, one only 1.7 feet. He commented that the Board was making decisions that prevented people from investing in their neighborhood, basically upgrading their properties, and improving the quality of life. He said it was not good policy.

Mr. Pammel commented that there was nothing they could do; their hands were tied. He voiced his concern that the ramifications of the Supreme Court's decision may unintentionally create an exodus of good citizens from Fairfax County, as the decision's results had rendered the Board limited ability to waive or modify the rules under which the Board was authorized to operate. Mr. Hammack commented that in older neighborhoods where there were greater setbacks, special economic districts would be created after people had left and had not invested in their neighborhoods.

Mr. Hart said this situation would be repeated where the variance request was minimal, that of handicap accessibility to a home in an older neighborhood. He stated that the "one size fits all" ruling didn't allow a case-by-case consideration of these kinds of modest requests, and those individuals would be unable to reside in those kinds of homes and be forced to leave. He said he believed that was not what was intended.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOE A. HATCHER, VC 2004-LE-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. with eave 7.3 ft. from side lot line. Located at 6102 Leewood Dr. on approx. 10,662 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((12)) 28. (Decision deferred from 5/18/04). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 2004; and

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

1. The applicant is the owner of the land.
2. Based on the Cochran decision, the application is denied since there is a beneficiary use of the property involved.

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 2004.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. JEFF A. DUNKELBERGER/CAITLIN GARVEY, VC 2004-MV-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft and roofed deck 11.9 ft. from side lot line, deck 25.9 ft. from front lot line and accessory structure in the front yard of a lot containing 36,000 sq. ft. or less. Located at 8000 Hamilton La. on approx. 10,353 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (4) 1.

Chairman DiGiulian announced that VC 2004-MV-069 had been withdrawn.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. DONNA M. ECHOLS, VC 2004-LE-074 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of an accessory storage structure 5.0 ft. from side lot line, an addition 5.0 ft. with eave 4.0 ft. from side lot line and total side yards of 16.7 ft. Located at 7026 Polins Ct. on approx. 11,347 sq. ft. of land zoned R-2 (Cluster) and HD. Lee District. Tax Map 92-2 ((27)) 24.

Chairman DiGiulian announced that VC 2004-LE-074 had been administratively moved to October 5, 2004, at 9:00 a.m.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. VIJAY B. BHALALA, VCA 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-SU-106 to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A. (Decision deferred from 5/18/04)

Chairman DiGiulian noted that VCA 2003-SU-106 had been deferred for decision from May 18th.

Mr. Hart explained that the Board was unable to grant the variance because of the Cochran decision as there was reasonable beneficial use with the existing home. Mr. Hart moved to deny VCA 2003-SU-106. Mr. Hammaok seconded the motion.

Vijay Bhalala stated that a phone call left by staff after he returned from overseas informed him of the Supreme Court's decision, and he requested a deferral of the decision.

Mr. Beard made an alternate motion to defer the decision on VCA 2003-SU-106 to January 11, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. KEVIN NGRTH, VC 2004-SU-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 17.4 ft. with eave 16.5 ft. and 12.8 ft. with eave 11.7 ft. from rear lot line. Located at 13223 Wrenn House La. on approx. 13,177 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (17) 31. (Decision deferred from 5/18/04)

Chairman DiGiulian announced that VC 2004-SU-038 had been deferred for decision from May 18th and there was a deferral request to January 11, 2005.

Mr. Ribble moved to defer VC 2004-SU-038 to January 11, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a 6-0 vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. WALTER WILLIAM DAY, SHARON ADKINS DAY, SP 2004-SU-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ff. from side and 8.0 ft. from rear lot line and accessory storage structure to remain 1.1 ft. from side and 1.0 ft. from rear lot line. Located at 4222 Kincaid Ct. on approx. 11,316 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 45-1 ((2)) 453.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Walter Day, 4222 Kincaid Court, Chantilly, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicant sought a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, consisting of a free-standing 15.25 foot high carport, to remain 2.0 feet from a side lot line and 8.0 feet from the rear lot line, and to permit an accessory storage structure, consisting of a 9.6 foot-high shed, to remain 1.1 feet from a side lot line and 1.0 foot from the rear lot line. She noted that variances of 6.0 and 7.25 feet were requested for the carport, and 6.9 feet and 8.6 feet for the shed.

Mr. Day presented the special permit request as outlined in the statement of justification submitted with the application. He said he parked his motor home on the street because of its size. He stated that to accommodate its length, he decided to construct a driveway behind his house and had contacted the County for instructions on setbacks. He said he was informed by the zoning branch that neither a permit nor a variance was necessary because less than 2,500 square feet would be disturbed. He said he had been instructed to contact Virginia Department of Transportation and obtained a \$10,500 bond to cut the apron and lay his driveway. He stated that he did not know a permit was required to construct the carport.

Mr. Langdon responded to questions of Mr. Hart concerning yard regulations and measurements of freestanding structures.

Mr. Day responded to Mr. Hart's and Mr. Hammack's questions concerning his shed and stated that there was a complaint on the shed, and he had since done extensive plantings to screen and buffer it.

Chairman DiGiulian called for speakers.

John Warner, owner of the adjacent rear lot, came forward to speak in opposition to the application. He said he was aware of Mr. Day's expense, but believed the area an eyesore. Mr. Warner stated he was worried about his property values and was sympathetic about the applicants' \$20,000 expenditure, but requested that the application be denied.

Mr. Beard clarified that removing the carport's canopy would bring the applicants into compliance.

In rebuttal, Mr. Day said he understood that the driveway was permitted if it were moved the required distances from the lot lines although it would be difficult to access. Addressing Mr. Warner, he said that if it became necessary to move the driveway, he would use it to park his cars because it must be utilized in some way because of its expense.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve-in-part SP 2004-SU-021 for the reasons stated in the Resolution.

Mr. Beard seconded the motion and commented that the mobile home did not require protection from the elements and it still could be parked on his property, which he said he believed was a reasonable facilitation to the neighbors.

Mr. Hart pointed out that the carport adversely affected the neighboring properties and did not satisfy Sect. 8-006, Sect. 3. He said he believed the proposed use was not harmonious with its surroundings and appeared

more industrial or commercial than what was expected in a residential neighborhood.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER WILLIAM DAY, SHARON ADKINS DAY, SP 2004-SU-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit accessory structure to remain 2.0 ft. from side and 8.0 ft. from rear lot line and accessory storage structure to remain 1.1 ft. from side and 1.0 ft. from rear lot line. **[THE DZA DENIED THE ACCESSORY STRUCTURE (CARPORT).]** Located at 4222 Kincaid Ct. on approx. 11,316 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 45-1 ((2)) 453. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 2004; and

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

1. The applicants are the owners of the land.
2. The errors do exceed ten percent of the measurement involved.
3. The fault was that of the property owner, but not necessarily in bad faith.
4. The carport would be clearly detrimental to the neighbors in the immediate vicinity.

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

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

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

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

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

following development conditions:

1. This Special Permit is approved for the location of a shed, (The BZA denied the carport) as shown on the plat prepared by Kephart and Company, dated April 5, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. RHODA Y. WATERS TRUST, VC 2004-BR-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 7.3 ft. from side lot line. Located at 8437 Chapelwood Ct. on approx. 12,091 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((23)) 19.

Chairman DiGiulian announced that the case was administratively moved to October 5, 2004, at 9:00 a.m.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. THE HEIRS OF RODERIC M. SWAIN, VC 2004-PR-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 10.0 ft. from a front lot line. Located at 10623 Marbury Rd. on approx. 1.01 ac. of land zoned R-1. Providencia District. Tax Map 47-1 ((1)) 6.

Chairman DiGiulian announced that the case was administratively moved to October 12, 2004, at 9:00 a.m.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. MICHAEL S. BUFANO, VC 2004-MV-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. with eave 11.3 ft. and stairs 11.7 ft. from the rear lot line. Located at 7113 Richard Casey Ct. on approx. 8,538 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((29)) 9. (Decision deferred from 5/18/04)

Chairman DiGiulian announced that VC 2004-MV-031 had been deferred for decision from May 18th.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant was not present at the hearing. She concurred that the case had been deferred for decision from May 18, 2004.

Mr. Beard moved to deny VC 2004-MV-031 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL S. BUFANO, VC 2004-MV-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. with eave 11.3 ft. and stairs 11.7 ft. from the rear lot line. Located at 7113 Richard Casey Ct. on approx. 8,538 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 03-3 ((29)) 9. (Decision deferred from 5/18/04) Mr. Beard moved that the Board of Zoning Appeals adopt the following

resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary 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 reasonable use of the land and/or buildings involved.

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

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Ribble and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 2004.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit building addition, side modifications and increase in land area. Located at 9105, 9111 and 9115 Backlick Rd. on approx. 1.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B and 27. (Admin. moved from 5/18/04) (Deferred indefinitely from 5/25/04)

Chairman DiGiulian announced that SPA 87-V-070 had been administratively moved to September 14, 2004, at 9:00 a.m.

//

~ ~ ~ July 6, 2004, Scheduled cases of:

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, VC 2004-HM-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a new church 32.0 ft. from front lot line. Located at 2472 Centreville Road on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with SP 2004-HM-013). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.)

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s). 3-103 and 6-105 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with VC 2004-HM-045). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David N. Hunter, the applicant's agent, 2125 Ft. Donelson Court, Dumfries, Virginia, replied that it was.

Tracy Swagler, Staff Coordinator, made staff's presentation as contained in the staff report. She pointed out that revised plans dated July 2nd were distributed at the hearing and would negate the need for the variance, but staff had not had time to review them. Also distributed at the hearing were revised development conditions that added a condition concerning historical documentation. She stated that the special permit application sought approval of a church to seat 200 with a childcare for 35 students. She said staff proposed development conditions to limit seating to 150 until such time as an off-site parking agreement was executed. Staff recommended denial of SP 2004-HM-013, as submitted, based on the need for a variance for new construction and the need for the additional parking. Ms. Swagler pointed out that staff's conditions referenced the plat in the staff report, not the July 2nd plat.

Mr. Ribble clarified that a variance was not needed as evidenced by the new plat dated July 2nd.

In response to Mr. Hammack, Ms. Swagler concurred that a special permit was required for any changes to the church and childcare center. Staff recommended they be given two weeks to review the new conditions.

Discussion followed among Board members concerning the merit of deferring the public hearing to allow time to review the recently submitted documentation.

David Hunter noted that the application was originally filed September 2003. He pointed out that the singular change on the revised plat dated July 2nd was the setback of the church structure from 32 to 40 feet from Coppermine Road. He begged the indulgence of the Board and staff, but urged the hearing go forward as the applicant was prepared to discuss the development conditions before the Board.

Issues and questions regarding light-wells, an access easement, the variance, the size of the site, the proposed structures, frontage improvements on Coppermine Road, and parking were discussed by Board members, it was decided that a deferral was warranted as neither staff nor the Board members had reviewed the new information.

After conferring with his client, Mr. Hunter said the applicant would consent to a two-week deferral.

Chairman DiGiulian asked if there was anyone present who wished to speak to the issue of deferral and receiving no response, turned to Mr. Hammack for a motion.

Mr. Hammack moved to defer SP 2004-HM-013 and VC 2004-HM-045 to July 20, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:30 A.M. ELLEN PAUL, A 2004-DR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is operating a home business with more than one employee and with storage that exceeds the use limitations set forth for the approved Home Occupation Permits, in violation of Zoning Ordinance provisions. Located at 10611 Allenwood La. on approx. 5.35 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((1)) 5C. (Admin. moved from 5/4/04 at appl. req.)

Chairman DiGiulian announced that A 2004-DR-003 had been withdrawn.

//

~ ~ ~ July 6, 2004, Scheduled case of:

9:30 A.M. RACHEL N. AND CHARLES D. SHORES, A 2004-MV-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have installed fencing, landscaping timbers, dirt and new plantings in the natural drainage channel which is obstructing the drainage onto the neighboring property, in violation of Zoning Ordinance provisions. Located at 1210 Falster Rd. on approx. 11,702 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 41A.

Chairman DiGiulian announced that A 2004-MV-010 had been withdrawn.

//

~ ~ ~ July 6, 2004, After Agenda Item:

Approval of June 29, 2004 Resolutions

Mr. Hammack moved to approve the June 29, 2004 Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Ms. Gibb was absent from the meeting.

Mr. Hammack asked about a Resolution the Board had deferred from the previous hearing. Susan Langdon, Chief, Special Permit and Variance Branch, clarified that a Request for Reconsideration item heard at the June 29, 2004 meeting had been approved by the Board and a public hearing date had been set.

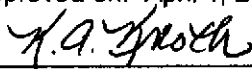
Mr. Hart asked whether there was a Resolution regarding Mr. Board's motion from the previous meeting. She explained that it would be recorded in the Minutes rather than in a Resolution, but the information was included in the Return of Record submitted to the Court the following day.


//

As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Paula A. McFarland

Approved on: April 1, 2008


Kathleen A. Knoth, Clerk
Board of Zoning Appeals


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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 13, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. THE CHURCH OF GOOD SHEPHERD (UNITED METHODIST)/LORIEN W GOD SCHOOL, SPA 85-C-003-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church to permit a private school of general education. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Decision deferred from 6/29/04 and 7/6/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pamela Priester, 1917 Abbotsford Drive, Vienna, Virginia, the applicant's agent, replied that it was.

Ms. Priester said the applicant had made every effort to address the issues raised at the public hearing. She said three documents had been presented to the Board, one from Lorien Wood School and two from the Church of the Good Shepherd. She said the church's Pastor and Robert Fredericks, legal counsel for the church, were present to answer questions. She then asked Mr. Fredericks to address the Board.

Robert Fredericks, 7369 McWhorter Place, Annandale, Virginia, said he had recently been retained by the church primarily to deal with the easement issue. He said the easement was on track but the central problem was that there was a plat that had a construction entrance designation and the church's concern was that that entrance should not be used over time for all of the construction on the Zoroastrian Center property. He said he had spoken to the attorneys involved, Keith Martin, Sack, Harris & Martin, PC, and Sarah Hall, Blankenship & Keith, and had been assured that the issues were being addressed. He asked that the Board set the easement issue aside so the school could be built and ready to receive students in September.

Mr. Hart asked staff what had happened to Development Condition 12, since it had been the issue that had derailed the application when it first came before the Board. He said the condition required Good Shepherd to give an easement at such time as the adjacent property was redeveloped and the timeframe was uncertain. Since the parties had not solved the question of an easement as of this hearing, was any suggested revision to Development Condition 12 that would explain when resolution had to be achieved so that the church could go ahead with building its school.

Mavis Stanfield, Senior Staff Coordinator, said the applicant and Mr. Martin had been trying to work something out and they had a suggestion on how to deal with the issue. She noted that the suggestion changed frequently and asked that the parties in question respond to Mr. Hart's question.

Mr. Martin said the Zoroastrian's development condition called for "...a 50-foot wide public access and egress easement over the portion of the entrance as shown on the revised plat that serves both churches shall be recorded...." He said he wanted to ensure that his client would not get to site plan approval, which was only a few days away, and find out that they would not be able to get started. He wanted a clear definition of the easement conditions which was standard County Attorney language that spoke to public access, grading and temporary construction. Mr. Martin said the issue at hand was not a construction easement as Mr. Fredericks had stated; it was a standard, temporary grading construction easement that went along with the public access easement.

Ms. Gibb asked for clarification of the applicant's concern.

Mr. Fredericks said the church was concerned with the temporary construction and grading area and wanted to be sure that it would not be used for the next two years for all of the traffic going in and out of the site while the Zoroastrian property was being developed.

Ms. Gibb said Mr. Martin's client was limited to whatever the document said they could do.

Mr. Fredericks indicated that the applicant's concern was with Item 4 in the easement document that stated "the temporary construction easement shall terminate on completion of the project" but it did not state that it was limited to construction only of the entrancoway and they were afraid that trucks would be driving over their property until completion of the Zoroastrian Center's site. He said Mr. Martin had assured him that that was not the case but the details had not been drawn up between them giving the church that assurance. He said he did not think that that had to be included in the current document.

Susan Langdon, Chief, Special Permit and Variance Branch, said when staff carried the application forward, they did not intend to hold up implementation of the school. She said the condition was to take place once the property to the north of Good Shepherd developed and the school entrance was not contingent upon this taking place.

Ms. Gibb said her concern was the approval of the Zoroastrian application and then their not being able to move forward. Ms. Langdon said that could have happened regardless of the application now before the Board. In response to a comment made by Ms. Gibb, Ms. Langdon said language could be inserted to read, "prior to the issuance of a Non-RUP for the Zoroastrian Church", which was the intention of Development Condition 12. Ms. Langdon agreed with Ms. Gibb's comment that a Non-RUP would not be issued until the easement question had been resolved.

Chairman DiGiulian questioned whether they needed the easement in order to get the site plan approved. Mr. Martin stated that his client's application did not have a trigger.

Mr. Fredericks said both churches were committed to follow through and Good Shepherd had hired him to facilitate that process. He said a delay could effectively cause a delay in building the school and he assured the Board that they would work expediently and get the work done soon.

Chairman DiGiulian called for speakers.

James Noland, Pastor, Church of the Good Shepherd, 12808 Folkstone Drive, Herndon, Virginia, said it was the church's intent to resolve the issue as soon as possible. He said they regretted causing any delay to the Zoroastrian's; however, he wanted to make sure that the language was clear concerning the limitations on the temporary construction easement so that it was related directly to the ingress/egress easement that was specified in Development Condition 12. He said they had spoken to the district superintendent who was agreeable to the application and was committed to expediting the granting of a temporary construction easement as soon as they could provide the information to him. He said he was confident that the issue could be resolved within 90 days, as soon as they had clarification of the issue of the temporary construction easement.

Mr. Hammack expressed his concern about Pastor Noland's comment that there was a church hierarchy involved with the acceptance of a temporary construction easement.

Pastor Noland apologized for waiting two years before answering Mr. Martin's letter. He said they had had a change in leadership in the church, and certain files that were supposed to have been passed along weren't, and the current leadership had not been aware of it.

In response to Ms. Gibb's question, Mr. Martin said this was the only easement that needed immediate attention.

Mr. Fredericks assured Mr. Hart that all of the issues raised could be dealt with within 90 days.

Mr. Fredericks asked for clarification that the school would be approved today and Development Condition 12 would be resolved within 90 days. Mr. Hart assured him that that was the case.

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

Mr. Hart moved to approve SPA 85-C-008-08 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE CHURCH OF GOOD SHEPHERD (UNITED METHODIST)/LORIEN WOOD SCHOOL, SPA 85-C-003-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 previously approved for church to permit the addition of a private school of general education. Located at 2351 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Decision deferred from 6/29/04 and 7/6/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 13, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony showing compliance with the required standards for a special permit.
3. The staff report was favorable.
4. There are no significant physical changes to the site.
5. The traffic situation on Hunter Mill Road is not going to be measurably affected by the introduction of a school.
6. In the context of the other applications on Hunter Mill Road where there has been tremendous opposition, one of the factors in favor of the subject application has been that this application has not been actively opposed by the community.
7. With the resolution discussed at the hearing, the uncertainty about the timing of the easement with the Zoroastrians has been resolved.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-E03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, the Church of the Good Shepherd (United Methodist) / Lorien Wood School, and is not transferable without further action of this Board, and is for the location indicated on the application, 2351 Hunter Mill Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Land Design Consultants, dated February, 1994, as revised through December 14, 1994, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats for the main area of worship shall be 400. The maximum number of seats in the outdoor worship area shall be 30.
6. There shall be no amplification used in the outdoor seating area.

7. Parking shall be provided as shown on the special permit plat. All parking shall be on-site, notwithstanding however, that approximately five (5) spaces may be removed in conjunction with the construction of an interparcel connection to the north, via Lot 26.
8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but supplemental plantings shall be maintained along the southern and western lot lines, as depicted on the plat. The barrier requirement shall be waived.
9. The limits of clearing and grading shall be maintained as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Division. There shall be no structures, except the existing outdoor seating, and no removal of vegetation except for dead or dying trees or shrubs in the area outside the existing limits of clearing and grading.
19. Any replacement lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. The width of the existing entrance shall be provided as determined by the Virginia Department of Transportation (VDOT).
12. Public access easements, as determined necessary by VDOT and DPWES to facilitate the construction of a consolidated entrance with the adjacent property located at Tax Map Number 37-2 ((1)) 26 to the north, shall be provided in recordable form in conjunction with the (re)construction of Hunter Mill Road to a four-lane divided facility and/or at such time as Lot 26 redevelops, or within 90 days of the approval of this application, whichever comes first. Construction of the improvements may be by others. If provision of the consolidated entrance necessitates the removal of parking spaces, existing asphalt on the site may be re-stripped to make up for the lost spaces without the approval of an amendment to this special permit. If VDOT determines that the existing entrance onto Hunter Mill Road must be closed, landscape plantings shall be provided in that area similar to that provided between the existing parking lot and the lot line abutting Hunter Mill Road.
13. Upon issuance of a Non-Residential Use Permit, the hours of operation for the private school of education shall be limited to 8:45 a.m. to 3:30 p.m., Monday through Friday. The private school of general education will operate during the school year and will not operate during the summer.
14. Upon issuance of a Non-Residential Use Permit, the number of students enrolled in the private school of general education shall be limited to a total maximum daily enrollment of eighty (80) children.
15. Upon issuance of a Non-Residential Use Permit, the number of employees associated with the private school of general education shall be limited to a maximum of six (6) at any one time.
16. The outdoor play equipment shall be relocated to the existing cleared area north of the church building. The play equipment shall not be located on a septic field.
17. The applicant shall obtain a sign permit for the proposed sign for the private school of general education in accordance with the provisions of Article 12 of the Zoning Ordinance.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-1-1. Mr. Hammack voted against the motion. Ms. Gibb moved to waive the 8-day waiting period. Mr. Hart seconded the motion, which carried by a vote of 6-0-1. Mr. Pammel abstained from the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. JOHN F. KELLY, VC 2004-MV-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6.5 ft. with eave 5.5 ft., deck 4.0 ft. and chimney 4.5 ft. with eave 3.5 ft. from side lot line and porch 26.8 ft. with stairs 21.8 ft. from front lot line. Located at 6423 Thirteenth St. on appr. 14,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 1. (Decision deferred from 6/29/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Kelly, 5423 Thirteenth Street, Alexandria, Virginia, replied that it was.

Chairman DiGiulian noted that a letter had been received from the Zoning Administrator concerning Mr. Kelly's application.

The Chairman asked Mr. Kelly if he had any comments.

Mr. Kelly said that he had been working with County staff and advised that he had designed the house on the same footprint, making a less than 10 percent modification to the square footage of the house, and that appeared to be the prime issue with his not falling under Section 15-101 of the Zoning Ordinance. He said that last February he had asked why that section did not apply to him and that if he had received an answer similar to the one he received today, he would have changed and modified the design of the house slightly.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he felt that he had no choice but to deny this variance application. He noted that the case had come before the Board once before and the Board had given the applicant the opportunity to appeal to the Zoning Administrator concerning whether or not Section 15-101 would apply to him. He referred to a copy of a letter from the Zoning Administrator, dated July 12, 2004, stating that Section 15-101 did not waive the variance requirements for any part of the dwelling that didn't fall within the original footprint of the dwelling. Mr. Hammack said that as a result of the Zoning Administrator's decision and the recent decision by the Virginia Supreme Court concerning its ruling that precluded variances, unless not doing so was tantamount to confiscation, he could not move for approval of this case. He noted that it was one of those decisions the Board had to make given the recent standards set forth by the Virginia Supreme Court in the Cochran case that stipulated that "...all reasonable use of the property would not be precluded by the construction of a dwelling within the original set back requirements...."

Mr. Hammack moved to deny VC 2004-MV-054. Mr. Hart seconded the motion.

Mr. Hart said there should be a way to consider variances such as Mr. Kelly's, on a case by case basis and to look at impacts such as tree removal. However, with respect to the Cochran case, the Court stated that where a house could be relocated elsewhere on the lot without a variance, the Board did not have the power to grant one. He said a staff report had been submitted indicating that the house could be centrally located on the lot. Mr. Hart called attention to the Zoning Administrator's interpretation that stated that because the new house was slightly larger it was not within Section 15-101 and could not be reconstructed in the same footprint. He said he would have gone along with another deferral because there was some legislative action pending which would involve action by the General Assembly or by the Board of Supervisors' changing a portion of the Zoning Ordinance. Following Cochran, Mr. Hart said, this Board had to obey the Court's decision that it did not have the power to grant a variance if the house could be moved elsewhere on the lot.

Mr. Hammack stated that further deferral would not benefit Mr. Kelly because he needed to reconstruct his home. He said it was regrettable that the Board was in a situation that precluded it from having the authority to grant minor variances, like the applicant's. He reminded Mr. Kelly that County staff had been opposed to

granting variances for years and there was a large group that thought variances should not be granted under any circumstance. He noted that the Virginia Supreme Court agreed with those decisions. Mr. Hammack suggested that Mr. Kelly speak to his representatives in the General Assembly and to the Mount Vernon Supervisor and explain why it would impose a hardship on him.

Mr. Ribble noted that Mr. Kelly had already spoken to his supervisor and he thought the Board of Supervisors was working on amendments to put this predicament in the realm of special permits.

Mr. Ribble moved to amend the motion to defer decision on VC 2004-MV-054 until January 2005. Mr. Pammel seconded the motion.

Mr. Hammack withdrew his motion to deny.

Mr. Kelly said that financially he could not afford to be out of his home any longer and had contacted Supervisor Hyland's office about his predicament.

Mr. Pammel commented that he was not sure that this application fell within the provision of a beneficial use. He said that the property was not habitable, and he did not think there was a beneficial use of the property. He said the Board was discussing a piece of property that did not currently have a structure and it was his opinion that the Board did have the right to grant variances on basically undeveloped lots and that was what Mr. Kelly's property was going to be. Mr. Pammel said that since they were minor, notwithstanding what the Zoning Administrator had said, he thought the Board could grant a variance under those conditions.

Mr. Hammack said he could not support Mr. Pammel's arguments with the examples set forth in the Virginia Supreme Court decision.

Ms. Langdon responded to Mr. Hart's question stating that Mr. Kelly could go forward with his special exception application if he chose to.

Mr. Hammack asked staff if there was any consideration being given to reclassifying cases such as this as special permits. Ms. Langdon said she had no information on any considerations at this time.

Mr. Hammack moved to defer decision on VC 2004-MV-054 to January 18, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 15.0 ft. with stoop 11.0 ft. from front lot line. Located at 4925 Twinbrock Rd. on approx. 5.16 AC. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with SPA 81-A-002-04). (Decision deferred from 3/16/04 and 5/25/04).

Chairman DiGiulian noted that the Board had received a request from the applicant to defer decision on VC 2004-BR-008 to October 5, 2004.

Mr. Hart moved to defer decision on VC 2004-BR-008 to October 5, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. MARIANELA ROJAS, VC 2004-MA-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 13.2 ft. with eave 12.5 ft. from one side lot line and 9.4 ft. with eave 8.1 ft. from other side lot line. Located at 4811 Seminole Ave. on approx. 7,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (B) 21.

Chairman DiGiulian noted that the applicant was not present and moved the application to the end of the agenda.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. MARY G. MEADOR, TRUSTEE, VC 2004-LE-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. with eave 10.0 ft. and stairs 8.8 ft. from side lot line. Located at 6600 Ridgeway Dr. on approx. 1.62 ac of land zoned R-2. Lee District. Tax Map 90-1 ((1)) 7B.

Chairman DiGiulian noted that the applicant was not present and moved the application to the end of the agenda.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. DEBORAH A. BASTAICH AND RAYMOND P. BASTAICH, VC 2004-BR-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. with eave 9.7 ft. from side lot line. Located at 7117 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 24. (Concurrent with SP 2004-BR-026).

9:00 A.M. DEBORAH A. BASTAICH AND RAYMOND P. BASTAICH, SP 2004-BR-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.8 ft. from side lot line and 2.9 ft. with eave 0.9 ft. from rear lot line. Located at 7117 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 24. (Concurrent with VC 2004-BR-079).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Deborah and Raymond Bastaich, 7117 Leesville Boulevard, Springfield, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition 10.7 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.3 feet was requested. The applicants requested a special permit to allow reductions to minimum yard requirements based on error in building location to permit an accessory storage structure of 11.9 feet in height to remain 3.8 feet from side lot line and 2.9 feet with eave 0.9 feet from rear lot line. A minimum rear yard of 11.9 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, reductions of 8.2 feet, 9.0 feet, and 8.0 feet, respectively, were requested.

Mr. Bastaich presented the variance and special permit requests as outlined in the statement of justification submitted with the application. With respect to the request for a special permit, he said there was an existing shed on the property when his wife had purchased the property, prior to their marriage, and it was in bad repair. He said they needed a better storage facility and had built a new shed, being unaware of the Zoning Ordinance requirement that they had to apply for a building permit. He said they had checked the neighborhood and found all types of sheds in various locations on the properties, and they had made their decision based on what they had seen. Mr. Bastaich said they were made aware of the problem when they had a plat made to change the existing carport into a garage. He said he had been told that if the shed was less than 8 1/2 feet in height, there would be no problem, but when he purchased the lumber, he used the full length of the boards, and when he finished, the height was over the 8-1/2 foot permitted allowance.

In response to Mr. Pammel's question, Mr. Bastaich said the black canisters located beside the shed, as shown in the submitted photograph, were recycling bins for composting yard scraps.

With respect to the request for a variance, Mr. Bastaich said the lot was narrow and they wanted to use the existing footprint for the carport and convert it into a one-car garage. He said that they would have been permitted to build a 10-foot wide garage in place of a carport; however, they would have difficulty with

entering and leaving the property because it would be difficult to open the doors. He noted that a standard one-car garage was 12 feet wide and they were requesting 11.3 feet to enable them to maintain the existing footprint of the carport.

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

Mr. Pammel moved to approve SP 2004-BR-026 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH A. BASTAICH AND RAYMOND P. BASTAICH, SP 2004-BR-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.8 ft. from side lot line and 2.9 ft. with eave 0.9 ft. from rear lot line. Located at 7117 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 24. (Concurrent with VC 2004-BR-079). 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 13, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have met the prescribed standards for the application.
3. The impact upon adjoining properties is minimal.
4. The structure is not a substantial or large structure.
5. The application is in compliance with the standards and policy provisions as related to these types of uses.

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

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

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

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

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

1. This Special Permit is approved for the location of a shed as shown on the plat prepared by Bryant L. Robinson, dated March 12, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Pammel moved to deny VC 2004-BR-079 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH A. BASTAICH AND RAYMOND P. BASTAICH, VC 2004-BR-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. with eave 9.7 ft. from side lot line. Located at 7117 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 24. (Concurrent with SP 2004-BR-026). 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 13, 2004; and

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

1. The applicants are the owners of the land.
2. Even though this is a very minor variance request, the Cochran case that the Board was challenged on and subsequently the Supreme Court found against the Board's decision was a very minor variance that was 1.2 feet.
3. Under the procedures the Board is now operating under with respect to the Cochran decision, the Board has no flexibility or latitude where there is a beneficial 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 difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

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

Mr. Hammack seconded the motion, which carried by a vote of 7-0. Mr. Hart made a motion to waive the 12-month waiting period for refiling an application. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. EMELITA M. ACUESTA, SP 2004-PR-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.3 ft. with eave 13.4 ft. from rear lot line. Located at 7312 Brad St. on approx. 10,552 sq. ft. of land zoned R-4. Providencia District. Tax Map 60-1 ((16)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Emelita Acuesta, 7312 Brad Street, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.3 feet with eave 13.4 feet from rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 9.7 feet and 8.6 feet, respectively, were requested.

Ms. Acuesta presented the special permit request as outlined in the statement of justification submitted with the application. She said she was requesting the special permit to allow her to enclose an already existing deck.

In answer to Mr. Beard's question, Ms. Acuesta said she had already enclosed the deck.

Ms. Acuesta stated that her neighbor's son had done the work and was a contractor in another state. She said she had not contacted the County for information nor had she requested a building permit; that her finances were limited. She said the contractor did not tell her that she needed a building permit. In answer to a question posed by Mr. Hammack, she said she did not want to make the deck enclosure an interior room, just a screen porch. Mr. Hammack pointed out that the photographs showed walls, roof and windows and asked if Ms. Acuesta planned to install electricity or plumbing. Ms. Acuesta said no.

Mr. Hart asked the applicant if an architect or engineer had designed the foundation or the framing. Ms. Acuesta said no.

Pamela Acuesta, 7312 Brad Street, Falls Church, Virginia, daughter of the applicant, said no one had designed the room. She said they had an existing deck and had enclosed it. Mr. Hart expressed concern that the footers may not be strong enough and that the framing may not consist of the right size of lumber. Ms. Acuesta said they had not consulted anyone before they proceeded to close in the deck. She said the deck was on a foundation that was raised from the ground. Mr. Hart then asked if it was on a continuous footer or on piers. Ms. Acuesta could not answer the question.

Ms. Gibb asked staff how this case had come before the Board. Ms. Langdon said a complaint had been made.

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

Mr. Hammack asked the applicant if she wanted a deferral to enable her to hire a lawyer to represent her. Ms. Acuesta said she was not financially able to do so.

Ms. Gibb stated that if the applicant had come before the Board before the enclosure was built, the Board would have had to say no because at the present time the law did not allow it to grant a variance. She said the photographs presented by the applicant did not show much of a foundation and that was troubling. She stressed that the safety of the facility would have been determined by an inspection. Ms. Gibb pointed out that the deck looked like it was sitting on rocks.

Ms. Langdon said staff had included a development condition, if the Board chose to approve the application, that would require the applicant to obtain a building permit and all final inspections would need to be completed within 30 days of approval.

Mr. Beard said he could agree to an approval if the development condition was adhered to and it was approved by some inspectors. He said he thought there was a safety issue involved.

Ms. Gibb moved to approve SP 2004-PR-022 for the reasons stated in the Resolution

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EMELITA M. ACUESTA, SP 2004-PR-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.3 ft. with eave 13.4 ft. from rear lot line. Located at 7312 Brad St. on approx. 10,552 sq. ft. of land zoned R-4, Providence District. Tax Map 60-1 ((16)) 46. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 13, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has met the required Standards A through G.

3. The noncompliance was done in good faith.
4. The applicant should have inquired as to whether a permit was necessary.
5. The mistake will not be made again.
6. It was an innocent error.
7. There is no impact on the immediate vicinity of the neighborhood, which is Standard D.
8. Based on the photographs, the addition is attractive.
9. The addition does not extend very far into the minimum setback.
10. Only a portion of the addition extends into the minimum setback because it's at an angle.
11. To force compliance with the minimum yard requirements would cause an unreasonable hardship upon the owner based on the applicant's testimony that she does not have the money, if she cannot hire a lawyer, to tear it down and rebuild.
12. Based on the photographs, a lot of work and materials were involved.

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

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

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

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

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

1. This special permit is approved for the location of an addition, as shown on the plat prepared by Lawrence H. Spilman, III, dated March 24, 2004, signed May 5, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained within 30 days of approval of this special permit and approval of final inspections shall be obtained or this Special Permit is null and void.

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

Mr. Beard seconded the motion, which carried by a vote of 4-2. Mr. Pammel and Mr. Hammack voted against the motion. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. FRANCIS AND ROBIN SAILER, VC 2004-PR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.5 ft. with eave 4.5 ft. and 7.6 ft. with eave 6.6 ft. from side lot line. Located at 8423 Stonewall Dr. on approx. 12,000 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 5. (Decision deferred from 5/18/04)

Susan Langdon, Chief, Special Permit and Variance Branch, said the case had been deferred for decision only, and she thought that it was the application that Bill Sherman, Staff Coordinator, indicated the applicant would not be present at the hearing.

Mr. Beard moved to deny VC 2004-PR-033 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANCIS AND ROBIN SAILER, VC 2004-PR-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 5.5 ft. with eave 4.5 ft. and 7.6 ft. with eave 6.6 ft. from side lot line. Located at 8423 Stonewall Dr. on approx. 12,000 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 5. (Decision deferred from 5/18/04) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 13, 2004; and

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

- 1. The applicants are the owners of the land.

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

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

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

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

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

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

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hart made a motion to waive the 12-month waiting period for refile an application. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. JOHN ADAM & ELISABETH ANNE NEFF, VC 2004-BR-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.85 ft. from side lot line. Located at 4729 Springbrook Dr. on approx. 15,326 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (5) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Neff, 4729 Springbrook Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition located 6.85 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 8.15 feet was requested.

Mr. Neff presented the variance request as outlined in the statement of justification submitted with the application. He said that he understood that if his application had been presented to the Board at an earlier date, it probably would have been approved. He made reference to the recent Virginia Supreme Court decision under which Cochran was a part, stating that it was having the effect of hampering any decisions the Board could make regarding variance applications. He said he had reviewed the Court's decision and his own application and had concluded that his application would still be appropriate and consistent with the decision. He said there were many reasons why the Court had ruled on why variances should be granted and said that the Court had concluded that they were compelling. Mr. Neff noted that in its decision the Court had acknowledged that they were immaterial in a case in which the BZA had no authority to act, whether or not the effect of the Zoning Ordinance had any effect upon the property owner or would interfere with all reasonable beneficial use of property taken as a whole. If the answer was in the negative, the BZA had no authority to go further. Mr. Neff challenged the claim that the BZA no longer had authority to grant any variance applications whatsoever. He disputed the legality of the Court's decisions. He said he had no alternative sites on which to build a garage; he had two vehicles; the family would use the space for storing toys and tools; and, he needed a woodworking area where he could work and teach his children how to use the tools and become skilled in their use. He argued that the power to grant a variance had not been taken away from the BZA because the Court had used the word "interfere" and not "prevent." It was his opinion that the BZA had authority to grant variances in order to avoid an unconstitutional result and that the Commonwealth of Virginia's Constitution, Article 1, Section 1 stated, in part, that a citizen could not be deprived of the enjoyment of life, liberty, and safety. Mr. Neff said that denying him the right to build a

garage to protect and/or use the property as stated would strike his family's right of the pursuit of happiness for themselves and the safety of their property. He said granting him a varianca was necessary to avoid an uncanstitutional result.

Mr. Beard suggested that Mr. Neff present his arguments to the Board of Supervisors. He said that as he understood it, the issue with respect to the Court's dacision was one of "by-right." He said he had considered resigning from the Board because of the Court's decision because, in his opinion, it amounted to a governmental easement and he agreed with Mr. Neff's conclusions.

Mr. Hammack said the unconstitutional result that Mr. Neff had referred to, as he understood it, had to approach confiscation and a two-car garage was not a by-right issue in this particular case. He said that as he understood it Mr. Neff could build a one-car garage by right.

Mr. Neff said that was correct but in each of the Virginia Supreme Court cases there was an alternative that gave the same square footage; however, in his case he said it did interfere with the amount of property he had and the Board should determine the distinction between the words "interfere" and "prevent."

Mr. Hammack advised Mr. Neff that the Board had been struggling with the Court's decision for several months and the Board's counsel had advised them on it.

Ms. Oibb said that the only way the Board could grant a variance was to someone who owned a vacant lot. She stated that in that case nothing could be constructed without a variance. She advised that the Board had had situations over the last few years where there was no house on the property and in those cases the owners would have been deprived of all beneficial use. She said she was sure that in the Court's decision, the wording was "interferes with all beneficial use."

Mr. Neff stated that beneficial use had to be considered with respect to the current owner of a property and what that term meant to them. He said it had to be reasonable in the context of the owner's wishes and that a family should also be included in such considerations.

Mr. Hart agreed with Ms. Gibb's analysis that the whole sentence had to be taken into consideration. He noted that, taken as a whole, the operative phrase was that it had to interfere with all reasonable beneficial use of the property. He said that in that context, applying that standard to this case did not interfere with all reasonable beneficial use of the property because Mr. Neff still had the house and could have a one-car garage or a carport. He said they felt that the Court couldn't possibly have meant that the Board could never grant a variance if a lot already had a house on it.

Mr. Hammack noted that the decision made by the Virginia Supreme Court was unanimous, oonsolidated three cases, and rejected this Board's motion to reconsider. He said it was regrettable that there wasn't more analysis of the application of statutes in the decision but the Board had to deal with it. He said he could not support Mr. Neff's application under that decision.

Mr. Neff said the Board would never be able to get past the threshold question without invoking its disoretion. He said that in his opinion the Board would have to take such a stand.

Mr. Hammack cited a recent airing of the television program entitled "Front Line" in which they reported that a 12-by-30-foot house had been built in Cleveland, Ohio where varianoes were not granted. He noted that the house had been built on an older, substandard lot, and that it was odd looking. He said that may be what this Board would have to consider in the future.

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

Mr. Hammack moved to deny VC 2004-BR-076 for the reasons stated in the Resolution.

Mr. Beard made a substitute motion to defer the application to January 18, 2005. The motion failed for laok of a second. Mr. Beard withdrew the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN ADAM & ELISABETH ANNE NEFF, VC 2004-BR-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.65 ft. from side lot line. Located at 4729 Springbrook Dr. on approx. 15,326 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (5) 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 July 13, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have not satisfied the standards for variance applications as set forth in the Cochran decision.

This application does not meet all of the following Required Standards for Variances in Section 16-404 of the Zoning Ordinance:

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Ms. Gibb made a motion to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. ERIC R. WILDER & PRESCILA B. WILDER, VC 2004-MV-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed lots C-2 and C-3 having a lot width of 12.02 ft. and to permit carport on proposed lot C-1 12.3 ft. and roofed deck 10.5 ft. from front lot line. Located at 3111 Douglas St. on approx. 1.05 ac. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 101-2 ((1)) 51.

Chairman DiGiulian noted that VC 2004-MV-977 had been administratively moved to September 21, 2004, at 9:09 a.m., at the applicants' request.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. JAMES G. KANALA, SP 2004-MA-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from side lot line. Located at 5403 Danville St. on approx. 11,961 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((2)) 103.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Kanala, 5592 Backlick Road, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 10.4 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 1.6 feet was requested.

Mr. Kanala presented the special permit request as outlined in the statement of justification submitted with the application. He said he had purchased the home from the former owner and current resident who had been in the midst of enclosing the carport. The current resident said he had contacted the County and had been told that he did not need a permit for the enclosure. Mr. Kanala said that approximately one month after he purchased the property he received a Notice of Violation, which he had received after he had closed on the property. He stated that the former owner had been in the process of fixing the carport when he received the notice. Ms. Gibb indicated that electricity had been installed in the carport and asked if it would become a living area. Mr. Kanala said he was not sure what the tenant's intended purpose was.

Also in answer to Ms. Gibb's question, Mr. Kanala said the previous owner now rented the property from him. Ms. Gibb then asked if any inspections had been done. Mr. Kanala said the County was the only entity to inspect the property prior to the issuance of the violation. He said since receipt of the notice he had had a surveyor check the property out before he applied for the permit.

Chairman DiGiulian called for speakers.

Joan Korcel, 5401 Danville Street, Springfield, Virginia, came forward to speak in support of the application. She said she had spoken to the previous owner who had indicated that he had been told by the County that he did not need a permit. She said she had been in the house but did not know if the inside of the carport had been completed. Ms. Korcel stated that she had no objections to the addition if it was within the County Code and if it was inspected by a building inspector.

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

Mr. Pammel moved to approve SP 2004-MA-023 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES G. KANALA, SP 2004-MA-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 10.4 ft. from side lot line. Located at 5403 Danville St. on approx. 11,961 sq. ft. of land zoned R-3. Mason District. Tax Map 80-2 ((2)) 103. 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 13, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony that he does comply with the standards as prescribed by the Zoning Ordinance, and that is included in his justification submitted in his application.
3. The applicant purchased the property after the addition had been basically completed.
4. Although the applicant queried the previous owner, the previous owner probably misinformed the applicant as to what actually transpired.
5. The applicant is the innocent party.

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

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

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

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

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

1. This Special Permit is approved for the location of an addition, as shown on the plat prepared by Harold A. Logan, dated April 29, 2004, submitted with this application and is not transferable to other land.
2. Within 30 days of approval of this special permit, the applicant shall obtain a building permit for the addition and approval of final inspections or this special permit shall be null and void.

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

Mr. Hart seconded the motion, which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004. This date shall be deemed to be the final approval date of this special permit.

//

The meeting recessed at 10:59 a.m. and reconvened at 11:08 a.m.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit an increase in seats and land area, building additions and site modifications. Located at 6531 and 6525 Little Ox Rd., 10915 Olm Dr., 6400 Stoney Rd. and 6340 Sydney Rd. on approx. 18.7 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 34 and 87-1 ((1)) 2, 2A, 5 and 6. (Admin. moved from 2/10/04 and 5/4/04 at appl. req.) (Deferred from 6/22/04 at appl. req.)

Vice Chairman Hammack noted that there was a long list of citizens who had signed up to speak on this application and requested that they limit their testimony to land use issues only. He then moved that speakers be limited to two minutes each, in lieu of the usual three minutes, and that civic associations be allowed to speak for three minutes.

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David S. Houston, Shaw, Pittman, Potts & Towbridge, 1650 Tysons Boulevard, McLean, Virginia, the applicant's agent, replied that it was. He apologized to the Board for delaying the application for three weeks and explained that changes had been made to the affidavit to enable the applicant to add consultants. He said he had not submitted the revised affidavit to the Office of the County Attorney within the allotted 22 calendar days and that was the reason for the delay.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to SP 90-S-057, previously approved for a church, to permit an increase in land area from 13.61 acres to 18.7 acres; an increase in seats from 400 to 1,500; an increase in building area from 7,100 square feet to 89,845 square feet; and an increase in parking spaces from 101 paved spaces and 88 overflow spaces to 581 spaces. Other site modifications included the provision of an eight-foot wide trail along Little Ox Road, rain gardens, cisterns, and other low-impact design water quality techniques, as well as possible underground stormwater detention facilities, sidewalks and a septic drainfield. Staff recommended approval of SPA 90-S-057-2 subject to the proposed development conditions contained in Appendix 1 of the staff report.

Mr. Hart asked staff about the Comprehensive Plan text for certain sectors that had been downzoned, post 1982. He noted that there were places where the text required certain additional criteria for special permit and special exception uses, one of them being that those uses should be oriented to an arterial roadway. Referring to the Mok Yang Presbyterian Church application that had been heard at an earlier date, he stated that it was his understanding that the Comprehensive Plan text requiring orientation to an arterial road pertained only to the lot where the existing church was and not the other parcels to the west, where the new

construction was, and that basically the R-1 requirement concerning an arterial road was not germane to the R-1 components of the application.

Ms. Stanfield said that was correct and it may not be applicable to the R-C parcel. She said she would check on it and return with an answer. She stated, however, that it was definitely not applicable to the R-1 property.

Mr. Hart asked if a decision had been made concerning the classification for Little Ox Road. Angela Rodeheaver, Chief, Site Analysis Branch, Fairfax County Department of Transportation, said the Virginia Department of Transportation had declared that Little Ox Road was a local road.

Mr. Hart asked if the Comprehensive Plan would preclude special permit use or expansion of an existing special permit use in the R-1 Districts because the road was a local one. Ms. Rodeheaver replied that it was not an impediment.

Mr. Hart referred to Development Condition 22 and whether there was a certain minimum area threshold with respect to wetlands and whether anything larger would require a permit. Ms. Stanfield said a permit was required, and staff had acknowledged from the very beginning that one was required. She said it was staff's misunderstanding as to when it had been applied for and obtained.

Mr. Houston, in response to Mr. Hart's query, stated that the area involved was .69 acres.

Mr. Hart then asked how adjacent properties would be protected from impacts from stormwater runoff connected to the church's expansion.

Ms. Stanfield stated that, to the best of her knowledge, the underground facility would provide runoff that was the same as the predevelopment rate and that the additional facilities the applicant was providing in the low impact design would mitigate the impact to an extent beyond that which was the pre-design rate.

Mr. Hammack, referring to page 2 of the proposed plat, said that the drainfield location appeared to be under the parking lot. Ms. Stanfield indicated that the dotted line under the parking area was actually the underground detention facility and that the drainfield was in the west corner of the property.

In answer to a question from Mr. Hammack, Ms. Stanfield said that if Stoney Road was vacated, it would reduce the FAR on the property; however, it had not been included into the computations because staff did not know if it could be obtained or would be approved.

Mr. Pammel's questioned whether or not all contiguous properties were served by public water or whether there were still some using wells. Ms. Stanfield deferred to the applicant whom she said had done a study of all the adjacent wells and had a diagram to that effect.

Mr. Houston introduced the pastor of Antioch Baptist Church, Marshall Osberry (phonetic).

Reverend Osberry said the church was celebrating its 15-year anniversary. He thanked County staff for their professionalism and assistance in helping to move the application process along. He also thanked the church's neighbors for their input and said he felt the church had made significant and substantial concessions and changes in response to community and staff concerns. Reverend Osberry gave a brief synopsis of when the church was established and its contributions to the community over the years. He said the church had needed to expand its ministries for quite some time and indicated that their administrative offices and mid-week children's ministry were located off-site in leased facilities. He said the church had approximately 70 ministries for inreach and outreach that included visitations to the Fairfax County Adult Detention and Juvenile Detention Centers, participation in the Feed the Homeless program, serving as a polling site for balloting and voting, and sponsoring a town hall meeting when the School Board was officially elected. Reverend Osberry said one of their greatest blessings was the children's youth and teen ministry that served 400 children and teens. The church also provided enrichment activity alternatives for the children and youth to include some marine programs, mystery camps and puppets, music camps, day trips to the city, excursions to theme parks, and provided values for the children. He described other activities and services the church provided. He stated that by expanding, the church would be able to bring its services onsite and would be able to continue developing. Reverend Osberry submitted a petition in support of the expansion that had been signed by 95 of the church's parishioners.

Mr. Houston presented the special permit amendment request as outlined in the statement of justification submitted with the application. Referring to the programs and accomplishments of the church and its parishioners, he said it demonstrated the need for expansion. He said the application had been filed approximately 18 months prior and the applicant had made concessions over that period of time and since the initial filing they had undergone a major redesign in order to reduce the intensity of the proposed development. He said the FAR had been reduced 20 percent below the limit allowed in the R-1 District, they were above the parking ratios, and indicated that they were "guinea pigs" for the low impact development technique of stormwater management, of water quality and quantity control. Mr. Houston said the applicant was implementing several different techniques in their plan. He said they had 67 percent of open space and 28 percent of undisturbed open space, and they were dedicating right-of-way along Little Ox Road which would improve the situation. He called attention to a traffic analysis that had been submitted to the Board that indicated that the road was not over capacity. He said they were adding walkways and a trail along Little Ox Road and preserving the existing vegetation to the extent possible with the new plan. Mr. Houston said there were 21 development conditions and handed out information to the Board that he said would address several of the issues already raised, such as wetlands. He said that as a result of the confusion expressed by staff and citizens over a year ago, the applicant had employed the Army Corps of Engineers to make a wetlands determination; however, the applicant had not yet filed for the wetlands permit that would allow the wetlands to be removed at that location. After that was accomplished, there would be mitigation that would take place at another location. He said the application for the wetlands permit had been submitted the prior week and referred to a booklet that he was going to hand out that contained an excerpt of the study. Mr. Houston said it would take two to three months to obtain the permit and typically, it would be done at site plan; however, the applicant filed it early in the process because it was an important part of the development plan. He said the applicant had had meetings with the Army Corps of Engineers and the County's Department of Environmental Quality to discuss the issue. With respect to runoff, he said the County's Public Facilities Manual (PFM) contained a requirement that the post-development runoff couldn't be any greater than the pre-development runoff, and the applicant had to figure out how to do that. He stated that the heavy engineering would typically be done at site plan. He said the applicant had done a lot of engineering to date and they had suggested many techniques. Mr. Houston indicated that the plan pointed out all the low impact development techniques and showed an underground stormwater detention facility underneath the parking lot. He stated that a determination as to whether it would be needed, what the size would be, and what the results would be would come during site plan approval. He said the PFM required the applicant to ensure that no more water was being moved to the adjoining property than was already there in an undeveloped state. He stressed that the protection was contained in a number of development conditions the applicant had provided.

Mr. Hammack referred to the original proposal for a single 82,000 square foot building and noted that the applicant had agreed to reduce the number of seats by almost one-fourth. He said the actual structure the Board was addressing was an issue of bulk and asked why the actual structure was only reduced by approximately 3,000 square feet.

Mr. Houston referred to Reverend Osberry's comments concerning the number of ministries that were conducted by the church and he said his handout would list those ministries. He said those activities, other than attendance at Sunday church services, required a need for the space and they wanted to bring all of their off-site activities on-site.

Mr. Hammack said there was opposition because of the extent of the church's ministries. He asked if the applicant intended to operate at any hours other than what appeared in their proposal. Mr. Houston said most of the ministries would be held during the hours stated in the proposal and the expected hours of operation were up to 7:00 p.m. and/or 10:00 p.m. in the evening. He noted that office functions would occur between the hours of 9:00 a.m. to 5:00 p.m. on weekdays. In response to Mr. Hammack's questions, Mr. Houston agreed that the application indicated that all the ministries would operate between the hours of 6:30 p.m. and 10:00 p.m. He said staff had been given general, not specific, information concerning the number of ministries the church would be operating.

In answer to Mr. Hart's query, Mr. Houston agreed that the request for a wetlands permit resolution would take two to three months to process. Mr. Houston said the mitigation would be off-site and was listed in the permit application and would be located in Prince William County. Mr. Houston handed out the booklet he had referred to earlier that contained the wetlands permit application. Calling attention to a question that had been raised earlier as to whether surrounding properties were hooked up to a public water facility or were on a well system, Mr. Houston referred to Attachment 1 in the booklet that contained an aerial map that had been prepared by the applicant's engineer that located the various wells on adjoining properties. He said wells were the predominant source of water; and the building in question would be on public water.

Mr. Hart noted that there was an area under the parking lot that was listed on the drawings, which were underground stormwater detention and BMP facilities. He then asked what would happen if the request for the underground detention facility was denied by the Department of Public Works and Environmental Services. Mr. Houston responded that an underground detention facility was permitted under the current PFM; however, if the wetlands permit was denied, which was where a small pond was located, the applicant would have to go through the entire process again.

Mr. Harf asked if the request for 1,500 seats would be the end of expansion of the church or was it an intermediate step. Mr. Houston said the intention of the church was to go through the process one time only. He said there was a limitation because the land was not on a public sewer system. He noted that there was only so much activity that would be permitted by the Department of Health.

Mr. Hart referred to correspondence that had been received that referenced spending public funds for water lines for the new facility. He asked if the funding was private. Mr. Houston said that he was not aware of any public funding. He said public water would have to be brought to the site by the applicant and they were doing that at their own expense.

Mr. Houston answered Mr. Hart's question stating that the applicant was amenable to the development conditions in the staff report with one caveat and that was the development condition concerning Stoney Road. He said the applicant was going to request an abandonment of that road and if it was approved, it would create more pervious area. He stated that the applicant was aware that that would reduce their FAR but they were not calculating that at this time. Mr. Houston said that if the abandonment were to be approved, the applicant would be required to put in a cul-de-sac at the end of Stoney Road and indicated that it was not shown on the development plan. He said he would like to be allowed to add a sentence or an understanding that the applicant could modify the plan slightly so that it would show a required cul-de-sac after the road abandonment. He acknowledged that that was something that could be approved administratively at a later date, but he wanted to be up front about it.

Mr. Hammack, referring to the storm sewer outlet noted on the plan, commented on the fact that it was fairly wide and backed up to two lots to the right of Lot 27. He asked Mr. Houston to explain what that was used for and how it would impact those two lots. Mr. Houston stated that was where the drainage would leave the property and that preliminary engineering showed that the applicant may need work to be done there. He said the underground facility would hold the water and then drain out in that direction. Mr. Houston said the water would continue to go through those properties but at the same rate of flow as it drained today and would have the same effect. He said that was what the applicant was required to do under the PFM. Mr. Houston stated that the applicant was going to use low impact development techniques in addition to the underground detention facility and, therefore, the water would be collected and saturated into the church's site through those techniques. He said they also had designed the potential underground facility and they were trying to keep as much water on site as possible. He advised that by law, the applicant could not drain off the site at any greater rate, volume or velocity other than what existed today in an undeveloped state.

Mr. Hammack expressed his concern about the flow on to the adjacent properties. Mr. Houston stressed that the applicant's intent was to comply with PFM requirement, Section 6-0202.4, which was cited in Tab C of his handout, and stated: "The drainage system shall be designed such that the properties over which the surface waters are conveyed from the development site to the discharge point are not adversely affected." He stressed that the applicant must meet that requirement.

Mr. Beard asked where the Bible Institute program would meet and how often. Mr. Houston deferred to Reverend Osberry for an answer.

Reverend Osberry stated that Bible study was held once a week, on Monday evenings, from 7:00 p.m. to 9:50 p.m., in a conference room at their off-site administrative offices. He said approximately 25 people attended.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in opposition to the application: James R. Michael, Jackson & Campbell, P.C., 1120 20th Street, NW, Washington, DC; Peggy Golden, 6543 Little Ox Road, Fairfax Station, Virginia; William Wiehe, 12321 Popes Head Road, Fairfax, Virginia; Gary Pisner, 6439 Little Ox Road, Springfield, Virginia; Jeffrey Moeller, 6401 Jumet Court, Fairfax Station, Virginia; James Jackson, 6537 Little Ox Road, Fairfax Station, Virginia; James Jehnson, 10701 Ellies Court, Fairfax Station, Virginia;

Janet Johnson, 10701 Ellies Court, Fairfax Station, Virginia; Joan Arban, 10706 Ellies Court, Fairfax Station, Virginia; Glenda Booth, 7708 Tauxemont Road, Alexandria, Virginia; David Gunnarson, 10707 Ellies Court, Fairfax Station, Virginia; Tamara Karas, 10701 Ox Croft Court, Fairfax Station, Virginia; William Sidenstick, 10950 Woodfair Road, Fairfax Station, Virginia; Christine Magenheimer, 10704 Ellies Court, Fairfax Station, Virginia; Clifford Krug, 10831 Olm Drive, Fairfax Station, Virginia; Kathleen Krug, 10831 Olm Drive, Fairfax Station, Virginia; William von Holle, 6603 Okeefe Knoll Court, Fairfax Station, Virginia; Mary Rosato, 6404 Jumet Court, Fairfax Station, Virginia; Patricia Ronay, 6606 Okeefe Knoll Court, Fairfax Station, Virginia; Linda K. Kledzik, 6601 Okeefe Knoll Court, Fairfax Station, Virginia; Elizabeth von Holle, 6603 Okeefe Knoll Court, Fairfax Station, Virginia; Diane Schute, 1090 Olm Drive, Fairfax Station, Virginia; Shayne Greenman, 6207 Halley Commons Court, Fairfax Station, Virginia; Robert Baumann 10905 Olm Drive, Fairfax Station, Virginia; Sarah Gunnarson, 10707 Ellies Court, Fairfax Station, Virginia; Kenneth Moeller, 641 Jumet Court, Fairfax Station, Virginia; and, Linda Barr, 10925 Olm Drive, Fairfax Station, Virginia.

Their main points dealt with: Not opposing reasonable growth of the church facility; limitations on activities held during the week; the size, scale, and intensity of the project and the lot; the impact of the church's ministries; the fact that the proposed buildings would be used to their maximum potential; information contained in a past staff report; the clearing of the land and loss of substantial mature tree coverage; the wetlands on the subject property and in the vicinity and the possible destruction and degradation as a result of the proposed expansion; the proposed mitigation of the lost wetlands being located in Prince William County rather than Fairfax County; the use by the church of additional lots to provide for open air space; parking, access, and a possible major entrance added to the middle of a blind curve with no shoulders; the surrounding area consisting of low intensity residential development; the future relocation of Route 123; the increase in traffic and possibility that vehicles would cut through neighborhoods when Little Ox Road was jammed; the amount of citizen opposition to the construction; the adverse effects on the environment; the wildlife inhabitants of the area and pond; prevention of the loss of the fragile and self-sustaining habitat; increased water runoff; the water quality and the rain gardens that would be used for stormwater abatement, their possible failure, and the results of a failure; health issues; the possible increase in the silting of Burke Lake and the increase of the lake's pollutant load; the character of the Little Ox Road neighborhood; the possible adverse effects on other properties, including wells and septic fields; children, pedestrian, bike, and vehicular traffic safety; dangerous conditions and past occurrences of traffic accidents on Little Ox Road and at nearby intersections; lack of access to adequate sewer capacity; the proposed increase in seating capacity; intrusion into the privacy of abutting properties; the proximity of the proposed structures to adjacent property lines and lack of screening and buffering; the possibility that the large Sunday school building would eventually become a full weekday school; conflicting information regarding the 70-plus ministries and the project engineers' explanation that the septic field's operation would depend on one large day being Sunday, followed by six lighter use days to drain slowly over time into the septic drainfield; the exclusion of the cellars in the calculated square footage; the effects of the project on surrounding real estate sales; deed restrictions; and, willingness of the Little Ox Coalition to compromise and the discrepancy in compromise from the applicant.

James Michael returned to the podium and summarized the concerns expressed by members of the Little Ox Road Coalition. He stated that the applicant had requested an increase in seating capacity to 1,500 seats and when the number of congregants was tallied, as set forth in their submission, there would be a total number of 1,900 people attending three services on Sunday morning. He said he thought there was more than enough seating capacity, at 800 seats, to accommodate the Sunday worshipers. Mr. Michael said that insofar as the ministries were concerned, these parishioners attended evening activities, as indicated by Mr. Houston. He questioned why the increase in seating capacity was needed because they would be using facilities in an office building or possibly the fellowship hall. He said members of the Coalition and others living in the surrounding neighborhoods did not see the need for increasing the seating capacity to 1,500. He said the reduction proposed by the Coalition was more than enough to accommodate the church's need. Mr. Michael said they were concerned about whether or not the church was looking to grow significantly and possibly be a place of repose for outside organizations. He said one of the other development conditions the Coalition would like to see in place was that the church not be allowed to lease space to a third party or outside groups. If it was indeed a local church and not a mega-church, as Mr. Houston had indicated to him, that might be something the applicant might consider, Mr. Michael said he wanted that to be indicated in the development condition. He said evening activities should be changed to reflect 7:00 p.m. to 10:00 p.m., instead of 6:30 p.m. to 10:00 p.m., to allow rush-hour traffic to dissipate. He said the number of people who could attend in the evening should be limited as well. He pointed out that it was open-ended, and at the present time there was no limitation. He said the Coalition also felt that the applicant should reduce by half the number of evenings it held its various activities. Mr. Michael stressed that staff and citizens had not been given specific information concerning what activities the 70 ministries would be offering and exactly how many people would be attending each activity. He stressed that the application potentially would approve

uses that were well beyond that stated in the facility. He reiterated Ms. Gunnarson's comments that the Coalition's compromise was fair and reasonable and consistent with the standards set forth in Article 8. He said they did not feel the current application, at 1,500 seats and over 500 parking spaces, was consistent with those standards. He said it was not harmonious, it was out of character, and it was out of shape in size. Mr. Michael said staff should require more information from the applicant in order to determine the proposed uses and what the church's expectations were with respect to its various activities. He requested that the Board deny the application based on citizen input.

Mr. Beard said that in deference to the church, the use of the words "70 ministries" should be clarified. He said that when he looked through the book presented by the applicant, an explanation of some of those ministries was consistent with normal church activities, and it did not designate hundreds of people as attendees.

Mr. Houston stated, in his rebuttal, that the booklet he handed out had been produced in anticipation of the issues raised this morning and there were attachments concerning the size and character of the structures. He referenced an e-mail he had written to Ms. Golden that stated that if the various ministries were added up, there would be 200 to 300 persons attending week night activities. He said the applicant had been asked if they would have the church empty on certain nights of the week and the response was no. He said the church did not want any restrictions on its right to worship. Mr. Houston said the applicant had done things to break up the design, they had pulled the building way from the residences on Olm Drive, and the setback was 75 feet which was more than the required transitional screening. He also said they had left the existing vegetation in place and the homes on Olm Drive, as refooted in the aerial photograph, were another 100 feet away. Referring to the 1990 staff report, Mr. Houston said that at that time the property had been zoned R-C and it was substandard with less than five acres. He noted that Little Ox Road was the old Ox Road and at that time it carried thousands more vehicles than it did today. He stated that the accident report mentioned earlier for the years 1990-1995 covered a time period when Little Ox Road was Route 123 and vehicles traveled at a much higher rate of speed. He noted that all of VDOT's comments, which were referenced in that report, specified that because there were between 15,000 and 25,000 vehicles per day, traversing what is now Little Ox Road, it was a two lane road which did not have sufficient capacity for a road with those traffic volumes. Mr. Houston called attention to Tab 7 in the handout that contained information provided by the applicant's transportation consultant, Wells and Associates. He said they made a specific study of the report in question and pointed out the obvious differences. Referring to Tab 6, he said there was another report that verified the numbers given by the County with respect to the number of vehicles per day and it indicated that Little Ox Road had sufficient capacity. With respect to blind curves, he said the applicant had to meet line of sight and they were dedicating land along Little Ox Road and providing a right-turn lane which would open up the line of sight. Mr. Houston said he had an exhibit he could turn in that showed how the applicant met VDOT standards. He also said the applicant was adding a trail where one did not currently exist and it would accommodate bicycle traffic, just like the one in front of the existing church. He then called attention to the environmental and stormwater management issues noting that the applicant had worked very hard with the County staff to come up with the low impact development techniques referenced in the booklet. He stated that the wetlands permit application was also included in the booklet and that it was a joint permit that didn't need approval by the Fairfax County Wetlands Board. He said they had done what needed to be done and they had done it earlier than most developers would have. Mr. Houston stressed that the proposal submitted by the applicant, which would be reviewed by the Army Corps of Engineers and the State Department of Environmental Quality, would be approved. He stated that other wetlands permits had been issued for land on Little Ox Road. He said the applicant's mitigation offer was sufficient and consistent with other permit applications and would be successful. Mr. Houston urged the Board to look at the issues the applicant had addressed in their booklet and layouts. He said he thought the density of the building was provided in a sketch showing a by-right subdivision. He noted that the land was in the R-1 District, not the R-C District, it did not have five-acre zoning, was not in the Water Protection Overlay District, and did not have EQC on it. Mr. Houston indicated that with 15 to 16 homes, adding up the types of homes already built at Donovan's Ridge, the square footage was similar to what Antioch was proposing. He acknowledged that two of those buildings were larger than the homes but they had set them apart, had lowered their heights, had set them farther back from the property lines and they were designing them with a residential appearance. He said the applicant had done many things and, working with Mavis Stanfield and other members of the BZA staff, they had come up with a development plan that they thought met the standards for a special permit.

In response to Ms. Gibb's question concerning the activities of the church, Mr. Houston stated that most of that information could be found on the church's website. Ms. Gibb asked how many additional people would be attending services and activities, over and above those who now attended. Reverend Osberry responded

that they expected between 200 to 300 persons at their weeknight Bible studies and other activities spread over the week. He said the heaviest traffic would be on Sunday morning.

Ms. Gibb asked if there was an opportunity to mitigate in Fairfax County as opposed to Prince William County. William Nell, Vice President, Wetlands Studies and Solutions, Inc., said his company had prepared the application that was before the Board. With respect to mitigation, Mr. Nell said there was an impact area of .69 acres of jurisdictional wetlands and waters of the United States on the property. He had his company propose mitigation that totaled .79 acres of constructed wetlands and waters and of that particular breakdown, .53 acres would be purchased from the Bull Run Wetlands Bank for mitigation. He also said there was a total of .26 acres that would be purchased from the Cedar Run Wetlands Bank which was mitigation for the open water of the pond area itself. Insofar as existing wetland banks in Fairfax County were concerned, he said there were none. Mr. Nell said there was a potential that off-site mitigation could be provided in the County but at this particular point in time the church owned no property where that could be done. Ms. Gibb then asked if buying into banks in other counties was the only way mitigation could be done. Mr. Wells replied that that was correct.

Mr. Hammack asked how the explanation provided by Mr. Wells would affect contiguous property owners on Ohm Drive if the mitigation was taking place elsewhere. Mr. Houston said the drainage issue was a question for the engineers and asked Steve Gleason, planner, William H. Gordon Associates, Inc., Leesburg, Virginia, to address the question.

Mr. Gleason said there were two separate issues involved. The County would require the applicant to provide adequate water quantity and quality control. He said that when the project was initiated with the County they had contemplated an enclosed, underground detention system that would include sand filters and an underground vault to handle both quality control and water quality. He noted that in discussions with the County, and in the redesign, his company was asked to look at low impact design principles. He said one of those would be a rain garden and stated that type of facility provided water quality control and phosphorus removal. He advised that the applicant would get credit for that removal. He said a rain garden would not abate stormwater detention because that would occur in an underground facility. As a practical matter, rain gardens had an additional benefit in that they provided on-site detention or runoff. He said the PFM did not have any way to calculate runoff, although County engineers stated that they did recognize that rain gardens provided an additional benefit. He said his company believed that the rain garden infiltration trenches and the roof systems mentioned would all have a double benefit in terms of water quantity and quality control and both systems would be required.

Mr. Hammack referred to a previous statement that inferred that the runoff would foul and that within a year some of the rain gardens would deteriorate and no longer serve their purpose. Mr. Gleason referred to the Gordon design and said they were working with Mr. Nell's company and doing additional surface grading of the parking lot. He said the parking lot runoff would flow uniformly and much of it would be captured in the rain garden shown on the sketch. He said part of the idea behind low impact was to take whatever soil was there, amend it with more permeable soils and put in basic plant materials. He stated that would allow other pollutants, such as oils emanating from vehicles, to wash uniformly into rain gardens and the roots of the system would draw them in. He pointed out that Fairfax County was not using that type of system very often but Maryland and other states were using rain gardens with basically positive results. Mr. Gleason said the system would use basic native plant materials such as shade trees, shrubs and soils to provide on-site mitigation. He said rain gardens were totally separate facilities from that used by the underground detention system in question, and they were excited about the combination of tree preservation and plantings in the rain gardens and their natural provision for phosphorus removal.

Mr. Hammack asked if rain gardens ever became fouled and required replacement or cleaning. Mr. Gleason responded that one of the things the County was wrestling with now was that they were asking for rain gardens to be pieced in common, open space areas, and they were asking for bond money to do so. He said the plant material itself needed to be cared for and constantly monitored and be indigenous material that preferred water, or wet feet. He noted that most of what would be seen would be in a woodland area and would be self-sustaining. However, he said that was something the church would have to look at because some plants could die and ground cover would have to be looked at occasionally.

Mr. Hammack noted that a previous speaker had indicated that the wetlands, which had been calculated to be approximately .7 of an acre, were fed by a spring. He asked if there was an actual spring and if so, how it was being addressed. Mr. Gleason said the water was being fed from the watershed and they had looked at it and determined that it was located a little beyond Little Ox Road. He said he believed most of the water was being recharged by that watershed but there could be some type of underground spring. He stated that

the applicant would move into the engineering phase, which the church had not done as yet, and they would have to hire a geotechnical engineer to do testing. He explained that a hole would have to be dug and if there was a high water table or something that would indicate that there was an engineering issue, it would have to be built into the design of the underground detention system and a drain would have to be installed. He said no one could determine what was under the ground at this time.

Mr. Nell said he could not comment on whether or not a spring was present but he did know that the County had mapped the downstream area of the pond as an intermittent stream on the RPA maps. He said there was no RPA on site. If required by the geotechnical engineers, a series of under drain systems would have to be located on the property. Mr. Hammack asked where that would be channeled. Mr. Nell responded that it would be under the impervious area of the site and it would be connected into the storm drainage system and then to the outfall. He said the common outfall would be located at the two lots indicated on the plat. Mr. Hammack then asked if an easement would be required. Mr. Gleason said it could be required.

Mr. Gleason further stated that if an easement was not granted, the engineers would have to provide additional on-site detention and they would have to ensure that the runoff was no greater than the predevelopment runoff. He noted that the County was looking closely at outfall issues and the adequacy of the channel. Mr. Gleason said some of the homeowners had allowed the engineers access to their property, and they had done some preliminary investigation of the channels. He said that if an easement was necessary, and could not be obtained, some additional over detention of the pond would be required. He said engineers were familiar with that issue, which was one that affected many infill developments. Mr. Gleason stated that if this was a modern subdivision, the property being looked at today was upstream, and a developer would have to create drainage easements as a matter of the subdivision design.

Mr. Hart asked for additional information on statements contained in the notebook that indicated that the Antioch property would have the largest septic field in Northern Virginia. Ms. Stanfield said a citizen had asked her about that and she had posed the question to the County's Health Department. She said she had provided the citizen with a list of much larger septic fields that were located within the County. She noted that a representative from the Health Department was present to answer questions. Mr. Hart asked if the sewage was being pumped downhill or uphill. Mr. Houston said he doubted that anything was being pumped uphill.

Mr. Hart stated that another citizen had expressed concern that the pumping station was run on electricity. He said he wanted to know what would happen if the sewage was pumped uphill. He said that if it was being pumped downhill, he did not think Burke Lake would be affected.

Kevin Walsler (phonetic), Supervisor, Fairfax County Department of Health, explained that the system was a pumping system and the sewage was pumped uphill to a higher elevated spot on the lot. He said that it was done over time and it was set up to dose four times during the day. If the electricity should go off for a period of time, he said there were safeguards that were the size of the septic tank which would provide storage above the effluent level of the norm inside the septic tank. He said there was also additional space in the pump chamber as well. Mr. Walsler indicated that if the power failure was a long term one, which would affect other residents in the same neighborhood, the Health Department would initiate emergency pump and haul procedures similar to what had been done during the outage caused by the hurricane last September. He said staff was okay with pumping uphill and with the safety of the system.

Mr. Hart stated that he did not remember a wetlands removal in conjunction with an approval of new construction for a special permit. He asked staff if the Board had ever approved a special permit where construction was displacing jurisdictional wetlands.

Susan Langdon, Chief, Special Permit and Variance Branch, replied that there had been one or two cases where there had been jurisdictional wetlands on sites that had been paved over or were a part of the application. She said prior conditions had stated that if the applicant didn't receive the appropriate approval from the Army Corps of Engineers, then the applicant would be prevented from proceeding with the application. Ms. Langdon confirmed that staff had provided the suggested language contained Development Condition 22.

Mr. Hart asked Mr. Houston if the applicant had looked at the possibility of reconfiguring around the wetlands rather than over it. Mr. Houston said they had considered it and there was no design available that could save the pond.

Mr. Hart asked if the number of seats, rather than the square footage of the building, was driving the size of the parking lot. Mr. Houston responded that the parking requirement was based upon the number of seats and they were well above required parking.

Chairman DiGiulian closed the public hearing.

Mr. Hart said it was his intention to defer the application. He said that because so much material had been presented to the Board, additional time was needed for review. He said he wanted to go over the wording contained in Development Condition 22. Mr. Hart said he thought the Board also needed more time to review and understand the wetlands removal and mitigation issues, staff's review of the additional information received from the ministry and to determine whether those changes would affect the development conditions. He stated that the Board also needed to review the report received from Young Ho Chang, Director of the Fairfax County Department of Transportation, concerning his department's response to transportation questions. Mr. Hart noted that even though staff was generally agreeable to the transportation issues as they now existed, he wanted the opportunity to review the FCDOT report more thoroughly. He said he would also like to look at information, if it was available, concerning any wetlands that had been displaced for construction for a special permit.

Mr. Hammack said he wanted to receive information on the relevant parts of the application for a wetlands permit that were being submitted to DEQ and the Army Corps of Engineers. He said he was confused as to how wetlands could be moved in Fairfax County and how the applicant could receive credit for them in Prince William County or elsewhere and if wetlands were being purchased 20 miles away. Additionally he wanted to receive quantitative information on the anticipated number of participants at each service or activity, on the 70 ministries referenced in the application which he thought impacted the application three ways such as, the hours of operation, the impact on traffic and on the well and septic systems located in the neighborhood, and on the scale of the proposed project, to include the size of the basements and cellars. Mr. Hammack said he considered the proposed project to be a major expansion and he wanted further explanation as to how that space would be utilized.

Mr. Hart moved to defer decision on SPA 90-S-057-2 to October 5, 2004, at 9:00 a.m., with the record to remain open for written comments only. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. MARIANELA ROJAS, VC 2004-MA-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 13.2 ft. with eave 12.5 ft. from one side lot line and 9.4 ft. with eave 8.1 ft. from other side lot line. Located at 4811 Seminole Ave. on approx. 7,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (B) 21.

Chairman DiGiulian noted that the applicant was not present.

Mr. Hammack noted that the Rojas application was not only a request for a second story addition, but it would also require a variance because it was on the same footprint as the original house. He asked staff to take a look at that issue because it was one of the issues he considered to be extremely unfair. He stated that it was his opinion that if the Virginia Supreme Court decision, that included the Cochran case, was to be taken literally, it prohibited the applicant from building up on a house that was legally constructed in 1935.

Mr. Hammack moved that the application be deferred to January 13, 2005, to allow staff to contact the applicant. He asked staff to suggest to Ms. Rojas that she obtain the advice of counsel. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were not present for the vote.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:00 A.M. MARY G. MEADOR, TRUSTEE, VC 2004-LE-073 Appl. under Sect(s). 13-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. with eave 10.0 ft. and stairs 8.8 ft. from

side lot line. Located at 6600 Ridgeway Dr. on approx. 1.62 ac of land zoned R-2. Lee District. Tax Map 90-1 ((1)) 7B.

Chairman DiGiulian noted that the applicant was not present.

Mr. Hammack moved to deny VC 2004-LE-073 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY G. MEADOR, TRUSTEE, VC 2004-LE-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. with eave 10.0 ft. and stairs 8.8 ft. from side lot line. Located at 6600 Ridgeway Dr. on approx. 1.62 ac of land zoned R-2. Lee District. Tax Map 90-1 ((1)) 7B. 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 13, 2004; and

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

1. The applicant is the owner of the land.
2. The subject lot is large.
3. The house is located in the corner of the lot.
4. The proposed addition requires variances that would be in violation of the standards set forth in the Cochran decision.
5. The applicant has not satisfied the required standards for granting variances set forth in the Cochran decision.

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

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack moved to waive the 12-month waiting period for refileing an application. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Ribble were not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 2004.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:30 A.M. LAWRENCE J. GRAY, PRESIDENT GHT ENTERPRISES, INC./VILLAGE HARDWARE, A 2003-MV-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing outdoor storage and display which exceeds the maximum amount of accessory outdoor storage allowed in the C-5 District in violation of Zoning Ordinance provisions. Located at 7934 - 7938 Fort Hunt Rd. on approx. 1.27 ac. of land zoned C-5. Mt. Vernon District. Tax Map 102-2 ((2)) (1) 1. (Admin. moved from 11/4/03 at appl. req.) (Deferred from 1/13/04 at appl. req.)

Chairman DiGiulian informed the Board that the notices for this case were not in order.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that staff had sent the Board a memorandum indicating that the notices were not in order so the hearing could not go forward. She said staff also advised the Board that since the application had been deferred for approximately a year, staff would not support any further deferrals. Ms. Stehman said she had received a letter from the appellant's representative, Jane Kelsey, Kelsey and Associates, Inc., Fairfax, Virginia, withdrawing the appeal.

Ms. Kelsey apologized to the Board for the delay in requesting a last minute withdrawal of the appeal stating that negotiations with the landlord had continued through the day before and the appellant did not know until then that they were not going to be able to work anything out.

Mr. Hart moved to accept the withdrawal of A 2003-MV-038. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were not present for the vote.

//

~ ~ ~ July 13, 2004, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2882 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D.

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to October 12, 2004, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ July 13, 2004, After Agenda Item:

Approval of July 6, 2004 Resolutions

Mr. Beard moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Pammel were not present for the vote.

//

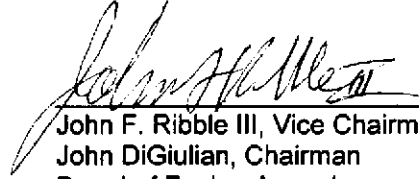
As there was no other business to come before the Board, the meeting was adjourned at 1:31 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 29, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 20, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. EDWARD C. GALLICK, TRUSTEE, ET. AL., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 95.14 ft. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129. (Reconsideration granted on 2/10/04) (Deferred from 5/18/04 at appl. req.)

Chairman DiGiulian noted that VC 2003-PR-157 had been administratively moved to September 28, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., VC 2004-DR-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into three lots with proposed lot 1 having a lot width of 35.12 ft. and proposed lot 3 having a lot width of 36.04 ft. Located at 7421 Tillman Dr. on approx. 1.05 of land zoned R-4. Dranesville District. Tax Map 30-3 ((1)) 8A.

Chairman DiGiulian noted that VC 2004-DR-072 had been administratively moved to October 19, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. AHMAD AMARLOOI & MANSOUREH KAVIAN, VC 2004-MV-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 13.0 ft. from the front lot line, second story addition 9.1 ft. from side lot line and addition 9.0 ft. from one side lot line and 10.0 ft. from other side lot line. Located at 1205 H St. on approx. 9,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (44) 19. (Decision deferred from 5/25/04)

Chairman DiGiulian noted that VC 2004-MV-034 had been previously deferred for decision only.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ahmad Amarlooi, 1205 H. Street, Alexandria, Virginia, replied that it was.

Mr. Hammack moved to deny VC 2004-MV-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AHMAD AMARLOOI & MANSOUREH KAVIAN, VC 2004-MV-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 13.0 ft. from the front lot line, second story addition 9.1 ft. from side lot line and addition 9.0 ft. from one side lot line and 10.0 ft. from other side lot line. Located at 1205 H St. on approx. 9,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (44) 19.

(Decision deferred from 5/25/04) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 2004; and

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

1. The applicants are the owners of the land.
2. In view of the Cochran decision, the applicants have reasonable use of the property because they have an existing two-story dwelling and beneficial 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 difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion. Mr. Hammack moved to waive the 12-month waiting period for refile an application. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 2004.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. THOMAS A. WILD, VC 2004-SU-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. with eave 12.0 ft. from rear lot line. Located at 12560 Lt. Nichols Rd. on approx. 9,404 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((6)) 322. (Decision deferred from 6/8/04)

Chairman DiGiulian noted that VC 2004-SU-044 had been previously deferred for decision only.

Mr. Hart moved to deny VC 2004-SU-044 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS A. WILD, VC 2004-SU-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. with eave 12.0 ft. from rear lot line. Located at 12560 Lt. Nichols Rd. on approx. 9,494 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-2 ((6)) 322. (Decision deferred from 6/8/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has not presented testimony showing compliance with the required standards for a variance.
3. This is an unusually shaped lot with a house shifted to the rear of the lot.
4. The request for a deck and sun porch is modest.
5. The proposed addition backs up to open space and there would not be a significant negative impact on anybody.
6. The Board is constrained to follow the Cochran decision, and because there is an existing house on the property, the owner has some reasonable beneficial use in the absence of a variance, so the Board is not allowed to reach these other considerations.

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

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

all reasonable use of the subject property, or

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

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

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

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

Mr. Hammack seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. 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 July 28, 2004.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. CAROL Y. & CHONG HYUP KIM, VC 2004-BR-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. with eave 6.0 ft. from side lot line. Located at 9304 Nester Rd. on approx. 21,161 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 3.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carol and Chong Kim, 9304 Nester Road, Fairfax, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition 8.2 feet with eave 8.0 feet from the side lot line. A minimum side yard of 15 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 6.8 feet and 4.0 feet, respectively, were requested.

Ms. Kim presented the variance request as outlined in the statement of justification submitted with the application. She said the subject property was adjacent to Fairfax County property, and when it rained, water came from the adjacent property onto their driveway, became icy during the wintertime, and increased the risk of injury from slipping and falling. She said she had safety concerns regarding the driveway and their children and in-laws, and they planned to build an entrance to allow her mother-in-law's wheelchair to enter the house from the garage. Ms. Kim said her father-in-law, who provided transportation for her children, had fallen the prior winter on the icy driveway. She presented a photograph showing water coming onto the driveway from a gutter system and said it was almost impossible to walk on the sloping driveway, which had a difference in elevation of 10 feet from the house to the street. She said the gutter system would be changed with the addition of the two-car garage so that the water would fall onto the lawn instead of the driveway. She said the request was not for convenience, but to minimize the hardship and risk imposed on them.

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

Mr. Pammel moved to deny VC 2004-BR-080 for the reasons stated in the Resolution. He said this was a case that the Board probably would have approved before the Cochran ruling, but that the Board was no longer permitted to consider such factors as health. There was a beneficial use because there was a house, and under the Cochran rule, the applicants were not entitled to file for a variance for enlargements and expansions that would require a variance. Mr. Ribble seconded the motion.

Mr. Beard asked whether the applicants would prefer a deferral of the decision, and Ms. Kim replied affirmatively.

Mr. Beard made a substitute motion to defer decision on VC 2004-BR-080 to January 25, 2005, at 9:00 a.m. Mr. Hammack seconded the motion.

Mr. Hart explained that after April 23, 2004, the Board could no longer grant variances and were either deferring or denying them. He said the Board had been hopeful that there would be a legislative solution with the Board of Supervisors creating some additional categories of special permits, which were subject to lesser standards, rather than variances for carport enclosures or minimum yards, or the General Assembly might do something as well to deal with what the Court had done to the statute. Mr. Hart recommended the applicants contact their elected officials regarding their situation and how they were unable to enclose an existing carport which imposed a hardship on them.

Mr. Ribble said the applicants could have a two-car carport by right or could enclose the existing carport, but not a two-car garage.

Mr. Beard advised the applicants that there was no guarantee the situation regarding the Cochran ruling would change, but it was possible, so a deferral of the decision was preferable rather than an outright denial.

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

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. DAN F. BRINKWORTH, VC 2004-LE-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. with eave 4.3 ft. from side lot line. Located at 3718 Logan Ct. on approx. 14,879 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((14)) (14) 6. (Decision deferred from 5/25/04).

Chairman DiGiulian noted that VC 2004-LE-039 had been previously deferred for decision only.

The applicant came forward to speak and requested a deferral.

Mr. Ribble moved to defer decision on VC 2004-LE-039 to January 25, 2005, at 9:00 a.m., at the applicant's request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. BENNY D. HOCKERSMITH, VC 2004-SP-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. with eave 5.83 ft. from side lot line such that side yards total 21.1 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. (Concurrent with SP 2004-SP-010). (Decision deferred from 5/25/04).

Chairman DiGiulian noted that VC 2004-SP-036 had been previously deferred for decision only and that the Board had received a request from the applicant to further defer the decision.

Ms. Gibb moved to defer decision on VC 2004-SP-036 to January 25, 2005, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A.

(Decision deferred from 5/25/04)

Chairman DiGiulian noted that VC 2004-PR-037 had been previously deferred for decision only.

Chairman DiGiulian called the applicant to the podium and asked whether the applicant wanted a further deferral of the decision. Hossein Fattahi, 8723 Litwalton Court, Vienna, Virginia, replied that he would.

Mr. Beard moved to defer decision on VC 2004-PR-037 to January 25, 2005, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. KENNETH ARTHUR & DEBRA SPRADLIN, VC 2004-BR-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. with eave 16.8 ft. from rear lot line. Located at 9325 Hobart Ct. on approx. 8,803 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((19)) 13. (Deferred from 5/25/04)

Chairman DiGiulian noted that VC 2004-BR-046 had been previously deferred.

Ms. Stanfield, Senior Staff Coordinator, said a verbal request had been received from the applicants for a further deferral to January 25, 2005.

Chairman DiGiulian asked whether the notices were in order. Ms. Stanfield said the hearing would have to be readvertised.

Mr. Ribble moved to defer VC 2004-BR-046 to January 25, 2005, at 9:00 a.m., at the applicants' request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. DAVID A. DISANO AND CAROL S. DISANO, VC 2004-SU-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.1 ft. from rear lot line. Located at 5856 Linden Creek Ct. on approx. 5,016 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((7)) 14. (Decision deferred from 6/8/04)

Chairman DiGiulian noted that VC 2004-SU-048 had been previously deferred for decision only and that the Board had received a request from the applicants to further defer the decision.

Mr. Hart moved to defer decision on VC 2004-SU-048 to January 25, 2005, at 9:00 a.m., at the applicants' request. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. ST. CATHERINE OF SIENA CATHOLIC CHURCH, SPA 80-D-021-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-021 previously approved for a church to permit a church with a nursery school and private school of general education. Located at 1020 Springvale Rd. on approx. 15.19 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 31, 32B and 32C.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McGranahan, the applicant's agent, Hunton & Williams, 1751 Pinnacle Drive, McLean, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to amend SP 80-D-021, previously approved for a church, to permit the addition of a nursery school and private school of general education for a maximum of 150 students. The proposed school would be located in the existing 42,666-square-foot building, would operate between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday, and would employ a maximum of 25 teachers. Staff recommended approval of SPA 80-D-021-04 with the adoption of the proposed development conditions. Ms. Stanfield noted that the Board had before it the applicant's objections to the development conditions outlined in a letter dated July 15, 2004, but she said staff continued to believe the development conditions should not be changed with the exception of the addition of the carpooling condition proposed by the applicant with the nursery school added to it.

Mr. McGranahan presented the special permit amendment request as outlined in the statement of justification submitted with the application. He referenced a letter he said he saw for the first time the morning of the hearing from a neighboring property owner regarding concern about potential impacts on septic and well issues. He said that at the suggestion of the Supervisor for the district, he had sent out a letter shortly after filing the application to all of the neighbors advising them of the application and encouraging them to contact the church or his law firm to discuss any concerns or issues they had, in addition to the legal notice for the hearing which was sent out as required, and he had not received any questions or comments in response to the letter or the legal notice. Mr. McGranahan said that in 2000 a special permit amendment was approved for an addition to the parish site, which was constructed in 2002 and included 11 classrooms, and that addition was what was to be used with the proposed school in the subject application. He stated that a new septic tank and field were installed with the addition and were sized to accommodate the planned use of the building. He said there was no new construction proposed, the applicant was not increasing the square footage, and no bathrooms would be added.

Mr. McGranahan explained that the school was a Montessori program which was unique in Northern Virginia in that it combined Dr. Montessori's academic curriculum with his religious curriculum, with a nursery school component for children two and a half to five years of age and a private school of general education, as it was called in the Ordinance, for grades K through 8, with the maximum number of students of 150.

Mr. McGranahan reported that on June 10, 2004, he met with the Great Falls Citizens' Association (GFCFA) to review the application with them, and they expressed general support for the application and suggested a carpool condition, which he requested the Board add to the development conditions. He said he discussed with the GFCFA the possibility of a trail easement in the event that a trail was added or moved from the Comprehensive Plan to the west side of Springvale Road, and the GFCFA was vehemently opposed to the realignment of Springvale Road, so that was why he was asking that Development Conditions 7 and 8 be deleted. He said Condition 8 talked about the addition of a right-turn lane in the event that Springvale Road was realigned, and he concurred with GFCFA that it should not be realigned, but if the Virginia Department of Transportation (VDOT) and the County decided to realign it, it should be a VDOT project and not be something on which the applicant should have to expend money. Mr. McGranahan said that with respect to Condition 7, the issue was again whether or not Springvale Road should be realigned, and he asked that condition be stricken or if the Board intended to re-impose Condition 7, he suggested the words "on demand" be deleted.

Mr. McGranahan said there was no immediate plan to have a summer program with the school, but he asked that the sentence regarding not operating during the summer in Condition 12 be deleted. He said that in the statement of justification, the applicant did not in any way limit the operation of the school to the normal school year and wanted the flexibility to be able to have four- to six-week programs during the summer and did not want to have to return to the BZA if the school decided to do so three to five years down the road.

Mr. McGranahan introduced Father McAfee, the priest at the St. Catherine of Siena Catholic Church parish, and Maggie Radzik, who would be the headmistress of the school, who were present for support and to answer questions. He asked the members of the audience who were present in support of the application to stand, and they complied.

Mr. Ribble asked Mr. McGranahan to further explain about the trails. Mr. McGranahan explained that there was no trail requirement on the church property because the comprehensive plan showed the trail on the east side of Springvale Road, but the community preferred to have the trail on the west side and was working through the Comprehensive Plan process to make the change. He said that if the trail was changed to the west, the church would be willing to give the appropriate trail easement along the Springvale Road frontage of the property to connect a trail that ran along Springvale Road as long as it did not impact any existing improvements, which it should not.

Mr. Hart referred to the diagram of a realignment of Springvale Road in Attachment 1 to the staff report and asked where that information was coming from. Ms. Stanfield said it was from the Office of Transportation. Mr. Hart said he did not remember the realignment of the road being an issue in the application four years prior, but it was in the development conditions, and he wondered whether something had changed from 2000 to the present with respect to the anticipated alignment of the road. Ms. Stanfield stated that there had been significant community opposition to the realignment, and there may be funding set aside because of the community opposition.

Mr. McGranahan said he had not been involved in 2000, but he understood that the church had not objected at the time. He said that what he perceived had changed was the community opposition, that the community saw the curve in the road as serving a traffic calming purpose that kept speeds down and wanted to maintain the curve, and the church supported the community in that position.

Mr. Hart asked whether there was any specific reference to the realignment in the Comprehensive Plan. Angela Rodeheaver, Office of Transportation, said there was no specific recommendation in the Comprehensive Plan. She said there was a concern that there would be a large piece of the applicant's property on the north side of the potential realignment, and the diagram Mr. Hart had referenced earlier was to show what the potential realignment would look like and that it would not leave a large chunk of property on the north side of the realignment. Mr. Hart asked whether there would be a widening or just a straightening out of the corner, and Ms. Rodeheaver said it would not be a widening, just a straightening out of the poor alignment. In response to Mr. Hart's question, she indicated that nothing had been funded or planned.

Chairman DiGiulian called for speakers.

John Ulfelder, Great Falls Citizens Association, Great Falls, Virginia, came forward to speak. He said the GFCFA was supporting the application, but opposed the previously discussed development conditions. Mr. Ulfelder said the issue of straightening Springvale Road was more complicated than Attachment 1 seemed to show, that a large chunk of right-of-way was being taken off the properties to the north in order to bring the curve through and straighten it to meet the existing pavement farther to the south, and two roads would have to be extended to be brought over to the new right-of-way for Springvale Road.

Mr. Ulfelder said the addition of another nursery school/preschool program in Great Falls was a good idea because there was a need, and people were driving out of Great Falls because there were not adequate spaces for their children, and the K through 8 program would relieve some of the pressure in the local elementary schools and give the opportunity for religious-oriented education to those who wanted it.

Mr. Ulfelder said he objected to the straightening of the curve because it served as a traffic calming measure, and part of the recent focus of community interest in the issue of the realignment stemmed from a proposal of VDOT a few years prior to replace a one-lane bridge farther south with a much wider bridge, but because of the width of the floodplain, the proposed bridge would have been 292 feet long and would have interfered with a number of existing property owner's access to their properties. He said the community also believed the existing one-lane bridge also acted as a traffic calming measure and preferred to keep it.

Mr. Hammack asked whether there had been any accidents along the stretch of Springvale Road. Mr. Ulfelder said there had been an accident with some fatalities just to the north where there was a big dip before the curve which involved a school bus. He did not know the accident statistics, but said it was well marked with lots of reflectors, and the speed limit was 15 miles per hour. He described it as a double curve on which you could not go any faster than 15 miles per hour, and if there were accidents, they seemed to be fender-benders because cars were traveling at a low speed due to the natural curve.

Mr. Hammack asked whether the GFCFA took into consideration that there would be school buses coming into the church to carry 150 young children during rush hour. Mr. Ulfelder said he understood the children would be brought by families in private vehicles, and that was one reason the GFCFA asked that the development conditions include a provision for a carpool coordinator in order to reduce the number of vehicles. He said that there was a long entrance drive with an existing right-turn deceleration lane so people headed south on Springvale Road could turn it, keep moving, and drop the children around in the back so there would be no occurrence of a stacking problem near the entrance to the site from Springvale Road.

Mr. Pammel said there was some inconsistency in Mr. Ulfelder's presentation in that he said he agreed with the applicant that Condition 8 should be stricken for a right-turn lane. Mr. Pammel said he did not

understand why the GFCRA would agree to remove a deceleration lane that would allow cars an opportunity to move over to get out of the way of moving traffic, particularly cars with children in them. Mr. Ulfelder said there was an existing right-turn deceleration lane, and if Condition 7 was removed, which called for the realignment, then there would be no need for a new right-turn deceleration lane. He said his understanding of Condition 8 was that the church would be required to put in a new right-turn lane when there was a realignment, and his position was that there should not be a realignment; therefore, there would be no need for Condition 8 because there was already an existing right-turn deceleration lane from the existing roadway on Springvale Road. Mr. Ulfelder said that if Springvale Road was realigned in the future, he agreed that there should be a new right-turn deceleration lane, but the church was saying that should be VDOT's responsibility, not the church, and Condition 8 put it on the church.

Mr. Pammel said it was the policy of the County that any development, whether residential or institutional, was required to install turn lanes during the development process, and he did not feel exceptions should be made. Mr. Ulfelder said that along Georgetown Pike, because of the historic nature and the fact it was a scenic highway, in certain situations where the amount of new traffic from development was minimal and in order to maintain the character and historic nature of the pike, VDOT had been willing to forgo the requirement for a right-turn or deceleration lane in some cases.

Chairman DiGiulian asked staff whether the current deceleration lane was adequate for the proposed development and whether there was any need for any reconstruction of the lane. Ms. Rodeheaver indicated that it was adequate, and there was no need for any reconstruction. She indicated that any reconstruction would be due to the realignment of the road.

Chairman DiGiulian closed the public hearing.

Mr. Hammack asked why staff had deleted the requirement for 257 parking spaces to be on site in Condition 11. Ms. Stanfield said it was a change staff had been making on many special permits because staff wanted it to reflect what was on the plat instead of an absolute number of parking spaces. She said sometimes there were minor modifications that might delete or move around parking spaces to some degree which would be within the realm of what the Zoning Ordinance permitted, and staff did not want to require the applicant to provide a precise number if at some time in the future one space more or less changed. Mr. Hammack asked whether that would allow an applicant to reconfigure a parking lot without coming back before the Board. Ms. Stanfield said only within the realm of the minor modifications provisions in the Zoning Ordinance.

Mr. Hammack moved to approve SPA 80-D-021-04 for the reasons stated in the Resolution. In regard to the changes to the development conditions, Mr. Hammack said that the church was introducing a new use to the property by putting a school in, which would intensify the use of the property, and for that reason, he thought there was a justification or nexus to have the church grant the property for a right-turn lane referenced in Condition 7; however, he agreed that the property should not be conveyed on demand. He said it was a safety factor for the school because originally when the church came in, the use was on a Sunday, but now there would be 11 classrooms and children would be brought in during rush hour times on a road that was, in his opinion, substandard and possibly hazardous, and the church should be willing to dedicate the land if it wanted to use the property for additional uses. Mr. Hammack said that he liked the declaration that there shall be 257 parking spaces provided on the site in Condition 11 because it gave the public notice of how many spaces there were. In regard to Condition 12, he said he did not see any reason a nursery school and private school of general education should be prohibited from being operated during the entire year. With respect to Condition 8, although the church should be willing to dedicate the road for realignment, he said he did not think the church should have to pay for the construction because there was currently a perfectly good right-turn lane there. Mr. Hammack included the condition proposed by the applicant regarding the promotion of carpooling.

Mr. Pammel seconded the motion.

Ms. Gibb suggested a change in the wording of Condition 18. Mr. Hammack stated that he had no objection.

Mr. Pammel suggested a modification to Condition 7. Mr. Hammack stated that he had no objection.

Mr. Beard requested clarification regarding the changes to the development conditions included in the motion, and the motion was clarified.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. CATHERINE OF SIENA CATHOLIC CHURCH, SPA 80-D-021-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-021 previously approved for a church to permit a church with a nursery school and private school of general education. Located at 1020 Springvale Rd. on approx. 15.19 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 31, 32B and 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 20, 2004; and

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

1. The applicants are the owners of the land.

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

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

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

1. This approval is granted to the applicant only, St. Catherine of Siena Catholic Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 1020 Springvale Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Intec Group, Inc., dated April 2, 2004, and approved with this application, as qualified by these development conditions.
3. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
4. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements. All dead, dying or diseased plants shall be replaced in consultation with the Urban Forestry Division, DPWES.
6. The barrier requirement shall be waived along all lot lines.
7. Right-of-way necessary for the realignment of Springvale Road located in the northeastern part of the property, as depicted on the attached (Attachment 1) locator map, shall be dedicated for public street purposes at such time as construction of Springvale Road is approved and authorized by the Virginia Department of Transportation and shall be conveyed to the Board of Supervisors in fee simple.
8. Seating in the church sanctuary shall be limited to a maximum of 506.
9. Upon issuance of a Non-Residential Use Permit, the number of students enrolled in the nursery

school and private school of general education shall be limited to a total maximum daily enrollment of one-hundred fifty (150) children.

10. There shall be 257 parking spaces provided on the site. All parking for the use shall be on site, as shown on the plat.
11. Upon issuance of a Non-Residential Use Permit, the hours of operation for the nursery school and the private school of education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.
12. Upon issuance of a Non-Residential Use Permit, the number of employees associated with the private school of general education shall be limited to a maximum of twenty-five (25) at any one time.
13. The area west of the line identified on the Special Permit Plat as the existing floodplain line and storm drainage easement shall be designated as an Environmental Quality Corridor (EQC). There shall be no clearing or grading in this area except for the removal of dead or dying trees and shrubs. This area shall remain as undisturbed open space.
14. Best Management Practices (BMPs) shall be provided as determined by DPWES to meet the requirements of the Chesapeake Bay Preservation Ordinance. Infiltration trenches or other infiltration measures may be used to help meet these requirements.
15. All signs, existing and proposed, shall be in conformance with Article 12 of the Zoning Ordinance.
16. Any replacement lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
17. Any dumpster placed on the site shall be located in an area which does not obstruct any space designated for parking and does not impact pedestrian pathways. Dumpsters shall be screened from view from adjacent residential properties.
18. The existing "chiller enclosure", which is noted on the plat located north of the social hall shall be constructed as a solid wall, sufficient in height to screen the air conditioner units and/or other enclosed items from the view of residential properties. The enclosure structure shall be maintained in good repair.
19. The nursery school and private school of general education shall promote carpooling among parents transporting children to the school by: (i) designating a "carpool coordinator" who shall facilitate the exchange of information among parents; (ii) at the beginning of each school year, sending written correspondence to each family encouraging carpooling and informing them of the role of and contact information for the carpool coordinator, and (iii) including articles in the Parish or school newsletter encouraging carpooling.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, VC 2004-HM-046 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of a new church 32.0 ft. from front lot line. Located at 2472 Centreville Road on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with SP 2004-HM-013). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.) (Continued from 7/6/04)

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s). 3-103 and 6-105 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with VC 2004-HM-045). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.) (Continued from 7/6/04)

Chairman DiGiulian noted that VC 2004-HM-045 had been withdrawn.

Chairman DiGiulian noted that SP 2004-HM-013 had been continued from July 6, 2004.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor David Hunter, 2125 Fort Donelson Court, Dumfries, Virginia, the applicant's agent, replied that it was.

Tracy Swagler, Staff Coordinator, stated that at the previous hearing, staff had recommended denial of the application because of the request for a variance, but the applicants had since submitted new plans and withdrawn the variance request, so staff was currently recommending approval of the special permit. She said the Board had questions at the prior hearing that she was prepared to answer. She said the ramp shown on the current plans extending into a side yard was allowable because it was an access improvement, and the window wells that were questioned on the south side of the building had been clarified to be at grade and would not stick up so would not be considered an intrusion into the front yard. She said the applicants had some questions about the development conditions related to times of operation and transitional screening requirements, and the questions had been resolved with the new plans and conditions, and everyone was in agreement. Ms. Swagler said the applicants had requested that the conditions be deleted related to providing an off-site parking agreement before the full 200 seats requested could be reached, and a condition related to frontage improvements had been included that said that if the separate adjacent rezoning application under which the frontage improvements were proffered should not go forward, the subject applicant would be responsible for the frontage improvements to allow the intensification on the site. She said that staff requested those two conditions remain in the application.

Mr. Ribble asked what the number of seats was that staff was suggesting. Ms. Swagler said 150 seats for the maximum, which would be one parking space per three seats, with the maximum to increase to 200 seats if an additional 17 spaces were found off site. She said there was a Zoning Ordinance requirement of one space per four seats on site, so the number of parking spaces required by the Zoning Ordinance would be 50 for the church use, but staff had recommended 67.

Mr. Hart asked whether there was a difference procedurally between why the subject application's shared parking agreement was to go to the Department of Public Works and Environmental Services when in other cases the agreements had gone to the Board of Supervisors. Ms. Swagler said part of the difference could have been because the subject applicants actually met the Zoning Ordinance requirement, so it was not an agreement in order to meet the Zoning Ordinance. Mr. Hart asked whether the Zoning Ordinance requirement would be met if the applicants had 200 seats and did not have a shared parking agreement, and Ms. Swagler replied affirmatively, but indicated that based on the experience with churches and how people drove there, staff did not believe that was sufficient.

Mr. Hart asked who was supposed to build Coppermine Road. Ms. Swagler said she believed it was the development to the north. Mr. Hart asked whether that project was going forward and there was a site plan. Angela Rodeheaver, Department of Transportation, said the site plan had not been filed, but it had been rezoned. Ms. Swagler said the case had been approved the prior year. Mr. Hart asked why the church would not get reimbursed if it built it first. Ms. Rodeheaver said there was nothing in the proffers on the adjacent rezoning that required the property owner to reimburse the church if the church did the improvements, and at the time the rezoning was done, there was no indication that the church would be coming in for a request. Mr. Hart asked whether it included the whole frontage of the church site, and Ms.

Rodeheaver answered affirmatively.

With respect to the amended development conditions contained in the addendum dated July 13, 2004, Mr. Hunter said the applicants concurred with the new Condition 6. The barrier requirement would be waived, and the new special permit plat showed shrubbery along the southern property line along Coppermine Road. He said the last sentence about the barrier requirement in new Condition 9 was stricken. With regard to the parking spaces, Mr. Hunter said the church met the Zoning Ordinance requirement, and although staff had requested that the church meet the policy of providing one space per three seats on the site, he asked that the board consider that the church had met Zoning Ordinance requirements for parking. He said the church was prepared to fulfill Condition 13 regarding the off-site shared parking agreement, but would welcome that condition being struck. Mr. Hunter asked that Condition 16 be struck because the Batman Corporation had proffered to provide the frontage improvements, and the applicants' position was that the proffer should stand and the applicants should not be bound to provide the frontage improvements.

Mr. Pammel asked about a reference to the existing church being relocated. Mr. Hunter said that originally the existing church structure was not going to be razed, and the church was going to add onto the existing structure. The architect looked at trying to fit the addition on the site with the existing structure, and it would not work, so the existing structure would be razed, and a new structure would be constructed.

Chairman DiGiulian asked whether the improvements on Coppermine Road were proffered under a rezoning, and regardless of who developed the property, the party who proffered would be required to do the construction on Coppermine Road. Ms. Rodeheaver responded that the proffers were with the adjacent property, and they were required to do the construction on the road at the time the property was developed.

Mr. Beard asked who monitored off-site parking agreements and how the County would know if one expired. Ms. Rodeheaver said that typically the parking was granted in perpetuity, and the agreement would be a part of the special permit file, but no one would be tracking the parking on any given day to ensure the spaces were available unless a complaint was received.

Mr. Hammack said the Board had approved a number of applications over the years which had been predicated on shared parking agreements that expired in the future, so the Board was allowing uses to go in that might not be in compliance, and no follow-up was done. He asked how many parking spaces were supposed to be on the site. Ms. Swagler said there were 51 spaces. She said there was also a parking agreement between the church and the on-site weekday childcare center operation, which allowed some spaces to overlap because the two uses did not occur at the same time.

Mr. Hammack asked how the applicant on the adjacent property could construct the road as part of their proffered conditions if the Board did not include Condition 16. Ms. Rodeheaver said that if the church got their site plan before the adjacent property had, because frontage improvements were a site plan Ordinance requirement, the church would be required to do the improvement if it had not already been done by others. She said that when the church got to site plan, they could request a waiver of the requirement, and if the rezoning had done the improvement, their justification would be that the improvement had already been done. If the improvement had not yet been done, the church could still ask for a waiver, but she was unsure what the justification would be.

Mr. Hammack asked why the condition was even put in at all if it was a legal requirement for site plan approval. Ms. Rodeheaver said it was to put the applicants on notice that it was something that the Department of Transportation would not support waiving if the applicants got to site plan before the adjacent property. Chairman DiGiulian said that if the Board put the condition in, he was afraid it would preclude the waiver. Ms. Swagler said that was staff's intent, that a waiver of frontage improvements was not appropriate, and the condition should be included because if someone was doubling the size of their church on their property, they were intensifying the use and needed to do the improvements. She said the while the improvements had been proffered, there were plenty of proffered plans in the county that had not been built in years, and there could potentially be a church twice the size of what was there today with new parking and a childcare center with additional people entering and leaving the property, which would be unacceptable without the improvements.

Mr. Hart said he did not understand how the adjacent developer could build the improvements on Coppermine Road if dedication was required. Mr. Swagler said she understood there was an agreement that the church would grant an easement when the adjacent rezoning came through, but at the time the church was not required to dedicate land, so the frontage improvements were to be constructed in an easement across the church property, which would be a public right-of-way easement so people would have the right to

drive on it as a street. The preferred would be that if there was a road, it would be in the state system and not in an easement.

Mr. Hart said an easement was not the same as fee simple dedication to the Board of Supervisors, but what he was trying to understand was who could go first if there was a side agreement that let the developer build the improvements before the church had to dedicate the area in which they were located. Ms. Swagler indicated the developer could go first even though the church had not gotten its site plan approved.

Mr. Hammack asked why the Board had not received a copy of the easement as part of the staff report. Mr. Hunter said that if the agreement had not been signed, it would be signed so that the right-of-way improvements could occur.

Mr. Pammel asked whether there was a problem with respect to the church as to an easement as compared to an outright dedication. Mr. Hunter said the applicants preferred not to dedicate and preferred to provide an easement so that the adjacent developer could provide the frontage improvements, but staff had requested dedication, and the applicants had consented to dedication. He said it depended on who got to site plan or got the non-RUP issued first, but however it shook out, the applicants would do whatever needed to be done, either provide the easement or outright dedication, so that the frontage improvements could be put in place. Mr. Pammel said that with an easement, that would leave the church possibly vulnerable as the owner of the property if something transpired on the easement as opposed to an outright dedication, which would absolve the church of any responsibility. He asked whether there would be an impact upon the FAR or any other aspect if the church granted outright dedication, and Mr. Hunter said there would not. Mr. Hunter explained that originally with the variance request and the church's desire to locate the building closer to the front lot line, the front lot line would have been different with the dedication as opposed to without, but because the variance had been withdrawn, it was a moot point, and dedication was no longer an issue.

Mr. Hart asked what the functional difference would be if the new church was open and the improvements had not yet been built and whether parking would be allowed along the curb once the improvements were completed. Ms. Rodeheaver said staff was concerned about the existing condition in front of the church remaining for some unknown period of time, and parking at the curb on Coppermine Road would not be allowed before or after the improvements.

Chairman DiGiulian called for speakers.

Ralph Duke, 9935 Corsica Street, Vienna, Virginia, came forward to speak in support of the application. He said he served as pastor of Beacon Hill Missionary Baptist Church since 1997. Pastor Duke said it was an underutilized facility in 1999, but the use had expanded over the past five years. He said there were four other congregations that used the facility. He discussed the different programs the church offered and the development which had occurred in the area of the church.

Margurtha Harrison White, 3035 Ashburton Avenue, Herndon, Virginia, came forward to speak in support of the application. She said she was a retired educator from the Fairfax County Public School System after serving 31 years and was working with the church to build its daycare center. She said the daycare would serve as part of the educational arm of the church and would function as an outreach to the community. Ms. White said the center would operate under the guidelines set forth in Article 10 of the Beacon Hill Missionary Baptist Church constitution and by-laws and be guided by standards set forth by federal, state, and county guidelines. The operational hours would be 6:00 a.m. to 6:00 p.m., and children aged two to four years would be enrolled.

Mr. Hammack referenced the July 13 addendum regarding interparcel access. Ms. Swagler said it was prepared in response to a question from the Board. She said the church's front entrance was the handicapped drop-off entrance where there were handicapped parking spaces. Mr. Hammack asked whether the easement had been acquired and whether staff supported the application if the easement for the additional required parking had not been acquired. Ms. Swagler said her understanding was the easement had not yet been acquired, but staff supported the application because if the applicants could not get the easement which would allow them to develop the site in conformance with the plan, they would have to amend the application. Mr. Hammack said that in the development conditions where it referred to demonstrating to DPWES how development of the site could occur, it seemed that the Board was delegating authority to the Department of Public Works and Environmental Services that it did not have authority to delegate.

Mr. Hammack asked whether the 17 parking spaces were in addition to the 51 spaces needed to meet the

Ordinance requirement for the 200 seats. Ms. Swagler said the 17 spaces were extra, but were not related to the access easement up in the corner. Mr. Hart asked whether six of the 51 spaces were dependent on the interparcel access easement. Ms. Swagler said that if the easement was not granted, there was an entrance onto Centreville Road which could be a two-way entrance instead of a one-way entrance. Mr. Hart asked how it could become a two-way entrance without an amendment if the Board approved it as a one-way. Ms. Swagler said if it was considered to be a minor modification of the plan, it could be done through interpretation, but if it was not, and had less than 51 spaces, as an example, it would require an amendment.

Mr. Hart asked how the note on the plat regarding saving the red cedar tree got incorporated into the development conditions. Ms. Swagler said it got incorporated into the conditions because the plat itself had been conditioned, and any notes on the plat were part of what must be done. She explained that the tree was one the applicants were interested in saving and was not something that staff felt was necessary to save, so that was why there were no additional conditions.

Mr. Hammack said that on the plat, it appeared that limits of clearing and grading went into an easement that had not yet been acquired and showed the existing right-of-way to be vacated. He asked who owned the right-of-way to be vacated, whether the vacation went down Old Centreville Road or was just in front of the easement, and if it was vacated, did that mean it could be driven over because it showed construction in an area that was to be vacated. Ms. Rodeheaver said there was an application Mr. Batman had filed to vacate the portion of Centreville Road, the portion that was left when he had realigned and widened Centreville Road to the existing six-lane divided facility, and the application was pending. She said that once it was approved, there would be an easement granted to the church for them to access the area to exit onto Coppermine Road, and the area where the off-site ingress/egress easement needed to be acquired was on the adjacent property owned by Mr. Batman, which Mr. Hunter had said the church was in the process of signing the agreements. Mr. Hammack said the Board approved applications according to the plats, but in the subject case, it was a plat that required a lot of things to be done by someone other than the applicants, and the development conditions did not seem to deal with the contingencies directly.

Mr. Hart asked whether the entrance coming out to Centreville Road shown as 18 feet wide would be wide enough for two ways or had to be a one-way. Ms. Rodeheaver said it was not wide enough for two-way and was intended to be an exit only so there would be no traffic backing up by stopping to make a left turn into the site.

Mr. Pammel said there were a number of questions relative to the application, and he wanted to make a motion to defer decision.

Further discussion ensued regarding the right-of-way, the easement, and the area to be vacated.

Chairman DiGiulian closed the public hearing.

Mr. Pammel asked that a plan be prepared by staff with Mr. Hunter's assistance that showed the entire interrelationship of the two parcels, what the proposed development was on the Batman property that was proffered with the development plan and how it interchanged with the property. Mr. Hammack said the engineer needed to show easements in the right places. Mr. Hart said a plat of vacation was needed or supporting documents to review.

Mr. Pammel moved to defer decision on SP 2004-HM-013 to October 19, 2004, at 9:00 a.m. He said that if the vacation had been resolved by action of the Board of Supervisors, the matter could come back to the Board before that time. He requested staff address the issues and questions raised by the Board and said that specifically the Board wanted to see a plan prepared by staff with Mr. Hunter's assistance that showed the entire interrelationship of the two parcels, including what the proposed development was on the Batman property which was proffered with the development plan and how it would interchange with the subject property. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:30 A.M. WILLIAM P. AND MARY O. OEHRLEIN, A 2003-MV-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Talbert Rd. does not meet the definition of street as set forth in the Fairfax County Zoning Ordinance and, as such, lot width cannot be measured along Talbert Rd. for Lots 2 through 5 of the proposed Gilos Glenn Subdivision.

Located at 9000 Hoes Rd. on approx. 10.0 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 15. (Moved from 2/3/04 due to inclement weather) (Deferred from 3/2/04 and 4/13/04 at appl. req.)

Chairman DiGiulian noted that the Board had received a request for a deferral until October 5, 2004.

There was no response when Chairman DiGiulian called for speakers to address the issue of the deferral request.

Mr. Hammack moved to defer A 2003-MV-049 to October 5, 2004, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 20, 2004, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for noticos.)

Elizabeth Stasiak, Zoning Administration Division, presented staff's position as set forth in the staff report dated July 9, 2004. She reported that in response to a complaint, staff from the Zoning Enforcement Branch conducted an inspection on January 15, 2004, which revealed that four tractor-trailer trucks were parked at the subject property in violation of Sect. 10-102 of the Zoning Ordinance.

Jerry M. Phillips, the appellants' agent, Phillips, Beckwith, Hall & Chase, 10513 Judicial Drive, Suite 100, Fairfax, Virginia, presented the arguments forming the basis for the appeal. He said the issue of the appeal was whether there was a nonconforming use which existed in 1955 when the appellants purchased the property. He said at that time the property, in the harmony of the neighborhood, was commercial vehicles with Payton Company located there, and other residents had and used commercial vehicles. Mr. Phillips stated that the interpretation on page 5 of the staff report was a misstatement of the Ordinance that was in existence in 1941, which was the first Zoning Ordinance adopted by the County, and staff had suggested language that said the agricultural district in 1941 could only have agriculture and forestry uses, but left out the words "and uses that were in harmony with the neighborhood." He said Attachment 2, page 2 of 2, should be compared to page 5 of the staff report, which omitted farming, dairy farming, livestock, poultry raising, lumber, sawmilling, and other uses commonly classified as agriculture and forestry, and uses which are in harmony with the character of the neighborhood with no restrictions as to the operation of such vehicles or machinery as are incident to such uses.

Mr. Phillips stated that when appellants bought their home in 1955, existing on that road was Fairfax Paving which had numerous trucks, vehicles, and equipment used for paving. He said the four subject vehicles were used for hauling gravel and sand, and Alvin Meadows, a resident prior to when the appellants moved in, would explain that was the existing condition at the time, and their use when they started their company known as Pennington Trucking was in harmony with the neighborhood. He said the four trucks were owned by Pennington Trucking and were registered to Mr. Pennington and his son, who were the nephew and brother-in-law of the appellants, and there had been no stoppage of the continuous use since 1955. Mr. Phillips said the Ordinance changed a year later, and a new Ordinance was adopted, which changed the use, but the appellants continued their legal use of the property, which was to park the commercial vehicles there. He said the staff report referred to a complaint some time ago that was dismissed because it was found the vehicles were parked in the front. Individuals had parked school buses, ATVs, and other types of commercial vehicles up and down the road since the appellants bought the property, and the complainant had since moved from the location. Mr. Phillips explained that the person had not complained until he married and had a child, and his spouse complained about the noise from the trucks leaving at 4:30 a.m. and returning at approximately 3:00 p.m., which started the investigation against the appellants and another neighbor, Alvin Meadows. He said Mr. Meadows filed an appeal and subsequently withdrew it because he sold the land.

Mr. Phillips submitted a petition from all the residents on Ruby Drive stating that they had no opposition to the parking of the four commercial vehicles on the property and never had. He presented photographs that showed different times that commercial trucks were parked in front of the property, including 1961 and 1968.

At one point Mr. Crabtree worked for one of his neighbors, which was Fairtax Paving, had also worked in the hauling business for William Hazel Construction, and was currently retired. Mr. Phillips said the facts of the case that were not contradicted were that there had been continuous use, the appellants qualified for nonconformance exception, and they were grandfathered. He asked the Board to decide that the use of the four commercial trucks was within the appellants' rights under the Ordinance that existed in 1941 and was continued to the present time.

Mr. Phillips called Mr. Crabtree to the podium. Curtis Crabtree, 5401 Ruby Drive, Fairfax, Virginia, came forward to speak. He said he had been operating the trucks out of the subject property since 1955. Mr. Crabtree said the trucks were used to haul gravel and sand for Virginia Concrete. He explained that he and his brother-in-law had owned the trucks, but after having a heart attack, Mr. Crabtree turned them over to his brother-in-law, who was kind of the caretaker of the property and looked after things for Mr. Crabtree.

In response to Mr. Phillips question as to what the character of the neighborhood had been when the appellants moved in, Mr. Crabtree said that Mr. Meadows and other companies had businesses in the area in 1955, including Fairfax Paving on Ruby Drive, and he worked for them for three or four years. Mr. Phillips asked whether Mr. Crabtree had the Fire Department check the property out based upon the complaint, and Mr. Crabtree replied that he had, and they found no hazardous operation was going on. He said the petition was signed by his neighbors in support of operating the trucks, and the photos showed trucks had been there continuously.

Mr. Hammack asked whether Mr. Crabtree had ever operated a sand or gravel business from his property. Mr. Crabtree said he only operated the trucks and delivered the gravel and sand to the plants where the concrete trucks picked it up. He said the trucks went out every morning and came back in the evening, and that was all that occurred.

Ms. Gibb made a disclosure, but indicated she did not believe her ability to participate in the case would be affected. She asked for staff's response to Mr. Crabtree's testimony that there were businesses of this type there in 1941 and what Sect. 3-A1 under agricultural use meant by uses which are in harmony with the character of the neighborhood. Margaret Stehman, Deputy Zoning Administrator for Appeals, said staff had focused on the subject property and had not looked at what other businesses had been on adjacent properties in the late '40s and early '50s. She said staff stood by their interpretation of the 1941 Zoning Ordinance relative to agricultural uses as they were allowed and that those uses had to be in harmony with the surrounding neighborhood. Ms. Stehman said that given 1941 was a long time ago, they had tacitly agreed that there may have been some varying interpretations on what some of the words may have meant in the 1941 Ordinance, but staff stood by what was included in the staff report.

Ms. Gibb asked whether staff was saying that it had to be an agricultural and forestry use, and Ms. Stehman replied affirmatively. In response to Ms. Gibb's question regarding the wording "and uses which are in harmony," Ms. Stehman said staff thought that was uses appurtenant to and in harmony with agricultural and forestry, or uses which were customarily accessory to agricultural and forestry uses and also any use had to be in harmony with the character of the neighborhood.

Ms. Gibb asked the appellants' agent if the testimony was that the use existed prior to the adoption of the March 1941 Zoning Ordinance, and Mr. Phillips said it was not. He said the appellants bought the property in 1955 during the time it was zoned agricultural on reliance that since Fairtax County Paving and Mr. Meadows were already there with commercial vehicles and supplies in the paving business, that he could live and use in harmony with the character of the neighborhood. Mr. Phillips said he did not agree with staff's interpretation and the addition of the wording "and appurtenant to." He said the clear wording talked not only about lumber and sawmilling, and he could not think of a more extensive and loud use of a property than sawmilling, but also livestock, dairy farming, and farming. He said staff had put in the wording "and appurtenant uses thereto" into their interpretation, which changed the clear language. Mr. Phillips said that before 1941 there was no Zoning Ordinance, and he thought a very wide range of uses was given. He said it was not until the next change in the Ordinance that the definitions were changed. He said the neighbors enjoyed the appellants' presence and had no objection, other than the one complainant who had moved away.

With respect to Attachment 4, Photograph 1 of 3, Mr. Beard asked whether the school bus depicted was on the adjacent property. Mr. Phillips said the school bus belonged to the gentleman who filed the complaint. Mr. Beard asked whether there was also a truck back in the driveway. Mr. Phillips said that according to the appellants, the complainant had commercial vehicles on his own property, filed a complaint, and left after being there for four or five years, and he was possibly a renter. Mr. Beard asked whether the May 27, 2003

photograph was indicative of how the property currently appeared regarding the number of vehicles and whether the carport and outbuildings still remained on the property. Mr. Crabtree indicated the photographs accurately depicted the current state.

Mr. Beard asked whether any additional violations were seen during the inspection other than the parking of the vehicles. Ms. Stehman explained that the zoning inspector had responded to a specific complaint regarding the parking of vehicles and issued a specific notice subsequent to the inspection.

Mr. Hart asked how many tractor-trailer trucks the appellants had in 1955. Mr. Crabtree said he had three and one dump truck. Mr. Hart asked whether the appellants had always had four trucks between 1955 and the present. Mr. Crabtree said he had three or four and currently had four. Mr. Hart asked whether there had been a period of time longer than two years when the appellants only had three trucks. Mr. Crabtree replied no.

Mr. Hart asked Mr. Phillips to indicate using the overhead the locations of Mr. Meadow's business and the paving company. Mr. Phillips asked a woman who he said was one of the neighbors to point them out, and she complied.

Mr. Hart stated that in the 1941 Zoning Ordinance under the Agricultural District under the use regulations, it said "and uses which are in harmony with the character of the neighborhood," and he asked staff the meaning. Ms. Stehman said it meant uses that were in harmony with agricultural and forestry uses. She also noted that there may have been other uses, but it was unknown whether the uses were legally established under the 1941 Ordinance, and although they may have contributed to the condition of the neighborhood, if they were not legally established, then they would not be in compliance with the Zoning Ordinance. In response to Mr. Hart's question regarding the wording "in harmony with the character of the neighborhood," Ms. Stehman said she thought that when the paragraph was talking about the agricultural and forestry uses and being in harmony with the neighborhood, that it implied a rural character rather than a neighborhood with a lot of commercial uses, vehicle storage, tractor-trailers, and paving companies, which would go more in the general business district or industrial district, which was also established under the Ordinance. Mr. Hart asked why the subject trucks would not be in harmony with the character of the neighborhood, even if it was predominantly a rural character with agriculture and the other uses enumerated, if before 1956 there had been a paving company next door and another business across the street, both of which had large commercial vehicles, even if it had not been expressly enumerated. Ms. Stehman said it would establish the character of the neighborhood, but would not mean they were compliant with the Zoning Ordinance.

Chairman DiGiulian asked what the situation would be if the tractor-trailers had been used to transport logs from a sawmilling operation. Ms. Stehman said that on the face of it without knowing more, if it was associated with a sawmilling business, it would have been allowed then and currently if they had been legally established in the 1950s and if they had been continued with no break greater than two years during that period. Chairman DiGiulian asked how the business would have been legally established in 1955. Ms. Stehman said that to be legally established today and in 1955, there were requirements for building permits as well as certificates of occupancy, and none were found in the files. Chairman DiGiulian asked whether a certificate of occupancy would have been required for trucks. Ms. Stehman said there would not have been a certificate of occupancy for the trucks, but there had been a requirement for a certificate of occupancy for a business that the trucks were a part of.

Mr. Hammack referred to the 1941 Ordinance regarding agricultural uses and asked whether the vehicles that were allowed had to be used in connection with farming or dairy farming by the owner of the property. Ms. Stehman said that was her interpretation. Mr. Hammack asked whether the appellants could have operated the trucks legally even in 1955 if it was not in connection with one of the enumerated businesses. Ms. Stehman indicated it was her interpretation that he could not. Mr. Hammack asked how sand and gravel as a business was treated under the applicable Ordinance in 1955. Ms. Stehman said there were businesses that were specifically prohibited in the Ordinance, but there did not seem to be a specific reference to paving or gravel business.

Mr. Pammel asked whether the appellants had a business license, and if so, when it had been first obtained. Mr. Crabtree said he did not have a business license.

Mr. Hart asked what the status was on the records from the other businesses. Ms. Stehman said that staff had not looked for the adjacent businesses and had no records in the street files of the subject file.

Mr. Hart asked whether it made a difference if the trucks belonged to someone other than the appellants. Mr. Phillips said that under the present definition of a commercial vehicle and being allowed to have one, it might. He said that although Mr. Crabtree might not be the legal title holder because Pennington Trucking owned the trucks, the appellants allowed them to stay there, and in return, Mr. Crabtree's nephew and brother-in-law took care of the appellants, so he suggested that the Crabtrees had an equitable interest in ownership of the four trucks.

Mr. Hart asked what the current use was that the trucks were incident to if the trucks being there was nonconforming because it was allowed as vehicles or machinery incident to some use that was in harmony with the character of the neighborhood that was allowed under Subsection 1. Mr. Phillips said it was hauling sand and gravel and the maintenance of the trucks to keep them in proper order so they could haul as a subcontractor for Virginia Concrete and other companies related to the paving business. Mr. Hart asked whether the parking of the vehicles was enough that they were incident to some other use rather than just being a storage yard if they were used elsewhere for the sand and gravel. Mr. Phillips said he did not think it was a storage yard because the business itself was a trucking and hauling business, and the trucks had to be maintained and taken care of in a safe manner as was inspected by the fire department. He said he had a report that said no leakages or contaminants were found, and it praised the cleanliness and neatness in caring for the large vehicles.

Mr. Hart asked how the Board was to conclude that there was a sand and gravel use that the trucks were still incident to if the appellants had not ever had a business license. Mr. Phillips said by the appellant's word and the word of his brother-in-law and nephew who would tell the Board that they had continuously been in the business since 1955 and their income and 1099s that they received from the companies who paid them.

Mr. Hart asked whether a business license would have been required at some point even if the use was acceptable under Subsection 1 as something in harmony with the character of the neighborhood. Ms. Stehman said she did not know when the County first began requiring business licenses, but it would have been incumbent upon the appellants to get a business license at the time it was required.

Mr. Hammack asked when the Penningtons began storing the vehicles on the property. Mr. Crabtree said he had raised his brother-in-law, who had been with him since he was seven years old, and he started the trucking company and put it in Pennington's name. Mr. Hammack noted that the address for the two trucks in Pennington's name showed a different address, and he asked when Pennington started to store the trucks on the appellants' property. Mr. Phillips said the particular current trucks had been there since 1968, but prior to that, there were predecessor trucks there that were probably registered at different locations. Mr. Hammack asked where Pennington Trucks, or whatever the corporate name was, listed its headquarters or principal place of business. Mr. Phillips said he did not think the business was incorporated and was just a partnership between Mr. Crabtree, his in-laws, and nephew. Mr. Crabtree described it as a family business.

Ms. Gibb asked how the drivers of the trucks knew where to go in the mornings, whether someone phoned. Mr. Crabtree said they went to Virginia Concrete in Woodbridge. He said the material was shipped into there by boat, and the trucks hauled it from there to the plants. Ms. Gibb asked whether the vehicles were just parked on the appellants' property, and Mr. Crabtree said they were parked there at night and left in the morning. Ms. Gibb asked if the trucks were hauling for the same company in 1955. Mr. Crabtree said the trucks worked for different outfits since 1955, but for the last few years had been hauling straight for Virginia Concrete. He said they had hauled salt out of Baltimore for the state highway department, hauled brick out of West Virginia for the builders in Washington, D.C., and worked for different companies to keep the trucks going. Ms. Gibb asked whether there were other trucks in the neighborhood when the appellants moved in, and Mr. Crabtree said Fairfax Paving had parked some of their trucks there.

Mr. Pammel asked where the trucks were maintained. Mr. Crabtree said on his property or in mechanics garages.

Chairman DiGiulian called for speakers.

Phyllis Hoglan, 5418 Ruby Drive, Fairfax, Virginia, came forward to speak. She said the trucks had always been there, and there were and always had been a part of the block. She said she did not have a problem with them, and she and her son had never been woken up by them. She said the trucks were there before she was. Mr. Hart asked how long she had lived there. Ms. Hoglan said she had lived there since 1966.

Mike Summersgill, 5423 Ruby Drive, Fairfax, Virginia, came forward to speak. He said he had been a resident there since November of 1992. He asked to see the petition. He said his name was not on it, and

not everyone on Ruby Drive was approached. He said the trucks had been there since he had moved in, and they woke him up every morning between 4:00 and 5:00 a.m. and returned in the afternoon between 1:00 and 3:00 p.m. Mr. Summersgill said the neighborhood was no longer a rural, agricultural community anymore and was now a bedroom community. He said there were nice homes there and people building nice homes, several being currently under construction. He said he had two children, who liked to ride their bikes and play on the street, and the operators of the trucks had been very courteous, drove slowly through the neighborhood, but the trucks were not in keeping with the harmony of the neighborhood anymore. He said Roger Hancock, who had filed the complaint, said one of his complaints was waking up at 4:00 a.m. from the noise of the diesel engines, which filled his adjacent home with diesel fumes, and he had a two-year-old. Mr. Summersgill said Mr. Hancock had to battle with Mr. Crabtree on the trucks and Mr. Meadows with Meadow's Tree Removal Service, who the Environmental Protection Agency found was burying used gasoline storage containers on the property. He said 16,000-pound trucks hauling sand and gravel should not have anyplace in the neighborhood.

Jeff Putnam, 12300 Anderson Avenue, Fairfax, Virginia, came forward to speak. He said he had lived adjacent to the appellants for seven years and was opposed to the application because of the noise of the diesel engines idling for extended periods of time and being woken up between 4:30 and 5:00 a.m. He said the drivers had been courteous and careful in driving around the neighborhood, but he had visitors who had commented about how they could live there after being woken up early each morning. Mr. Putnam said the presence of the trucks hurts property values, and the streets were prematurely aging with potholes forming due to the weight of the trucks. He also mentioned that there was wear and tear on the roads and safety concerns over the trucks being present while school buses were unloading children after school. He said maintenance had been an issue, and the police chief had been out to investigate a claim that welding was being done on a full gas tank. He said he had not been approached regarding the petition.

In response to questions by Mr. Beard, Mr. Putnam said he had moved in seven years prior, and there had been no indication that there were four trucks, the trucks would be starting up so early, and extensive maintenance was being done on the trucks. He said that on the day he looked at the property and at the closing of his purchase, there was only one truck back in the woods because at that time the other trucks were not there. Photograph 1 of 3 of Attachment 4 was shown to Mr. Putnam, and he was asked to point out his property, and he complied.

Ms. Stehman said the issue was whether or not the trucks being parked on the property was a nonconforming use. To be nonconforming, it was not sufficient that it was simply established and had been going on all this time. It must have been legally established, and the appellants had provided no evidence to indicate that the uses on the property were legally established. She said it was staff's position that the use was not a nonconforming use and was in violation of the Zoning Ordinance.

Ms. Gibb asked whether it would be legally established if there had been a business license. Ms. Stehman said that if there was sufficient evidence with public records that the use was established in 1955, then it could be a nonconforming use, but there was no such evidence. It was established, but not legally established.

Mr. Phillips said he thought that the burden of a notice of violation should be on the one that made the accusation. According to the present Zoning Ordinance, the burden was to show it was nonconforming. The fire department did inspect and said the welding, the use, and the maintenance were all proper, neat, and orderly, and the inspection resulted in no violation. Mr. Phillips said there was no evidence by the County that the appellants were not legal. He asked that the Board find for the appellants that they were not in violation because they had a legally established use which was in harmony at the time.

Chairman DiGiulian closed the public hearing.

Mr. Hart said he thought something was allowed under the 1941 Zoning Ordinance under agricultural district use regulations under subparagraph 1 to include uses which were in harmony with the character of the neighborhood. He said he thought there might be some additional information in the street file about the paving business or the tree removal business and also the character of the neighborhood in 1955. The second issue was whether the parking of four trucks was a legally established use in 1955 and what the legal requirements were in 1955.

Mr. Hart moved to defer decision on A 2004-SP-004 to September 14, 2004, at 9:30 a.m. Ms. Gibb seconded the motion. Mr. Ribble was absent from the meeting. Mr. Beard said he would support the motion. Mr. Pammel said he wanted some aerial photography. Ms. Gibb said it was difficult to establish a

use in 1941 or the 1950s, and she thought the testimony was there was no business license. Mr. Hammack asked staff to consider further the significance of the Penningtons that had no ownership interest.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ July 20, 2004, After Agenda Item:

Approval of BZA Meeting Dates for the First Six Months of 2005

Mr. Pammel moved to approve the proposed meeting dates with the deletion of the February 22, 2005, and May 31, 2005 meetings. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ July 20, 2004, After Agenda Item:

Approval of July 13, 2004 Resolutions

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

//

As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: January 27, 2009

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 27, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. ANDREW H. ARNOLD AND LESLIE K. OVERSTREET, VC 2004-MV-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 24.9 ft. with eave 23.5 ft. from the front lot line. Located at 7735 Tauxemont Rd. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 5.

Chairman DiGiulian announced that a deferral request had been received by the Board.

Deborah Hedrick, Staff Coordinator, confirmed that the applicants had requested their case be deferred, and staff suggested February 8, 2005, at 9:00 a.m.

Mr. Ribble moved to defer VC 2004-MV-084 to February 8, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. MICHAEL AND MARIA MORGAN, SP 2004-MV-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.7 ft. with eave 1.6 ft. from rear lot line and 9.3 ft. with eave 8.3 ft. from side lot line. Located at 2109 Wakefield St. on approx. 14,781 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (4) 509.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mike Morgen, 2109 Wakefield Street, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory storage structure, a shed, to remain 2.7 feet with eave 1.6 feet from the rear lot line and 9.3 feet with eave 8.3 feet from the side lot line. A minimum rear yard of 11.5 feet and a minimum side yard of 12.0 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum yards; therefore, modifications of 8.8 feet, 6.9 feet, 2.7 feet, and 0.7 feet, respectively, were requested. Ms. Hedrick said she had requested that the Department of Public Works & Environmental Services review the shed, and it was determined that it was not an issue within the Resource Protection Area (RPA).

Mr. Morgan presented the special permit request as outlined in the statement of justification submitted with the application. He gave the shed's dimensions, stating that it was 8 feet by 18 feet with a roof apex of 11.5 feet in height, and listed four reasons to justify the special permit: the shed was constructed in good faith by a licensed carpenter who he trusted to meet all codes; erosion mandated that the shed's foundation be elevated to level the floor, which made the shed excessively high; there was no other place to locate the shed that met the required 12-foot setback; and the design of the shed rendered it impossible to lower the roofline three feet. A professional would have to rebuild the floor and remove or recut the windows at significant expense.

Mr. Morgan gave a brief history of the shed, pointing out that the design was modeled from other sheds in the neighborhood. He said the cost was several thousands of dollars, as superior materials were used and Randy Drucker, a licensed professional, was contracted to do the job. Mr. Morgan utilized the overhead viewgraph to show elevations, foliage, and his fence that screened and buffered along one side of his property line. He pointed out his yard's severe slope and the apex of the shed's roofline. He said that there was no negative impact on his neighbor, Mr. Yi. Mr. Morgan said he planned to professionally landscape his

property to level the back yard, correct the severe slope, and that would lower the shed to approximately 9.5 feet. Addressing the concerns of his neighbor, Mr. Yi, he stated that the shed had no electrical hookup, would never be occupied, and would not be attached to his home. Mr. Morgan stated that the shed was necessary to store his lawn care equipment.

Chairman DiGiulian called for speakers.

Maeng Yi, 9003 Stratford Lane, Alexandria, Virginia, came forward to speak in opposition to the application. He maintained that the shed was too close, blocked the breeze, was too tall and imposing, and had a negative impact on his property value.

In his rebuttal, Mr. Morgan refuted Mr. Yi's contention that his shed blocked the breeze. He pointed out how any breeze flowed through the trees and swept along the slope of his yard. He stated that the shed was strictly a storage shed and would not be utilized for guest quarters.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2004-MV-028 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL AND MARIA MORGAN, SP 2004-MV-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.7 ft. with eave 1.6 ft. from rear lot line and 9.3 ft. with eave 8.3 ft. from side lot line. Located at 2109 Wakefield St. on approx. 14,781 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (4) 509. 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 27, 2004; and

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

1. The applicants are the owners of the land.
2. The lot is a corner lot and as such, has two front yards.
3. There is no other place on the lot where a storage structure could be located.
4. If the applicants relocated the shed to another area, it would be in the front yard, which would require a variance; the Board no longer has the option of granting variances as long as there is a beneficial use of the property.
5. The noncompliance was done in good faith.
6. Looking at the contract, it is clear that the contractor was required to get the required permits, which he did not do.
7. The contractor's failure in that respect left the applicants in the position of having a nonconforming shed, which the applicant stated he regrets and clearly would not have done had he known what the requirements were.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure (shed), as shown on the plat prepared by Dominion Surveyors, Inc., dated February 8, 2004, submitted with this application and is not transferable to other land.

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

Mr. Beard and Mr. Ribble seconded the motion, which carried by a vote of 4-2-1. Ms. Gibb and Mr. Hart voted against the motion. Mr. Hammaok abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2908 Westcott Street on approx. 11,627 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 86. (Decision deferred from 4/20/04 and 5/25/04).

Chairman DiGiulian announced that a deferral request to early 2005 had been received by the Board.

Bill Sherman, Staff Coordinator, confirmed that the applicants wanted to further defer their case's decision, and staff suggested a date of February 8, 2005.

Mr. Hammack moved to defer decision on VC 2004-PR-019 to February 8, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 27, 2004, Scheduled case of:

- 9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1885 and 1889 Virginia Ave. on Approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44 (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04)
- 9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-061). (Admin. moved from 8/3/04)

Chairman DiGiulian announced that the two concurrent cases had been administratively moved to September 28, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ July 27, 2004, Scheduled case of:

- 9:00 A.M. ROMULO AND BLANCA B. CASTRO, VC 2004-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.5 ft. from front lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 106. (Concurrent with SP 2004-PR-034).
- 9:00 A.M. ROMULO CASTRO, SP 2004-PR-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit trellis to remain 7.0 ft. from side and 3.0 ft. from rear lot line, accessory storage structure to remain 3.0 ft. from side and 3.0 ft. from rear lot line, roofed deck to remain 0.6 ft. from front lot line and dwelling to remain 6.0 ft. from front lot line and 2.0 ft. from side lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 106. (Concurrent with VC 2004-PR-087).

Chairman DiGiulian announced that the notices were not in order for these two cases. The applications were administratively moved to October 12, 2004, at 9:00 a.m.

//

~ ~ ~ July 27, 2004, Scheduled case of:

- 9:00 A.M. BECKY MARTIN, VC 2004-PR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 2512 Swift Run St. on approx. 10,684 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Becky Martin, 2512 Swift Run Street, Vienna, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, consisting of a garage with living space above it, to be located 6.0 feet from the western side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.0 feet was requested.

Ms. Martin presented the variance request as outlined in the statement of justification submitted with the application. She explained that all the homes in her neighborhood were built without garages. She pointed out that it was a standard in today's market to have a garage and that her neighbors had consistently added two-car garages to their homes. Ms. Martin attested that her proposal was in accordance with similar structures in her neighborhood.

Mr. Hart advised Ms. Martin that after a decision was made in the Cochran case on April 23, 2004, by the Virginia Supreme Court, the Board no longer had the power to grant variances for lots that had an existing beneficial use. He said he believed her justification fell into that category and asked if she preferred a deferral of the decision. Mr. Hart said that perhaps some modification to the Ordinance or future legislation in the General Assembly could offer a solution.

Ms. Martin requested a deferral of the decision to early 2005.

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

Mr. Hart moved to defer decision on VC 2004-PR-063, with the record to remain open for written comment, to February 8, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 27, 2004, Scheduled case cf:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. Moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04)

Chairman DiGiulian noted that the Board had received a letter requesting a deferral to September, 2004.

Lori Greenlief, Greenlief Consulting, LLC, 14366 Nandina Court, Centreville, Virginia, concurred that the applicant requested a deferral of the decision. In response to the Board's April 27, 2004 directive, she said a revised plat dated July 1, 2004, evidenced the additional best management practices added to preserve water quality and added additional screening, but only the cover letter outlining the changes was transmitted without the plat, so the Board had not had the opportunity to review the plat. Ms. Greenlief said the engineer, James McCormack, worked extensively with the Virginia Department of Transportation to assure adequate sight and stopping distance at the site's entrance. She said the drawings were submitted to staff and a copy distributed at the July 16th Pleasant Valley neighborhood meeting. Ms. Greenlief asked the Board to allow the applicant time to reduce the size and scale of their project. Ms. Greenlief acknowledged that they were keenly aware of the strong opposition to the project.

Chairman DiGiulian called for speakers to address the issue of a deferral.

Cynthia Shang, 15121 Elk Run Road, Chantilly, Virginia, stated she was against a deferral and pointed out that there were a number of concerned neighbors in the audience who expected a decision that morning. She explained the actions taken and meetings attended that she and her concerned neighbors underwent to apprise themselves of the proposal. She said she believed the proposal was a public facility not in character with its residential surroundings, and issues of traffic, noise, lighting, environmental impacts, and parking were concerns. Ms. Shang insisted that their property values would be adversely affected by the facility.

Mr. Hammack pointed out that the Zoning Ordinance specifically allowed places of worship in residential communities. He noted that the applicant was considering reducing the size of the church, and an amended application was forthcoming.

A discussion followed to determine a date to reschedule the decision that allowed sufficient time for the applicant to revise its application and the citizens to review the new information.

Mr. Hart commented that he supported the deferral. He pointed out that the property was not being rezoned and was zoned R-C, under which several non-residential uses were allowed and places of worship were one of these uses. He clarified that it was not a public use, such as a library or a fire station, but an institutional use, which must meet several criteria and Zoning Ordinance Standards.

Mr. Hammack moved to defer decision on SP 2003-SU-045 to October 19, 2004. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. TIMOTHY BOWERS, VC 2004-MS-032

Chairman DiGiulian announced that the case had been deferred indefinitely.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. EDWARD AND GINA BAKER, SP 2004-SP-029 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit addition to remain 3.4 ft. with eave 2.9 ft. and 4.8 ft. with eave 2.8 ft. from side lot line such that side yards total 13.9 ft. Located at 7010 Spaniel Rd. on approx. 14,856 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((2)) 135. (Concurrent with VCA 74-S-143).

9:00 A.M. EDWARD AND GINA BAKER, VCA 74-S-143 Appl. under Sect(s) 18-401 of the Zoning Ordinance to amend VC 74-S-143 to permit construction of addition 3.4 ft. with eave 2.3 ft. from side lot line such that side yards total 13.9 ft.. Located at 7010 Spaniel Rd. on approx. 14,856 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((2)) 135. (Concurrent with SP 2004-SP-029).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Baker, 7010 Spaniel Road, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition, consisting of the enclosure and expansion of the existing carport into a garage, to be located 3.4 feet with eave 2.8 feet from the northern side lot line, such that side yards total 13.9 feet. A minimum side yard of 8.0 feet and minimum total side yards of 24 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 4.6 feet, 2.2 feet, and 10.1 feet, respectively, were requested. The applicant also sought a special permit to allow reduction to minimum yard requirements based on error in building location to permit a shed and a carport to remain 3.4 feet with an eave 2.9 feet and enclosed porch to remain 4.8 feet with an eave 2.3 feet from the northern side lot line, such that side yards total 13.9 feet. Modifications of 4.6 feet, 2.1 feet, 3.2 feet, 2.2 feet, and 10.1 feet, respectively, were requested.

Mr. Baker presented the variance and special permit requests as outlined in the statement of justification submitted with the applications. He pointed out that the carport structure was there when they moved in three years ago, and they had not added onto it. He said the house was 32 years old, and they had been renovating it to improve its appearance, enhance the aesthetics of the neighborhood, and increase the property value. Mr. Baker pointed out that they had removed unsightly shrubbery, cleared out termite-infested timbers, fixed cracked sidewalks, repaired the front porch and the foundation, and replaced the chimney. In light of the Supreme Court case, he requested that the decision be deferred.

Chairman DiGiulian called for speakers.

Guido Ianiero, 7008 Spaniel Road, Springfield, Virginia, came forward to speak in support of the application. He said he had resided in his home for 32 years. He said he supported the Bakers' addition as well as all the improvements, and he believed it enhanced his own property value.

Chairman DiGiulian closed the public hearing.

Ms. Gibb requested clarification as to which structures were included in the special permit. Ms. Stanfield stated that it included the carport, the shed, and the enclosed porch.

Ms. Gibb moved to approve SP 2004-SP-029 for the reasons stated in the resolution. Mr. Beard seconded the motion. Mr. Hammack suggested that the paragraph in the special permit regarding relieving the applicant from compliance be deleted. Ms. Gibb and Mr. Beard accepted the amendment to the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZOHINO APPEALS

EDWARD AND GINA BAKER, SP 2004-SP-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit addition to remain 3.4 ft. with eave 2.9 ft. and 4.8 ft. with eave 2.8 ft. from side lot line such that side yards total 13.9 ft. Located at 7010 Spaniel Rd. on approx. 14,856 sq. ft. of land zoned R-2 Cluster). Springfield District. Tax Map 86-4 ((2)) 135. (Concurrent with VCA 74-S-143). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony that they have met Standards A through G.
3. The applicants bought the property with the addition already existing.
4. The addition is not something that can easily be moved or taken down.
5. The previous property owner had obtained a variance, but the construction was not done in accordance with the variance.

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

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

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

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

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

1. This Special Permit is approved for the location of additions, as shown on the plat prepared by Javier A. Arencibia, dated May 3, 2004, submitted with this application and is not transferable to other land.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Ms. Gibb moved to defer decision on VCA 74-S-143 to February 8, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:00 A.M. ANDROULA DEMETRIOU, A 2004-MV-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's property contains two dwelling units in violation of Zoning Ordinance provisions. Located at 8618 Richmond Hwy. on approx. 9,583 sq. ft. of land zoned R-2, HC and CRD. Mt. Vernon District. Tax Map 101-3 ((1)) 65G.

Chairman DiGiulian announced that A 2004-MV-012 had been administratively moved to October 5, 2004, at 9:30 a.m.

//

~ ~ ~ July 27, 2004, Scheduled case of:

9:30 A.M. RON JOHNSON, A 2004-MA-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is conducting a use on property in the R-3 District which is not in substantial conformance with the conditions of Special Exception Amendment SEA 81-M-034 in violation of Zoning Ordinance provisions. Located at 6071 Arlington Blvd. on approx. 10,300 sq. ft. of land zoned R-3, SC and CRD. Mason District. Tax Map 51-4 ((2)) A8.

Chairman DiGiulian announced that the notices were not in order.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concurred that the notices were not in order and informed the Board that the appellant was unable to attend the hearing that morning. She suggested November 2, 2004, to reschedule the application. She explained that although the notification package had been mailed to the address indicated on the application, the appellant failed to pick it up, and when he was contacted, he said the address should have been the appeal property address. Chairman DiGiulian directed staff to communicate to the appellant that the Board would dismiss the application if the appellant he did not appear at the next hearing.

Ms. Gibb moved to defer A 2004-MA-013 to November 2, 2004, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ July 27, 2004, After Agenda Item:

Request for Additional Time
Archdiocese of the Syrian Orthodox Church, a/k/a Archdiocese of the Syrian Orthodox,
Church of Antioch for the Eastern United States, SPA 79-M-031-5

Mr. Pammel moved to approve twelve months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was May 28, 2005.

//

~ ~ ~ July 27, 2004, After Agenda Item:

Request for Additional Time
William and Barbara Weiss, VC 00-H-022

Mr. Pammel moved to approve six months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was January 26, 2005.

//

~ ~ ~ July 27, 2004, After Agenda Item:

Approval of July 20, 2004 Resolutions

Mr. Ribble moved to approve the July 20, 2004 Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 7-0 vote.

//

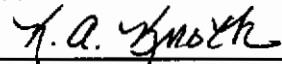
Mr. Hammack called the Board's attention to the Board of Zoning Appeals By-Laws. He pointed out that he had proposed several changes. He suggested that in view of the Cochran case, the Board review the By-Laws to ascertain applicability and whether any revisions should be considered. Mr. Hammack distributed copies to each member. The Board agreed to discuss the matter at a later date.

//


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

Minutes by: Paula A. McFarland

Approved on: March 22, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 3, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. John F. Ribble III was absent from the meeting.

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

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. ARMANDO AND ELENA MESCHIERI, VC 2004-DR-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.8 ft. with eave 2.6 ft. from side lot line such that side yards total 20.0 ft. Located at 1311 Titania La. on approx. 16,452 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 139.

Chairman DiGiulian noted that a request for a deferral had been received from the applicants.

Mr. Pammel moved to defer VC 2004-DR-085 to February 15, 2005, at 9:00 a.m., at the applicants' request. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. SYED N. RAZA & SHEHNAZ RAZA, SP 2004-MV-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.9 ft. from rear lot line and 1.8 ft. with eave 0.2 ft. from side lot line, deck 2.5 ft. from rear lot line and addition 4.4 ft. from side lot line such that side yards total 16.8 ft. Located at 7910 Frye Rd. on approx. 8,791 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (19) 9. (Admin. moved from 6/8/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Syed Raza, 7910 Frye Road, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to permit reductions to minimum yard requirements based on error in building location to permit an accessory storage structure, specifically a shed, which measured 10.7 feet in height, to remain 1.9 feet from the rear lot line and 1.8 feet with eave 0.2 feet from a side lot line; a deck 2.5 feet from the rear lot line; and an addition 4.4 feet from a side lot line such that the side yards totaled 16.8 feet. A minimum side yard of 8.0 feet, a minimum rear yard of 25 feet, and a minimum total side yards of 20 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard, and decks are permitted to extend 20 feet into the minimum rear yard; therefore, reductions of 8.8 feet, 6.4 feet, 4.8 feet, 2.5 feet, 3.6 feet, and 3.2 feet, respectively, were requested.

Mr. Raza presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the property sloped, and because of standing water caused by rain, he had a mosquito problem. He said he had four small children, and he was unable to use the backyard, so he had approximately four tons of stones placed in that area to enable his family to walk in the backyard. He stated that because of the standing water, his children had adverse reactions to the bites from the mosquitoes. Mr. Raza apologized for not complying with the Zoning Ordinance.

Referring to photographs of the addition, Mr. Hart said the storage shed did not seem to be on a continuous foundation and asked whether there was a foundation under the addition. Mr. Raza said he had used six-by-six posts. Mr. Hart asked whether an engineer or architect had designed the structure. Mr. Raza replied that his friend, who was a contractor, had helped him. Mr. Raza said there was no plumbing in the structure, but there was electricity that had been installed by another friend who was a master electrician. Mr. Raza said the shed was sitting on a concrete block and could not be shifted because it had been built in place and there was no room to move it elsewhere.

In response to Ms. Gibb's question regarding how the application had come before the Board, Ms. Hedrick said the applicant had applied for a building permit and had been rejected. She said he had been informed that he had to apply for a special permit to bring the nonconforming areas into conformance. Ms. Hedrick stated that, according to the applicant, all the structures were in place when he applied for a building permit for the final inspection phase, but she said there were no building permits found in the records.

Ms. Gibb asked whether a building permit was required for the shed if it had been built in place of the previous shed. Ms. Hedrick said a permit would not have been required if the dimensions of the shed had been the same because it was under 150 square feet; however, it was the height that was the issue because it was over 6.5 feet. Ms. Hedrick explained that if the applicants relocated the shed to an appropriate place or reduced the height, a building permit could be obtained. Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the shed could stay in its current location if the height was reduced to 6.5 feet or less.

Chairman DiGiulian called for speakers.

James Ashton, 7911 Frye Road, Alexandria, Virginia, came forward in support of the application. Mr. Ashton said Mr. Raza was an exemplary neighbor who had enhanced his property which contributed to the aesthetics and value of neighboring homes. He said Mr. Raza was an engineer, and, to his knowledge, the neighbors had no problem with the shed.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2004-MV-015 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SYED N. RAZA & SHEHNAZ RAZA, SP 2004-MV-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.9 ft. from rear lot line and 1.6 ft. with eave 0.2 ft. from side lot line, deck 2.5 ft. from rear lot line and addition 4.4 ft. from side lot line such that side yards total 16.8 ft. Located at 7910 Frye Rd. on approx. 8,791 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (19) 9. (Admin. moved from 6/8/04 at appl req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with Section 8-006.
3. The Board determined that the applicants meet the required standards for a special permit to be granted.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure (shed), deck and addition, as shown on the plat prepared by SDE, Suburban Development Engineering, dated November 14, 2008, as signed through March 11, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. STEVEN AND BARBARA MINK, VC 2004-BR-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line such that side yards total 18.8 ft. Located at 4902 Loosestrife Ct. on approx. 10,365 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 89-4 ((12)) 60.

Chairman DiGiulian noted that a request for a deferral had been received from the applicants.

Mr. Pammel moved to defer VC 2004-BR-088 to January 18, 2005, at 9:00 a.m., at the applicants' request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. ALI TORKAMBOOR, VC 2004-DR-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 29.05 ft. from the front lot line of a corner lot. Located at 9101 Jackson La. on approx. 1.12 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 27A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Ali Torkamboor, 9101 Jackson Lane, Great Falls, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of dwelling 29.05 feet from the front lot line of a corner lot. A minimum front yard of 50 feet is required; therefore, a variance of 20.95 feet was requested. Mr. Sherman noted that three letters of opposition had been received the morning of the hearing.

Mr. Torkamboor presented the variance request as outlined in the statement of justification submitted with the application. He said that because of the lay of the land, he was asking that the garage be built on the side of the house because by placing it either in the front or the back of the property, the old and new septic fields would be disturbed. He noted that there was an older house on the property where he and his family would be living until the new house was built. He said he had spoken to County staff when he had purchased the property and asked what the zoning was and what they considered to be a front yard. He stated that based on that, he had designed the home they wanted to build; however, when he applied for a permit, he was informed that he had a corner lot with two front yards, one from Jackson Lane and the other from River Bend Road. He stated that the lot was an old narrow lot that measured a total of 48,000 square feet, with 34,000 square feet of it located in the setbacks. He said that there was nowhere else to build the new house, and it could not be reversed to make the driveway exit onto Jackson Lane because the highest point of Jackson Lane was the location of his current driveway, and a septic tank would be placed there. He said he doubted that the Virginia Department of Transportation would approve a driveway on Jackson Lane because of poor vehicular visibility.

Mr. Hart asked whether the old septic field would be needed if the old house was torn down. Mr. Torkamboor said no; however, he could not afford to find another place for his family to live during construction.

Mr. Hart asked about the sizes of the new and existing garages. Mr. Torkamboor said the proposed garage would be a three-car garage, but there was no existing garage. He said that what had been referred to as a garage was a shed sitting on a cement block, and it would have to be torn down.

Referring to the plans, Mr. Hart stated that there appeared to be one room sticking out at the southern end of the proposed house. He asked whether the room could be placed elsewhere and the house reconfigured and shifted to get the projection behind the 50-foot setback. Mr. Torkamboor said he could not do that because the old house would have to be torn down.

Chairman DiGiulian called for speakers.

Sedighmar Oufi Fariba, the wife of the applicant, 9101 Jackson Lane, Great Falls, Virginia, came forward to speak in support of the application. She said that their subdivision had the smallest lots in the Great Falls area. She said it was her opinion that a 50-foot setback would pertain only to minimum two-acre lots, not to their small cluster lot. She stated that with a quarter- or half-acre lot and the setbacks, there could be no house built. She asked whether there were any exceptions to the rules because there was a grandfather clause and the lots had already been subdivided to a smaller size. Chairman DiGiulian said that was the setback required for the R-E District, and he did not know of any grandfather provision that would allow it.

Jack Boles, 618 River Bend Road, Great Falls, Virginia, came forward to speak in opposition to the application. He said that he was concerned about construction and stormwater runoff, and because of the slope of the land, his property was located at the bottom, and there was a swale in his front yard where all the drainage landed. He said he was concerned that many trees would be lost. Mr. Boles asked that a condition be placed on the permit to minimize construction runoff because not only he but two other neighbors would be affected. He said he was also concerned about the proposed setback. He referred to the regulations in Section 18-404 of the Zoning Ordinance and indicated that he didn't think the application met several of them. Mr. Boles stated that Jackson Lane was semi-historic, many of the lots had been grandfathered, and there were several old historic houses located there. He said that it was his opinion that it would be easy to adjust the house plan to fit within the setbacks, and if the applicant could comply with a one-acre setback, that would make him and his neighbors happier. Mr. Boles commended the applicants for their dedication to the preservation of the trees along Jackson Lane. He noted that the subject property was within 200 yards of the boundary of Great Falls National Park.

Referring to the description of the variance on page 1 of the staff report, Ms. Gibb said it indicated that the minimum yard requirement was per Section 3-E07 and asked staff to what that pertained. Mr. Sherman

stated that it was the bulk regulations for the R-E District, and it laid out all the minimum required yards. Mr. Sherman said the R-E District was a two-acre district, and he confirmed that the setback requirement was the same for all R-E lots regardless of the size of the lots. He also indicated that the applicant's lot had been divided prior to the R-E zoning, and if the existing house was located closer to the Jackson Lane than 50 feet prior to the R-E zoning and it was not torn down, that could be grandfathered.

Referring to the chart on page 1 of the staff report, Mr. Hart noted that it read proposed location 29.05, variance request 10.95, which added up to 40; however, it stated that the minimum allowed was 50. He asked whether the applicant wanted a 21-foot variance. Mr. Sherman stated that the variance required should be 20.95, not 10.95.

In his rebuttal, Mr. Torkamboor said he was not trying to harm the neighborhood nor the natural resources in the area, and the reason why they opposed putting in a driveway on Jackson Lane was because they didn't want to cut down any trees. With respect to construction runoff, he said he would follow the County's regulations.

Ms. Gibb asked Mr. Torkamboor if he was aware of the new standards that the Board had to meet as a result of the Cochran case which was part of a Virginia Supreme Court decision in April of 2004. She told him that it said that unless an applicant was being denied all reasonable beneficial use of the property, the Board would not be able to grant a variance. Mr. Torkamboor stated that he had just been made aware of it a few days prior when he talked to Mr. Sherman.

Ms. Gibb asked Mr. Torkamboor if he could build a house on the property without a variance. He said no, because the problem would be that he would not have a garage. He said when he had asked his architect if the garage could be located in the rear of the house, he had said no, because it would interfere with the new septic field that had already been approved by the County. He said he received the same answer regarding moving the garage to the front of the house, indicating that it would interfere with the old septic field. Mr. Torkamboor said the proposed house would be approximately 5,000 square feet, which by today's standard was not a large house. He said he doubted that the new septic field could be used with the old house until the new house was built because the new one would have a sump pump, and the old one had a gravity flow, and he did not know if the Department of Health would approve that or not. Mr. Torkamboor said that was the only place he could put the new septic field because on the other side of the house they were approximately 50 feet away from their neighbor's well.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said he was sympathetic to the points made by the applicant and his wife, and he thought her comments were on target with respect to the size of the lot and having to meet the requirements for a lot for a zoning district whose lots were twice as large as theirs. He said that nonetheless the applicant did have a beneficial use of the property with the existing structure, and under the Cochran rule, he did not think the Board could approve the request for a variance. He suggested he come up with a different design for the lot and consider removing the existing house, in which case he would no longer have beneficial use of the property, and he could proceed with the development of the site. He said it was his personal feeling that a variance of 10 feet would be appropriate and would put the applicant within the requirement for R-1 District standards.

Mr. Pammel moved to deny VC 2004-DR-091 for the reasons stated in the Resolution. Mr. Hammack seconded the motion.

Mr. Hart said he would support the motion, but noted that many cases had come before the Board where someone had a 1950s house they wanted to demolish and rebuild on the lot. He said that he thought that if there was a standard whereby the Board had to look at whether the owner was deprived of all reasonable beneficial use of the property taken as a whole and absent the variance, by definition there would never be a variance for a teardown for a house that could be occupied because that would always be a reasonable beneficial use. He indicated that this application would never meet that standard.

Ms. Gibb said she did not hold out any hope that Mr. Torkamboor would be able to obtain a new building permit. She said she did not want him to rely on an approval upon resubmission because she did not see any solution coming anytime soon.

Mr. Hart stated that the Board of Supervisors could change the Ordinance in certain respects so that certain kinds of things could be submitted as special permits instead of variances. He said the General Assembly

may be looking at the issue in the next session. He suggested that Mr. Torkamboor speak to his elected officials concerning his situation where he had an old nonconforming lot, but was not able to apply for any type of permit.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI TORKAMBOOR, VC 2004-DR-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 29.05 ft. from the front lot line of a corner lot. Located at 9101 Jackson La. on approx. 1.12 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 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 August 3, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has a beneficial use of the property with the existing structure.
3. Under the Cochran rule, the Board cannot approve the applicant's request for a variance.
4. It was suggested the applicant come up with a different design for the lot.
5. It was suggested the applicant consider destroying or removing the existing house, in which case the applicant would no longer have a beneficial use of the property and could proceed with the development of 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.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 2004.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. DAMIAN & SUSAN CARACCILO, SP 2004-SU-033 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 11.0 ft. with eave 10.0 ft. from side lot line and 35.2 ft. with bay window 34.0 ft. from front lot line. Located at 6221 Point Ct. on approx. 13,146 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5)) (4) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Damian Caracciolo, 6221 Point Court, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modifications to certain R-C lots to permit construction of an addition 11 feet with eave 10 feet from a side lot line and 35.2 feet with bay window 34 feet from the front lot line. A minimum side yard of 20 feet and a minimum front yard of 40 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side yard and bay windows are permitted to extend 5.0 feet into the minimum front yard; therefore, reductions of 9.0 feet, 7.0 feet, 4.6 feet, and 1.0 feet, respectively, were requested. Mr. Sherman noted that revised development conditions dated August 3, 2004, had been distributed.

Mr. Caracciolo presented the special permit request as outlined in the statement of justification submitted with the application. He said he had researched the project to be sure it would fit in with existing homes in order to maintain the spirit of the neighborhood and be consistent with existing homes. He said he had discussed the proposed construction with his neighbors and the Virginia Run Architectural Review Board, and they found it to be acceptable.

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

Mr. Hart moved to approve SP 2004-SU-033 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAMIAN & SUSAN CARACCILO, SP 2004-SU-033 Appl. under Sect(s). 6-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 11.0 ft. with eave 10.0 ft. from side lot line and 35.2 ft. with bay window 34.0 ft. from front lot line. Located at 6221 Point Ct. on approx. 13,146 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5)) (4) 36. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2004;

and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicants presented testimony showing compliance with the required standards for a special permit.
7. This is a grandfather R-C lot that would have met the standards in 1982, but has 5-acre lot setbacks currently.
8. There have been a number of similar requests in the neighborhood.
9. There would be no negative impact on anybody.

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

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

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

1. This special permit is approved for the location of an addition, as shown on the plat prepared by L.S. Whitson, dated May 15, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-012 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 2004.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. NICOLE ROGERS, SP 2004-SU-030 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 28.0 ft. from the side lot line and 32.0 ft. from the front lot line of a corner lot. Located at 15519 Vino Cottage Dr. on approx. 13,866 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (3) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Soumya Ramakrishnaiah, the applicant's agent, 4321 Delhaven Drive, Chantilly, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

requested a special permit to allow modifications to certain R-C lots to permit construction of an addition 32 feet from the front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, a reduction of 8.0 feet was requested. Mr. Sherman noted that revised development conditions dated August 3, 2004, had been distributed.

Ms. Ramakrishnaiah presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition was requested because the family needed more living space. She stated that the proposed addition would be harmonious with the existing homes in the neighborhood. She said the homeowners association had approved the construction and that other homes had similar additions.

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

Ms. Gibb moved to approve SP 2004-SU-030 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NICOLE ROGERS, SP 2004-SU-030 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 32.0 ft. from the front lot line of a corner lot. Located at 15519 Vine Cottage Dr. on approx. 13,866 sq. ff. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (3) 1. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2004; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. Based on the applicant's testimony and the staff report, the applicant has met Requirements 1 through 5.

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

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

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

1. This special permit is approved for the location of an addition, as shown on the plat prepared by Guy H. Briggs, dated July 26, 1999, and updated by Soumya Ramakrishnaiah, dated May 19, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-012 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Pammel seconded the motion, which carried by a vote of 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 August 11, 2004.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. CHUNG AE AUH, SU HAK AUH, VC 2004-MA-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from the front lot line and front yard coverage greater than 25 percent. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Concurrent with SP 2004-MA-024).

9:00 A.M. CHUNO AE AUH, SU HAK AUH, SP 2004-MA-024 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.8 ft. and roofed deck 25.6 ft. and stairs 20.9 ft. from front lot line and addition to remain 9.2 ft. from side lot line. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((8)) 20B. (Concurrent with VC 2004-MA-078).

Chairman DiGiulian noted that VC 2004-MA-078 and SP 2004-MA-024 had been administratively moved to November 2, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. AMY LOUISE LA CIVITA, VC 2004-BR-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stairs 3.3 ft. from side lot line. Located at 10212 Glen Chase Ct. on approx. 9,718 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-2 ((27)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Amy Louisa LaCivita, 10212 Glen Chase Court, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a set of stairs to be located 3.3 feet from a side lot line. A minimum side yard of 8.0 feet is required; however, stairs are permitted to extend 5.0 feet into the minimum side yard; therefore, a variance of 1.7 feet was requested.

Ms. LaCivita presented the variance request as outlined in the statement of justification submitted with the application. She said the addition would allow her family the maximum use of their property and would be harmonious with the existing homes in the neighborhood. She stated that the staircase would be as unobtrusive as possible and indicated that the rear of the home was covered with trees. Ms. LaCivita indicated that her lot was different from others in the neighborhood because it came to a point in the rear yard. She stated that it was a hardship the other neighbors didn't have. She said that her next-door neighbor had no problems with the plans.

Mr. Hart asked if the last few steps located to the right of the house could be angled 45 degrees to bring her within the 5-foot line. Ms. LaCivita said she did not know how difficult that would be. She explained that the reason for two stairs leading from the deck was that one set would lead to the patio and the other to the shed that would be located underneath the deck.

Mr. Pammel said he would put in a landing and then a 90-degree turn, which would be well within the required setback, and there would be no need for a variance. Mr. Pammel suggested that the applicant reconsider the variance request.

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

Mr. Beard moved to defer decision on VC 2004-BR-090 to February 15, 2005, at 9:00 a.m., at the applicant's request. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:00 A.M. PENELOPE A. LANG, SP 2004-HM-031 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation of the keeping of animals. Located at 2527 Logan Wood Dr. on approx. 1,056 sq. ft. of land zoned PDH-16. Hunter Mill District. Tax Map 16-3 ((9)) (6) 100.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Penelope Lang, 2527 Logan Wood Drive, Herndon, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to the limitation on the keeping of animals to allow five Italian Greyhounds dogs. A minimum lot size of 20,000 square feet is required for the keeping of five or six dogs. The keeping of two dogs would be permitted by right on the applicant's property.

Mr. Hart asked whether the Board had ever approved such an application in a townhouse that didn't have a backyard. Ms. Stanfield replied that under the last special permit she had done under Section 8-917, the applicant did have a rear yard, but did not use it for the dogs because it was not enclosed. She stated that the applicant had five dogs. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not recall any specific incidences where an applicant did not have a yard. She said there had been an application with a potbelly pig in a townhouse, but they had a rear yard where they kept the pig.

In response to a question from Mr. Board, Ms. Stanfield indicated that the Board had approved applications on which they had placed development conditions that stated that as the animals passed on, they had to come down to conformity, and that was the case with this application.

Ms. Lang presented the special permit request as outlined in the statement of justification submitted with the application. She said she had not known what the regulations were at the time she had acquired the dogs and noted that Italian Greyhounds were small and weighed approximately 10 pounds. Ms. Lang stated that she always cleaned up after the dogs when she walked them, made sure they did not frighten anyone, and made every effort to be a good neighbor.

In answer to Ms. Gibb's question, Ms. Lang said she had resided in her home for five years. Ms. Gibb indicated that a complaint had been received. Ms. Lang responded that the person claimed she had too many dogs and noted that the complainant did not live on her street. She said she had obtained over 30 signatures from neighbors indicating that they had no problem with her having five dogs.

The following speakers came forward to speak in support of the application: Charles Cook, 2545 Logan Wood Drive, Herndon, Virginia; and, Judy Lyver, 2529 Logan Wood Drive, Herndon, Virginia. They state that the applicant was a good neighbor who maintained her property well; the dogs were always on leashes; the Langs always picked up after the dogs; the case was frivolous and the Board should not waste time on it; children liked the dogs; the homeowners association had determined that it was not within their purview to take action; and, this case had united the neighborhood behind the Langs.

Robert MacDonald, no address given, Herndon, Virginia, came forward to speak in opposition to the application. He cited the County code with respect to the keeping of dogs. He said that when the Langs purchased their home, they had to sign off on the covenants and other documents that stated that the number of dogs allowed per dwelling was not to exceed two; the applicant had seven dogs, and there were

only two of the original four dogs remaining; and, two of the dogs had been injured by a larger dog, and one had died.

At Mr. Hammack's request, Mr. MacDonald pointed out where his unit was located. Mr. Hammack asked Mr. MacDonald whether he had been bothered by barking, and his reply was yes, when he walked through the neighborhood. Mr. MacDonald stated that he owned a parrot.

In her rebuttal, Ms. Lang said that she had been attacked by a large dog. It had attacked one of her dogs and knocked her down, and at that time she dropped the leashes. She said the attacking dog had a collar and tags, but no leash. Ms. Lang stated that her dog had surgery, but died a few hours later. She said one of her dogs was noisy, and she had been working with her to moderate that behavior.

In response to Mr. Hammack's question, Ms. Lang said she had five dogs, but she had been cited for four. She said that at the time one of the dogs was a puppy, and it had not been included in the citation.

In answer to Mr. Beard's question, Ms. Lang acknowledged that she showed her dogs, and she understood, if the Board overturned the citation, that she could not replace them if one died.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2004-HM-031 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PENELOPE A. LANG, SP 2004-HM-031 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation of the keeping of animals. Located at 2527 Logan Wood Dr. on approx. 1,056 sq. ft. of land zoned PDH-16. Hunter Mill District. Tax Map 16-3 ((9)) (6) 100. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2004; and

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

1. The applicant is the owner of the land.
2. One large dog can be much more obtrusive in some ways than several smaller animals.
3. The applicant has tiny animals.
4. The applicant testified regarding the care she gives to the animals.
5. A petition of support was filed by members of the community.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Penelope L. Lang, and is not transferable without further action of this Board, and is for the location indicated on the application, 2527 Logan Wood Drive (1,056 square feet), shown on the plat prepared by Charles P. Johnson and Associates, Inc., dated March 2, 1999, as revised by Penelope A. Lang, through May 18, 2004, and is not transferable to other land.

2. The applicant shall make this Special Permit property available for inspection by County Officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing five dogs. If any of these specific animals die, are sold or given away, they shall not be replaced, except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. Animal debris associated with the five dogs shall be collected daily and such debris shall be disposed of in a method approved by the Health Department.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:30 A.M. CARVILLE J. CROSS, JR., A 2004-PR-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected a structure, which does not comply with the minimum rear yard requirements for the PDH-4 District, without a valid Building Permit in violation of Zoning Ordinance provisions. Located at 9827 Fox Rest La. on approx. 6,361 sq. ft. of land zoned PDH-4. Providence District. Tax Map 48-1 ((32)) 18.

Mr. Hart recused himself from the public hearing.

H. Kendrick Sanders, the applicant's agent, Gilliam, Sanders and Brown, P.C., 3905 Railroad Avenue, Fairfax, Virginia, reaffirmed the affidavit.

Maryann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated July 26, 2004. She noted that the building permit application originally proposed the addition of privacy screening to the deck; however, the approved building permit, on which the privacy screening was crossed off, indicated that the privacy screening was not approved.

Mr. Hammack asked whether the appellant would be in violation of the Ordinance if the lattice was on a moveable platform or moveable stand. Margaret Stehman, Deputy Zoning Administrator for Appeals, stated that if it was a moveable stand, it would not violate the Ordinance because the Ordinance defined a deck as that which is attached to the dwelling and addresses the railing that is part of the deck that could not exceed four feet in height. She said that if the appellant were to install a moveable fence around the deck, it would be allowed because it would no longer be part of the structure.

Mr. Sanders presented the arguments forming the basis for the appeal. He said that as far as he knew there had been no opposition to the deck from the appellant's neighbors or the homeowners association. He indicated that when the appellant had applied for a structural permit to construct a hot tub, they had understood the latticework did not require a permit, and that was the reason why it had been removed from the building permit. Mr. Sanders distributed photographs to the Board showing the condition of the deck.

In response to a question from Chairman DiOulian, Ms. Stehman stated that the case had come to the Zoning Administrator's attention because a neighbor had made a complaint, and the Zoning Enforcement staff was required to investigate. She said they had discovered that the latticework in question was in violation.

Mr. Sanders said he had referred to the portion of the Ordinance that dealt with decks and roof decks, and if the deck was not surrounded on all sides, the latticework was legal and did not violate the definition of the Ordinance. He read the definition of an enclosure as referenced in the dictionary. Referring to one of the photographs, he said it showed that the latticework did not enclose the deck. He noted that without the latticework, a roof could be placed on the beams that were in place and pointed out that the beams went to the floor of the deck behind the railing. He said that, in his opinion, the definition of a deck needed to be

revised in the Ordinance. He said that according to the definition, the deck was not enclosed, and putting up privacy latticework did not enclose it. He indicated that if the lattice surrounded the deck, it would perhaps violate the terms of the definition. Mr. Sanders stated that he thought the County was interpreting the Ordinance wrongly in this case because he did not think the deck had been enclosed in violation of the Ordinance.

Mr. Hammack asked whether it was Mr. Sanders' contention that because they had applied for a permit to install a hot tub, his clients had not realized that they needed a building permit in order to put up the lattice. Mr. Sanders said yes. Mr. Sanders indicated that the homeowners association had approved the lattice. He said the deck was already in place when the applicant applied for the hot tub permit, and the permit showed latticework. He said that Mrs. Cross had understood staff to indicate that they did not need a permit to put the lattice up, and that was why it had been taken off the permit. Mr. Sanders said his clients had not intentionally ignored or violated the permit. He said that, in his opinion, the lattice was not a structural addition.

Mr. Hammack stated that one of the remedies would be to seek an error in building location if someone had constructed something in violation of the Ordinance without fault on their part. He noted that the same issue had been brought before the Board previously, and to his recollection, they supported the Zoning Administrator, notwithstanding that Mr. Sanders' arguments were well taken. Mr. Sanders indicated that there was a safety code that required that a deck three feet or more above ground had to have a rail which would be approximately four feet in height. He noted that the Ordinance stated that "you may" enclose a deck with a rail, but it did not address any limitations if a deck was not enclosed. He said that if the lattice was portable, he believed that it was legal. Mr. Sanders said that in this case the lattice was attached to the beams, and it sat on top of the rail, and if his clients took it off the rail and then nailed it to the beams, it was his opinion that there was no possibility that County staff could say it violated the Ordinance.

Mr. Hammack said that what concerned him was that part of the definitions in the Ordinance which provided that the deck may have an open work railing or wall not to exceed four feet in height, which put a limitation on the height. He said the definitions also referred to there being at least 50 percent of it being open to an evenly distributed pattern. Mr. Sanders stated that the Ordinance began with a deck shall have no enclosure, and that did not mean one wall. He said the Ordinance may have meant that, but it should have said it shall have no railing or no fence on any part of the deck, but he thought it was referring to enclosing the deck and with what a deck could be enclosed. He said the Ordinance stated that a deck could be enclosed by a rail, but it did not say it would be restricted from putting lattice on one side.

In response to Mr. Beard's request, Mr. Sanders read the dictionary definition of an enclosure, which was "to surround on all sides." Mr. Sanders said he did not interpret a railing as an enclosure unless it surrounded the deck on all sides. Mr. Beard asked whether Mr. Sanders considered a four-foot high rail that surrounded the other sides of the deck that were not adhered to the wall as an enclosure. Mr. Sanders said he determined that a railing on a deck could be no higher than four feet in height, and it did enclose the deck.

Mr. Gibb said the implication of the Ordinance's definition was that there could be an enclosure which was a side of a building, and to her that meant that "enclosure" did not mean that it went all the way around.

Carville Cross responded to Ms. Gibb's statement saying that, in his opinion, the Ordinance definition meant that if someone had a townhouse where two of the buildings protruded and another was set back, then those sides of the buildings would enclose the deck. Ms. Gibb agreed with him. Mr. Cross said the four-foot railing enclosed the deck; however, the lattice on top did not enclose the deck. He stated that many homes in the county had lattice on their decks and felt that the County did not mean that latticework could not be placed on a deck. He said his lattice did not wrap all around the deck. Ms. Gibb stated that in other cases concerning the same type of violation, the Board had interpreted that latticework being partially on a deck was not allowed under the Zoning Ordinance.

Responding to a question from Ms. Gibb, Ms. Stehman stated that a variance would not be required if there was no extension into the minimum required yard, and latticework would be allowed. She added that an addition would also fit into that same building envelope, and that was how a deck would be allowed, and staff would consider it an addition.

Mr. Sanders asked for an answer to the question of what would happen if the lattice was not attached to the railing. Mr. Hammack responded that periodically issues were raised regarding if something was not attached, whether it was a structure or not. He agreed with Ms. Gibb that the Board had previously supported the Zoning Ordinance in cases such as this. However, he indicated that many people added

items that were not attached to their decks, and there was never an issue concerning whether they were considered structures or they violated the Ordinance. He said he thought that at times latticework added to the appearance of the property, but the Board was dealing with the Ordinance.

Jean Cross, the appellant's wife, asked whether the Ordinance would permit them to remove the latticework, mount it on a frame so it would not be attached, and hang it. Mr. Hammack said he thought the County had said yes.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the lattice was attached to the railing which enclosed the deck, and, therefore, at several locations the height of the deck exceeded what was allowed by the Ordinance. He said the lattice was an integral part of the railing that surrounded the deck; however, if it was something that was independent and did not completely enclose the deck, he might have supported the appellant's argument on the definition of enclosure.

Mr. Pammel moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion.

Mr. Hammack said that he thought the proper remedy for the appellant would be to seek a special permit for an error in building location, which would give the Board different standards to consider rather than to overrule the Zoning Administrator. He said he did not think the deck with its intrusion into the setback area was any different from some of the others the Board had seen. He said he was not inclined to overrule the Zoning Administrator on the issue. He said in the Zoning Ordinance the Board dealt with a lot of ambiguities; however, he thought the definition was one of the better ones. He said he would support a deferral to give the appellant an opportunity to consider whether they wanted to file for an error in building location rather than the Board making a ruling that day.

Mr. Sanders stated that the appellants would like the opportunity to consider whether it would be a viable alternative.

Mr. Pammel withdrew his motion.

Mr. Hammack moved to defer decision on A 2004-PR-014 to August 10, 2004, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Ribble was absent from the meeting.

//

~ ~ ~ August 3, 2004, Scheduled case of:

9:30 A.M. JENNIFER CANTY/WILLIAM FRISCHLING, A 2004-DR-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are operating a Retail Sales Establishment and a Repair Service Establishment and are exceeding the home occupation use limitations on property in the RE District in violation of Zoning Ordinance provisions. Located at 802-A Olde Georgetown Ct. on approx. 2.77 ac of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 66C.

Chairman DiGiulian noted that A 2004-DR-015 had been administratively moved to October 12, 2004, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ August 3, 2004, After Agenda Item:

**Consideration of Acceptance - Application for Appeal
Submitted by Bristow Shopping Center Limited Partnership LLC**

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, stated that the appeal was for an approval of a special exception, which was not within the purview of the Board of Zoning Appeals (BZA) because it was not a decision of the Zoning Administrator or an administrative officer of the County. She noted that the special exception had been approved in September of 2001, which was significantly more than 30 days ago. She said it was staff's position that not only was the appeal not timely, but it was not a proper appeal. She

stated that in 2001 the Board of Zoning Appeals upheld the Zoning Administrator on the Heritage Citgo U-Haul appeal, A 95-BR-045, which was deferred many times. Ms. Stehman indicated that the final deferrals were to allow the appellant to obtain a special exception after the Board of Supervisors adopted a Zoning Ordinance Amendment which allowed truck rental establishments. She stated that Heritage Citgo's application for a special exception for a truck rental establishment was denied by the Board of Supervisors, and that was the special exception denial that was the subject of this appeal. She noted that there was a Notice of Violation that was issued to the shopping center in July of 2004, and it was not referenced in the appeal.

Mr. Hammack asked if the appeal had been filed within the 30-day period of the June 8 Notice of Violation. Ms. Stehman replied that the appeal had been filed on July 7, which was the 30th day.

Mr. Hammack asked if the Board would be denying the appellant the right to appeal a Notice of Violation if they took the position staff wanted them to take. Ms. Stehman stated that the appellants had not referenced the Notice of Violation in their appeal. She said that in the application they were appealing the denial of the special exception, and their rationale was that they had added references only to the special exception, not the Notice of Violation.

Mr. Pammel read from the documents submitted by the appellant and stressed that they had specifically referenced March 21 and June 8, 2004.

Mr. Hart agreed that there was no way to appeal a Board of Supervisors' denial of a special exception to the Board of Zoning Appeals, whether it was within 30 days or not. He asked why someone who had received a Notice of Violation on June 8, 2004, indicating that they had too many trucks of certain sizes and measurements, could not file an application within 39 days. He also wanted to know why the Board of Zoning Appeals would not accept the case. Ms. Stehman apologized that staff had missed the inclusion of the June 8, 2004, date in the appeal application by the appellant. She noted, however, that since the Board had the authority to accept or deny appeals, she wanted the Board to know that this was an issue that had been argued previously by the owner and operator of the service station. Ms. Stehman agreed that the appellant was allowed to file a case.

Mr. Beard asked why the issue of the special exception would have gone to the Board of Supervisors rather than come to the Board of Zoning Appeals first. Ms. Stehman replied that all special exceptions were filed with staff and went through the Planning Commission and the Board of Supervisors. She stated that several years ago there was an appeal for the Heritage Citgo, and the remedy for that appeal was for them to obtain a special exception, which had to be approved by the Board of Supervisors, and the Board denied it. She said that left Heritage Citgo in violation of the Zoning Ordinance.

Mr. Pammel asked why the County had not proceeded with legal action since the appellant had been in violation since his special exception had been denied. Ms. Stehman asked the current inspector, Bruce Miller, to answer the question. She said that, to her knowledge, there had been a couple of staff changes as well as a change in ownership of the service station, and that was why legal action had not been pursued with respect to the violation. She said that documents and a check that was filed with the appeal had been from Heritage Citgo. She also said staff was in receipt of a letter from Bristow Shopping Center's tenant representatives stating that they had requested the U-Hauls be removed from the site.

Bruce Miller, Senior Zoning Inspector, Zoning Enforcement Branch, stated that the original inspector had transferred to another agency, the case had been assigned to another inspector who was no longer with the branch, and he had received the complaint in December of 2003. Mr. Miller said he had not had an opportunity to inspect the site until May of 2004 because of his workload. He indicated that upon making the inspection during the follow-up research, a Notice of Violation had been sent to the shopping center only because they were the only entity that had changed in its composition from the previous Notices of Violation that had been issued approximately nine years ago. Mr. Miller indicated that the reason why the service station had not been served was because its composition had not changed.

Mr. Hart indicated that he remembered Jane Kelsey, Kelsey and Associates, bringing the case before the Board in 2001 and that it had been deferred many times. He asked if the appellant was different from the one represented by Ms. Kelsey. Mr. Miller said it was his understanding that the appellant was Heritage Mall Citgo, not the shopping center. Ms. Stehman indicated that Ms. Kelsey's client had been Heritage Citgo. She noted that this time both the shopping center and Touche' and Company, trading as Heritage Mall Service, were both listed as the name of the appellant, and it was the same client that Ms. Kelsey had represented. She stated that it was an appeal that went on for approximately five months, so the 1995

appeal was the same as the 2001 appeal.

In response to questions by Mr. Hart, Ms. Stehman said she was not aware of any appeal of the BZA's 2001 decision within the 30-day period, nor was she aware that one had been filed after the Board of Supervisors' denial of the special exception within the 30-day period in 2001. Ms. Stehman said the Board of Supervisors had denied the special exception on March 5, 2001, and the BZA had upheld the Zoning Administrator on April 3, 2001.

Mr. Hart asked Mr. Miller why the Office of the County Attorney or the Zoning Administrator had not gone to court if the appellants had not appealed to the court within the allotted timeframe. He asked why the County did not have everything it needed to go to court now. Mr. Miller stated that staff had consulted with the County Attorney's Office, and upon their recommendation, he had sent a new Notice of Violation to the limited partnership, the shopping center, because that partnership had changed since the original notice had been issued.

John Forest, acting on behalf of Jim Bacon and the Alred Bacon firm, requested that the BZA defer the appeal for two weeks based on the memorandum dated July 23, 2004, which he had received sometime after the appellants had submitted the appeal. He said he needed more time to consider the issues that were raised in order to present an argument in response. Mr. Forest said he had papers in his file that showed that Ms. Kelsey had represented U-Haul International, and he was not certain whether that would have any bearing on the issue raised.

Mr. Hart informed Mr. Forest that the Board of Zoning Appeals would be going on break after the following week. He asked Ms. Stehman if the Board could accept the case and if that was what needed to be decided today. Ms. Stehman said the issue was an acceptance of the appeal.

Mr. Pammel moved to accept the appeal application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ August 3, 2004, After Agenda Item:

Approval of July 27, 2004 Resolutions

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

//

Mr. Hammack moved that the Board recess and go into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and to other specific legal matters requiring the provisions of legal advice by counsel pursuant to Virginia Code Section 2.1-344 (A) (7), and with issues arising out of the Cochran decision. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The meeting recessed at 11:10 a.m. and reconvened at 12:16 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board during the Executive Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

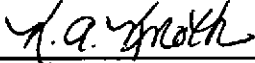
Mr. Pammel moved that the Board authorize the forwarding of the resolution of instructions to the County Attorney which was discussed in Executive Session. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack abstained from the vote. Mr. Ribble was absent from the meeting.

//

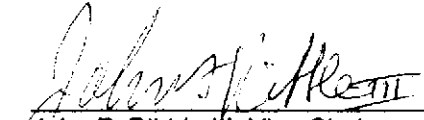
As there was no other business to come before the Board, the meeting was adjourned at 12:17 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: May 13, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 10, 2004. The following Board Members were present: Chairman John DiGiulian; Max V. Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian asked if there were any matters to be presented by Board members.

Mr. Ribble moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advica by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

The meeting recessed at 9:01 a.m. and reconvened at 9:57 a.m.

Mr. Hammack then moved that the members of the Beard of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Bcard of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion, which carried by a vcte of 7-0.

Mr. Hart moved that the board communicate its resolution of instructions to the County Attorney as discussed in the closed session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no other Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

Mr. Ribble moved to waive the 8-day waiting period for the applications approved at the meeting. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 76-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amerid SP 76-A-022 previously approved for community swim club and tennis ccurst to permit additional tennis courts. Located at 4827 Holborn Ave. cn approx. 6.05 ac. of land zoned R-2. Braddcck District. Tax Map 70-1 ((1)) 16. (Admin. moved from 5/4/04 and 5/8/04 at appl. req.)

Chairman DiGiulian noted that SPA 76-A-022-02 had been administratively moved to September 14, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. DIANA A. HARRISON-CRAUN, SP 2004-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.1 ft. with eave 2.1 ft. from the rear lot line and 5.7 ft. from side lot line. Located at 7113 Fort Hunt Rd. on approx. 16,001 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((3)) (1) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Diana Harrison-Craun, 7113 Fort Hunt Road, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit an accessory structure, specifically a shed, 11.7 feet in height to remain 3.1 feet with eave 2.1 feet from the rear lot line and 5.7 feet from the side lot line. A minimum rear yard of 11.7 feet and a minimum side yard of 12.0 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; theretore, reductions of 8.8 feet, 6.6 feet and 6.3 feet, respectively, were requested.

Mr. Craun and Ms. Harrison-Craun presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Harrison-Craun said the shed that her husband built was too large. She added that there was only one location to put the shed. Mr. Craun stated that he made a mistake by not getting a permit to build the shed. He said he had been told by Home Depot that he did not need one, but later a neighbor pointed out to him that it was too big and needed a permit. He said the shed was 50 square feet larger than permitted, and there was nowhere else to put it because of the sloped yard. Ms. Harrison-Craun reported that she and a neighbor, Mrs. Lancaster, had split the \$600 cost for bushes to hide the view of the shed. Ms. Harrison-Craun explained that the shed was used for storage, and there was no electricity or running water.

Mr. Beard asked what was visible to the neighbor, Mrs. Lancaster. Mr. Craun responded that nothing was visible. Mr. Ribble ascertained from Ms. Harrison-Craun that Mrs. Lancaster requested the bushes be put on her property to block the view of the shed.

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

Mr. Hammack moved to approve SP 2004-MV-035 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DIANA A. HARRISON-CRAUN, SP 2004-MV-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.1 ft. with eave 2.1 ft. from the rear lot line and 5.7 ft. from side lot line. Located at 7113 Fort Hunt Rd. on approx. 16,001 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((3)) (1) 22. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the standards set forth in paragraphs A through G.

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

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

applicable zoning district regulations.

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure (shed), as shown on the plat prepared by Dominion Surveyors, dated March 9, 2004, submitted with this application and is not transferable to other land.
2. A building permit shall be obtained within 30 days of final approval of this application for the accessory storage structure because it exceeds 150 square feet in gross floor area.

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

Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. BARBARA ELKIN & PAUL KLEIN, VC 2004-MV-096 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. with eave 7.0 ft. and deck 0.4 ft. from side lot lines. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20. (Concurrent with SP 2004-MV-038).

9:00 A.M. BARBARA ELKIN & PAUL KLEIN, SP 2004-MV-038 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. with eave 2.3 ft. from side lot line and 9.1 ft. with eave 8.9 ft. from rear lot line. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20. (Concurrent with VC 2004-MV-096).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Elkin, 6404 10th Street, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit an accessory storage structure, specifically a shed, to remain 2.6 feet with eave 2.3 feet from the side lot line and 9.1 feet from the rear lot line with eave 8.9 feet from the rear lot line. A minimum rear yard of 9.9 feet and a minimum side yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, reductions of 9.4 feet, 6.7 feet, and 0.8 feet, respectively, were requested. The applicant also requested a variance to permit construction of a screened porch addition and a ground level deck. As indicated in an addendum to the staff report, the deck is permitted to extend 5.0 feet into the side yard; therefore, the variance requested for the deck is 6.6 feet instead of 11.6 feet as was previously shown in the staff report.

Ms. Elkin presented the special permit request as outlined in the statement of justification submitted with the application. She said the shed had been on her property for 24 years, and it had been discovered that the shed was too high for where it was located near the rear lot line and too close to the side lot line when they were doing the variance plat. Ms. Elkin distributed pictures of other sheds in her neighborhood and explained that her shed was similar to others in the neighborhood, many of which were higher and closer to the back lot line than her shed. She noted that the shed was only above 8.5 feet for the middle portion of the roof and said the neighbors had no objection to the shed remaining. Ms. Elkin explained that the lot was narrow and this was the only location for the shed, which was not on a concrete slab.

Ms. Elkin then presented the variance permit request as outlined in the statement of justification submitted with the application. She indicated that the reason for the screened porch was due to the mosquitoes. Ms. Elkin explained that the lot was 50 feet wide, and the house was six feet from the lot line on one side and 11 feet on the other. She noted that the County had rezoned the community to R-3 in the 1970s and said it was impossible to build an addition without being within eight feet of the lot line. Ms. Elkin said she wanted a screened porch instead of an enclosed room, and it would not be higher than the back of the house. She explained that many of the houses had additions that were closer to the back lot line because they were built under different zoning, R-4, which permitted it. Ms. Elkin said it was a hardship because they could not use their property in the evenings without some kind of screened structure. If the variance was to be denied, she asked for a deferral.

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

Mr. Pammel moved to approve SP 2004-MV-038 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA ELKIN & PAUL KLEIN, SP 2004-MV-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. with eave 2.3 ft. from side lot line and 9.1 ft. with eave 8.9 ft. from rear lot line. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20. (Concurrent with VC 2004-MV-096). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants met the prescribed standards for a special permit under the mistake section of the Zoning Ordinance.
3. The shed has been in the current location for 24 years.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure (shed), as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 11, 2004 as revised through May 25, 2004, submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Pammel stated that Ms. Elkin's variance request was justified and that the variance requested was less than the current location of the building would require, but the Supreme Court did not allow the Board to consider it.

Mr. Pammel moved to defer decision on VC 2004-MV-095 to February 15, 2005, at 0:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Hart recommended Ms. Elkin contact her elected officials on the Board of Supervisors and/or the General Assembly. He said he thought there ought to be a legislative solution to allow the case-by-case review of homeowner improvements. Mr. Hart said Ms. Elkin's house was typical of many homes in Fairfax County where more severe setbacks went into effect in 1973, and the addition she asked for was farther away from the side line than the existing house.

Mr. Pammel said that under the Cochran case the board cannot reach those issues if there was beneficial use of the property and that this type of situation applied to many houses. He pointed out that part of the variance was for a ground level patio, and there were setback problems with patios and decks that ought to be treated differently, which he said was an ordinance issue, because a ground level patio has less impact than an elevated deck. Mr. Pammel noted that the zoning and lot size for Ms. Elkin's property were totally incompatible and said it was not an area that should have been zoned R-3.

Ms. Gibb asked whether it made a difference that the patio was not attached to the house. Ms. Hedriok said that if the patio was not connected in any way to the principle structure or to the addition and the addition was approved, it would be considered an accessory use, and then it would have to meet the fewer than 7.5 feet requirements.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF HOLY TRINITY LUTHERAN CHURCH, VC 2004-PR-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10 ft. from front lot line. Located at 3017 and 3021 Wallace Dr.; 3020, 3022 and 3025 Woodlawn Ave. on approx. 1.45 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (1) A and 1; 50-3 ((6)) 156, 157 and 187. (Concurrent with SP 2004-PR-032).

9:00 A.M. TRUSTEES OF HOLY TRINITY LUTHERAN CHURCH, SP 2004-PR-032 Appl. under Sect(s). 3-403 of the Zoning Ordinance for an existing church to add land area. Located at 3017 and 3021 Wallace Dr.; 3020, 3022 and 3025 Woodlawn Ave. on approx. 1.45 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (1) A and 1; 50-3 ((6)) 156, 157 and 187. (Concurrent with VC 2004-PR-086)

Chairman DiGiulian noted that VC 2004-PR-086 had been administratively withdrawn.

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

Mr. Hart made a disclosure that his firm currently had two cases where there were attorneys from the applicant's agent's firm on the opposing side unrelated to the subject application, but said he believed it would not affect his ability to participate.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to bring an existing church under special permit approval and to permit the addition of land area for the church use.

Mr. Hart asked if the parking spaces had been moved away from the 10-foot setback. Mr. Sherman said that the variance had been administratively withdrawn because it was determined that the parking spaces preceded the requirement that they be 10 feet from the front lot line, so the variance was not required.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She stated that Holy Trinity Church had been a part of the community since 1951 and predated the requirement for special permit or special exception approval. Ms. Strobel explained that the applicant had recently acquired an adjacent lot with a single-family detached home, and they wanted to use it for small group meetings and counseling. She said there would be no changes to the sanctuary or to the existing operation, so it would not change the character of the neighborhood or the property.

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

Mr. Hart moved to approve SP 2004-PR-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF HOLY TRINITY LUTHERAN CHURCH, SP 2004-PR-032 Appl. under Sect(s). 3-403 of the Zoning Ordinance for an existing church to add land area. Located at 3017 and 3021 Wallace Dr.; 3020, 3022 and 3025 Woodlawn Ave. on approx. 1.45 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((5)) (1) A and 1; 50-3 ((5)) 156, 157 and 187. (Concurrent with VC 2004-PR-086) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. The staff report is favorable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Holy Trinity Lutheran Church and is not transferable without further action of this Board, and is for the location indicated on the application, 3017 and 3021 Wallace Drive; 3020, 3022 and 3025 Woodlawn Avenue (1.45 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, LLC, dated February 6, 2004, updated through April 27, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 304 seats in the main place of worship.
6. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
7. Transitional screening shall be waived as shown on the Special Permit Plat.
8. The barrier requirement shall be waived as shown on the Special Permit Plat.
9. Prior to the issuance of a Non-Residential Use Permit, a pedestrian connection shall be provided between the parking area on the western side of the existing church building and the structure on Lot 156.
10. All parking shall be on site as shown on the Special Permit Plat. Two cars may be parked in the driveway on lot 156. Additional parking for events in the structure on Lot 156 shall be in the existing parking lots on lots A, 1, 157 or 187, not on the street.
11. The dwelling on Lot 156 shall only be used for administrative purposes and meeting space for small groups. The maximum permitted hours of use of the dwelling on Lot 156 shall be from 8:00 am to 10:00 pm. No worship services shall be held in the dwelling.
12. Any new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 3-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. TERRY W. ESTES & CHRISTA B. ESTES, SP 2004-SU-036 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of roofed deck 17.24 ft. with eave 16.7 ft. from side lot line. Located at 15440 Eagle Tavern La. on approx. 13,766 sq. ft. of land zoned R-C and Sully District. Tax Map 64-1 ((5)) (6) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Terry Estes, 15440 Eagle Tavern Lane, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to certain R-C lots to permit the construction of a roofed deck 17.24 feet with eave 16.7 feet from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, reductions of 2.76 feet and 0.3 feet, respectively, were requested. The addition would meet the minimum yard requirements of the R-2 Cluster District, which were applicable to this lot on July 25, 1982.

Mr. Estes presented the special permit request as outlined in the statement of justification submitted with the application. He said he proposed to build a 10-foot by 15-foot roof, which would be architecturally compatible with other dwellings in the neighborhood, over an existing brick and stone patio to afford them shade and privacy in the backyard. Mr. Estes explained that they had considered building it smaller to meet current R-C setbacks, but it would be cumbersome to access the house from the kitchen door where the roof was to be constructed. He noted that approval had been granted by the community association of Virginia Run.

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

Mr. Ribble moved to approve SP 2004-SU-036 for the reasons stated in the Resolution.

Mr. Hart stated that applications for R-C lots were handled as special permits rather than variances, as provided in the Ordinance. He explained that in 1982 a significant portion of the county was down-zoned so that many preexisting lots were subjected to new and more severe setbacks, and they were classified as special permits in the Ordinance, but the analysis was similar, and they were generally screened porches and decks.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TERRY W. ESTES & CHRISTA B. ESTES, SP 2004-SU-036 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of roofed deck 17.24 ft. with eave 16.7 ft. from side lot line. Located at 15440 Eagle Tavern La. on approx. 13,766 sq. ft. of land zoned R-C and Sully District. Tax Map 64-1 ((5)) (6) 24. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 3-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a roofed deck, as shown on the plat prepared by Curtis L. MoAllister, dated August 26, 1998, revised by Terry W. Estes, dated June 10, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 2004.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. OSCAR HINOJOSA, SP 2004-PR-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.67 ft. with eave 7.67 ft. from the rear lot line and 5.0 ft. with eave 4.0 ft. from the side lot line. Located at 2927 East Tripps Run Rd. on approx. 8,932 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((13)) (3) 58.

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

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

requested a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit an accessory storage structure, specifically a detached garage, of 14.67 feet in height to remain 8.67 feet with eave 7.67 feet from the rear lot line and 5.0 feet with eave 4.0 feet from a side lot line. A minimum rear yard of 14.67 feet and a minimum side yard of 10 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, reductions of 6.0 feet, 4.0 feet, 5.0 feet, and 3.0 feet, respectively, were requested.

Mr. Bernal presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had an existing garage which was 10-feet by 22-feet with certain limits on the setbacks that was made into a 2-car garage. Mr. Bernal stated that a shed would be taken down.

Ms. Gibb asked whether the applicant had a contract with the contractor, to which Mr. Bernal replied that he did. He said the applicant had a permit for the addition, but not for the garage. Mr. Bernal stated that the contractor who built the garage was a licensed contractor named Edgar. He said the applicant had a contract for the addition, and the garage was built after the addition.

Mr. Hart asked whether it would require a special permit or a variance if the applicant wanted to build a garage in the same location, but had not already done so. Mr. Sherman said it would require a variance because it would be a complete reconstruction of a nonconforming structure, and the fact that it was an accessory structure would not affect the variance versus a special permit. He said the new garage was no closer to the side and rear lines than the old garage was.

Chairman DiGiulian called for speakers.

Charles Marsden, 6712 Farragut Avenue, Falls Church, Virginia, came forward to speak in opposition to the application. Mr. Marsden said his backyard abutted Mr. Hinojosa's garage. He said he objected to Mr. Hinojosa's using it for metal and paint work because the painting of cars was unpleasant when Mr. Marsden was barbecuing.

Ms. Gibb asked Mr. Marsden how many cars were there. Mr. Marsden said 10 to 15.

Albert Lafranca, 6800 Jefferson Avenue, Falls Church, Virginia, came forward to speak in opposition to the application. Mr. Lafranca said it was a very large structure constructed without a building permit and in violation of the minimum yard requirements. He said the nonconforming use for accessory structures were of concern to him. He explained that the increased height and length of the wall facing Mr. Marsden's backyard increased the visual bulk looming over the yard. Mr. Lafranca noted that he had seen a large tool chest and a large vertical commercial air compressor in the garage, which he said did not seem to be in keeping with the applicant's description of the garage being for storage only. He said the paint fumes seemed to go against the statement that no hazardous or toxic chemicals would be used. Mr. Lafranca explained that in a neighborhood where lots tended to be small, it was a concern that there would be a proliferation of similar structures, and it was an invitation for the current or a future owner to be operating some kind of commercial trade.

Mr. Hart addressed questions to Tammy Brown, Senior Zoning Inspector for the Zoning Enforcement Branch about the automobile painting. Ms. Brown responded that there was an antique truck stored and a car that belonged to the applicant's mother.

Ms. Gibb inquired as to any complaints made to the zoning office, to which Ms. Brown responded that she had no record of any other complaints, but they could be in archived files.

Ms. Oibb asked the applicant if neighbors were okay with the painting of wrecked vehicles. Mr. Hinojosa said he was repairing his own cars with his son, that he works six days a week, and that no commercial work had been done on the property. Mr. Hinojosa stated that he owned six cars; five cars and a pickup truck. Mr. Hinojosa said he parked them in the front or on the side of the house. In the past year, Mr. Hinojosa remarked that he repainted one car only, which was his son's car, and that was when the fumes were apparent, and the complaint was subsequently made.

Mr. Sherman stated that it was not a violation of the Zoning Ordinance to paint cars within your yard.

In response to questioning by Mr. Beard, Mr. Hinojosa stated that he worked in the auto body shop six days a week for Brown Nissan in Arlington and further testified that he was not doing any side jobs on the premises. Mr. Hinojosa identified cars in photographs as being that of his wife, a wrecked car as his son's,

and his as being the antique car.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer decision on SP 2004-PR-037 to September 14, 2004, at 9:00 a.m., so Mr. Hinojosa could submit the contract for the addition. Ms. Gibb said she wanted to determine that this was a mistake made in good faith. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Ribble said it was unusual that Mr. Hinojosa had a contract for the addition, but not for the garage.

Mr. Beard asked for a registration card for the applicant's wife's vehicle, which Mr. Hinojosa furnished.

Mr. Pammel said there were building code and OSHA standards for ventilation, and the garage did not meet these.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. COMMONWEALTH HOMES LLC, VCA 94-D-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 94-D-153 to permit change in development condition. Located at 419 and 421 Walkor Rd. on approx. 4.59 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 39A and 39B.

Mr. Hart made a disclosure that his firm currently had two cases where there were attorneys from the applicant's agent's firm on the opposing side unrelated to the subject application, but said he believed it would not affect his ability to participate.

Mavis Stanfield, Staff Coordinator, advised the Board that the applicant had requested a deferral to October 12, 2004.

Mr. Ribble moved to defer VCA 94-D-153 to October 12, 2004, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. JOHN HOWARD CARPENTER TRUSTEE, VC 2004-MA-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.2 ff. with eave 2.6 ff. from side lot line. Located at 4107 Wynnwood Dr. on approx. 16,900 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 ((24)) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Howard Carpenter, 4107 Wynnwood Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a one-story garage addition 3.2 feet with eave 2.6 feet from the side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 8.8 feet and 6.4 feet, respectively, were requested.

Mr. Hart confirmed with Ms. Stanfield that the applicant could have a 12-foot carport by right rather than a garage. Ms. Stanfield said carports can extend five feet into the minimum yard.

Mr. Carpenter presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had been working on the application process since April of 2004. Mr. Carpenter said he wanted to have a two-car garage, as several of his neighbors had. He said that time was an issue due to a serious medical condition, and he explained that his hobby of restoring older cars provided a release from the pressures he had from having cancer.

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

Mr. Beard moved to deny VC 2004-MA-093 for the reasons stated in the Resolution.

Mr. Beard said the situation was very upsetting to him, and he equated the Cochran ruling to a governmental easement. He advised people to go to their governmental agents.

Ms. Gibb added that this was the type of variance that the Board used to grant because there was no adverse impact on the neighborhood and it would enhance Mr. Carpenter's use of his property immensely.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN HOWARD CARPENTER TRUSTEE, VC 2004-MA-093 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of addition 3.2 ft. with eave 2.6 ft. from side lot line. Located at 4107 Wynnwood Dr. on approx. 16,900 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 ((24)) 5. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; end

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

1. The applicant is the owner of the land.
2. Pursuant to the Cochran ruling, this application can not be approved.

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

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 7-0. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 16, 2004.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE GOOD SHEPHERD, VC 2004-BR-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in a front yard. Located at 9350 Braddeck Rd; 4925 and 5001 Olley La. on approx. 10.63 ac. of land zoned R-1. Braddock District. Tax Map 69-4 ((1)) 6, 7 and 8.

Chairman DiGiulian noted that VC 2004-BR-092 had been withdrawn by the applicant.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. CHARLES AND SUSAN FISENNE, VC 2004-MA-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 7.5 ft. from both side lot lines. Located at 3516 Blair Rd. on approx. 11,521 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((3)) (1) 7.

Chairman DiOiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Fisenne, 3516 Blair Road, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 10 feet with eave 7.5 feet from the side lot lines. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 2.0 feet and 1.5 feet, respectively, were requested.

Mr. Fisenne presented the variance request as outlined in the statement of justification submitted with the application. He said County staff informed him the previous day that the BZA had been denying or deferring variance requests as a result of the recent Cochran case. Mr. Fisenne said Justice Charles Russell clearly stated that the BZA had no authority to grant a variance unless the effect of the Zoning Ordinance would interfere with all reasonable beneficial use of the property taken as a whole. Mr. Fisenne said that what struck him about the three cases mentioned was that in each case the applicant had alternate synergies and options that they could have pursued in reaching their goals, and convenience stood out as their objective in seeking a variance. Mr. Fisenne stated that his request was in line with the intent of the Code of Virginia Sect. 15-223.092. He explained that his lot was subdivided in 1938, prior to the establishment of the existing Zoning Ordinance, and was drawn up with a width of 50 feet, making his lot long and narrow. Mr. Fisenne said that under the current zoning requirements, any house placed on the lot would be limited to 26 feet wide with 12-foot side yard setbacks and stated that 26 feet was too narrow to be of reasonable beneficial use. He reported that he had been searching for five months to find a 26-foot wide house plan with adequate square footage and had been unable to identify a heuse plan with sufficient square footage that met the 26-foot width requirement. Mr. Fisenne said he would not be able to construct a house without a variance to the side yard setbacks, which would be a hardship, and the variance request was a necessity in order to build his new home and not a convenience.

Ms. Gibb ascertained from the applicant that there was a house on Lot 8 that faced Blair Road with a side yard setback of seven feet. Ms. Gibb also asked about Lots 9 and 10. These houses also predated the

Zoning Ordinance. Mr. Fisenne said his house was built in 1941 and was on Lot 6. Mr. Fisenne lived on Lot 7. Ms. Stanfield pointed out Lots 8 and 9 on the tax map and stated that both had lot widths of 50 feet. Mr. Fisenne said he had the only vacant lot in the neighborhood.

Ms. Gibb stated that she was trying to determine whether the Zoning Ordinance was depriving Mr. Fisenne of all reasonable beneficial use of the property.

Mr. Ribble asked when the garage was built. Mr. Fisenne said he did not know, but it was there when he bought the property in 1991. Mr. Fisenne said he did not have a house plan and that it was dependent on whether the variance was approved. He said he did not want a front-loading garage and so reflected one in the back.

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

Mr. Hammack moved to deny VC 2004-MA-095 for the reasons stated in the Resolution. Mr. Hammack prefaced his motion by stating that the Board had granted a minimal variance for 18 inches which then led to an appeal that resulted in the Cochran decision. He said he understood Mr. Fisenne's predicament of trying to find a house that would fit into a 26-foot building envelope, but added that there had to be one out there someplace because townhouses are often less than 26 feet in width. He mentioned viewing a television broadcast in which a family had a similar situation and built a triangular-shaped house, but it could have been an architecturally built house that may put the cost at a prohibitive level. Mr. Hammack stated that prior to the Cochran decision, the Board would have routinely approved similar applications because of the narrowness of the lots, but he said the applicant had not satisfied the Board that physical conditions existed which under a strict interpretation of the Zoning Ordinance would deprive him of all beneficial use of the property, as defined by Cochran.

Mr. Hart asked Mr. Fisenne if he would rather have his application deferred than denied, pending some potential legislative action. Mr. Fisenne conferred with his wife and said to deny it.

Mr. Pammel said he could not support the motion. He said it was clearly the exception to the Cochran ruling because the applicants had a vacant parcel of land on which there was no structure; therefore, Mr. Pammel said Mr. Fisenne did not have beneficial use of the property. He added that the lot was extremely narrow and was recorded in 1938. He said what the applicants had requested was to provide relief to allow the construction of a dwelling on the property with side yards that are similar, if not identical, to those that existed in the rest of the neighborhood. Mr. Pammel said he did not see where this situation was in any shape or form incompatible with the character development of the property, and they should be permitted to develop their land with their residence with the requested variance.

Ms. Gibb said she would like to agree with Mr. Pammel, but the Cochran decision stated that you had to be denied all reasonable beneficial use of the property. She commented that the application came closer to doing this than other recent applications. She said she would have supported approving it in the past, but the applicants were not being deprived of all reasonable beneficial use, so she would support the motion, however, reluctantly.

Mr. Hammack advised Mr. Fisenne to take his case to the appropriate legislative officials on the County Board of Supervisors or the members of the General Assembly. Ms. Stanfield said she had conveyed that message to Mr. Fisenne in previous conversations.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES AND SUSAN FISENNE, VC 2004-MA-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 7.5 ft. from both side lot lines. Located at 3516 Blair Rd. on approx. 11,521 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((3)) (1) 7. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 2004; and

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

- 1. The applicants are the owners of the land.
- 2. The applicants have not met the standards for variance applications as set forth and provided in the Cochran decision.

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

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

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion. Mr. Pammel moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 18, 2004.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:00 A.M. OORDON L. BOSCH, VC 2004-BR-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. with eave 17.0 ft from the front lot line of a corner lot. Located at 4211 Willow Woods Dr. on approx. 13,149 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 297.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gordon L. Bosch, 4211 Willow Woods Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a one-story, one-car garage, 18 feet with eave 17 feet from the front lot line. A minimum front yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 7.0 feet and 5.0 feet, respectively, were requested.

Mr. Bosch presented the variance request as outlined in the statement of justification submitted with the application. He said he requested the garage be placed in the position as described in the staff report due to the mature oak trees on the side of his house, and it would require extensive grading if placed elsewhere because of the hills on his property. Mr. Bosch said the existing driveway was located in the front of the house, and he wanted it relocated to keep his car off the busy main road and onto the side road. He stated that if the garage were built, he would shorten the concrete pad and put landscaping in front to divert water runoff.

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

Mr. Pammel moved to deny VC 2004-BR-094. He said the standards had not been met by the applicant as a result of the Cochran decision by the Virginia Supreme Court. Mr. Pammel said he wanted trees to be preserved for the benefit of the environment, and prior to the Cochran decision, the application probably would have been approved, but could not be now. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Pammel moved to waive the 12-month waiting period for refiling an application. Mr. Ribble and Ms. Gibb seconded the motion, which carried by a vote of 7-0.

Ms. Stanfield said Mr. Bosch requested that the Board consider a deferral.

Mr. Pammel moved to reconsider VC 2004-BR-094. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Pammel moved to defer decision on VC 2004-BR-094 to February 15, 2004, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:30 A.M. DIDIER VANTHEMSCHE, A 2004-DR-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory structure, which does not comply with the minimum yard requirements for the R-E District, without a valid Building Permit and has installed two entrance gates, which exceed the allowable height regulations, in violation of the Zoning Ordinance provisions. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22 C.

Chairman DiGiulian informed the Board members that the notices for this case were not in order, and he noted that there was a request for a deferral to November 9, 2004.

Mr. Pammel moved to defer A 2004-DR-016 to November 9, 2004, at 9:30 a.m., for notices. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:30 A.M. THOMAS A. HUHNS, A 2004-MA-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an addition (a deck and pergola), which does not comply with the minimum bulk regulations for the PHD-8 District and was

constructed without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 4522 Shoal Creek Ct. on approx. 2,100 sq. ft. of land zoned PDH-8 and HC. Mason District. Tax Map 71-2 ((34)) (9) 47.

Chairman DiGiulian informed the Board members that the notices for this case were not in order, and he noted that there was a request for a deferral to November 2, 2004.

Thomas A. Huhn, 4522 Shoal Creek Court, explained that he was administratively seeking to reclassify the structure that was built as a roofed deck structure, and he requested a deferral until November 2, 2004.

Mr. Pammel moved to defer A 2004-MA-017 to November 2, 2004, at 9:30 a.m., for notices Mr. Hammaok seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ August 10, 2004, Scheduled case of:

9:30 A.M. CARVILLE J. CROSS, JR., A 2004-PR-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected a structure, which does not comply with the minimum rear yard requirements for the PDH-4 District, without a valid Building Permit in violation of Zoning Ordinance provisions. Located at 9827 Fox Rest La. on approx. 6,361 sq. ft. of land zoned PDH-4. Providence District. Tax Map 48-1((32)) 18. (Decision deferred from 8/3/04)

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that at the previous meeting the appeal was deferred until this week to allow the appellant to decide if he would pursue a special permit to remedy the violation. Ms. Stehman reported that she received a letter from Ken Sanders, the attorney for the appellant, requesting a deferral to December 7, 2004, to get a special permit. The letter was distributed to the Board.

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Mr. Pammel moved to defer decision on A 2004-PR-014 to December 7, 2004, at 9:30 a.m. Mr. Hammaok seconded the motion, which carried by a vote of 6-0.

//

~ ~ ~ August 10, 2004, After Agenda Item:

Consideration of Acceptance
Application for Appeal submitted by Richard Pleasants

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, explained that it was an appeal request that came in one day after the 30 day deadline for two dwellings in a residence that was only allowed to have one. Papers were distributed setting forth the applicant's position and that he was unable to appear at the hearing. Staff opposed the acceptance because Ms. Stehman said it was not timely filed.

Mr. Pammel stated he did not believe that the applicant met the requirement for filing.

Mr. Hart said the requirement was to file the appeal from the date the appellant received the notice of violation not the date of the letter. The sheriff's return receipt was on the 24th which would have been within the 30 day filing period.

Mr. Hammaok moved to accept the application for appeal. Mr. Hart seconded the motion, which carried by a vote of 6-1. Mr. Pammel voted against the motion.

//

~ ~ ~ August 10, 2004, After Agenda Item:

Approval of February 24, 2004 Minutes
Lake Braddock Community Association, A 2003-BR-052
for inclusion into the Return of Record

Mr. Hart moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ August 10, 2004, After Agenda Item:

Approval of August 3, 2004 Resolutions

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

//

As there was no other business to come before the Board, the meeting was adjourned at 11:58 a.m.

Minutes by: Vanessa A. Bergh

Approved on: November 30, 2004

K. A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 14, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 78-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis court to permit additional tennis courts. Located at 4827 Holborn Ave. on approx. 8.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 18. (Admin. moved from 5/4/04, 6/8/04, and 8/10/04 at appl. req.)

Chairman DiGiulian noted that SPA 78-A-022-02 had been administratively moved to October 26, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. LANSING W. HINRICHS, SP 2004-MA-040 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.0 ft. from side lot line. Located at 3023 Cedarwood La. on approx. 23,869 sq. ft. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((23)) 61. (Concurrent with VC 2004-MA-097).

9:00 A.M. LANSING W. HINRICHS, VC 2004-MA-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. with eave 11.7 ft. from side lot line. Located at 3023 Cedarwood La. on approx. 23,869 sq. ft. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((23)) 61. (Concurrent with SP 2004-MA-040).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lansing Hinrichs, 3023 Cedarwood Lane, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure, specifically a shed, which measured 9.3 feet in height, to remain 1.0 foot from a side lot line. A minimum side yard of 20 feet is required; therefore, a reduction of 19 feet was requested. The applicant also requested a variance to permit the construction of a screened porch addition 14 feet with eave 11.7 feet from a side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 6.0 feet and 5.3 feet, respectively, were requested.

Mr. Hinrichs requested a deferral on the variance request until April 2005.

There were no speakers regarding the deferral request, and Chairman DiGiulian called for a motion.

Mr. Hammack moved to defer VC 2004-MA-097 to April 5, 2005, at 9:00 a.m., at the applicant's request. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Hart suggested to Mr. Hinrichs that prior to the hearing on his variance request, he take that time to talk to his elected officials because he thought that it was conceivable that there would be legislation in the General Assembly to return things back to the way they were before the Cochran case. He noted that the applicant's house was 48 years old. He stated that when a property owner wanted to do an addition to his house, in this case a screened porch in the back that was no closer than the existing house was, it violated the setbacks which were initiated by the Zoning Ordinance after the house had been built. Mr. Hart said that

unless something changed legislatively, it would be very difficult for the Board to grant a variance for any lot that already had a house on it.

Mr. Hinrichs presented the special permit request as outlined in the statement of justification submitted with the application. He indicated that the storage shed was on the property when he bought it in July of 2004 and thought that it had been built approximately 10 years prior. He said he had not had any complaints from his neighbors and asked that the Board consider that the shed was grandfathered.

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

Mr. Hammack moved to approve SP 2004-MA-040 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LANSING W. HINRICHS, SP 2004-MA-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.0 ft. from side lot line. Located at 3023 Cedarwood La. on approx. 23,869 sq. ft. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((23)) 61. (Concurrent with VC 2004-MA-097). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the standards for the granting of a special permit.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory storage structure (shed), as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 26, 2004 as revised through May 18, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. JENNIFER L. CHU, SP 2004-HM-039

Chairman DiGiulian noted that SP 2004-HM-039 had been withdrawn by the applicant.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. MAREC CORPORATION, VC 2004-DR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with SP 2004-DR-041).

9:00 A.M. MAREC CORPORATION, SP 2004-DR-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain in a minimum required front yard. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with VC 2004-DR-098).

Chairman DiGiulian noted that the applicant had requested VC 2004-DR-098 and SP 2004-DR-041 be deferred.

Ms. Gibb asked what the reason was for a six-month deferral. Fred Taylor, Bean, Kinney & Korman, PC, 2000 North 14th Street, Arlington, Virginia, the applicant's agent, replied that it was because of the Ccchran decision. He said that having seen and read some of the other cases that had been before the Board that had been denied or deferred, he did not think it was appropriate to bring this case before the Board at this point. He said they were hoping there would be some legislative changes made within the six-month period. He stated that on September 9, 2004, a resubdivision plat had been submitted to the County that would make the lot in question 2.10 acres and that would render a portion of their request for the varianca moot.

Ms. Gibb noted that the variance involved a fence and asked if there was an existing fence that was a problem. Mr. Taylor said a masonry wall was the accessory structure that had been referred to. He said the applicant would be dealing with the front yard problem and the height of the fence and that changing the lot to 2 acres would enable the applicant to deal with 7 feet around the perimeter of the property.

Mr. Taylor acknowledged that both issues could be resolved with the subdivision; however, they were submitting an appeal of a violation that related to the fence. He said they had discussions with County staff

and part of the issue would have to be resolved by a variance because they may be dealing with the stepped wall that exceeded 7 feet at certain places.

Mr. Hart asked if the applicant wanted a decision on the special permit today or wait and do the special permit and the variance at the same time. Mr. Taylor said he would have no difficulty with having a decision made on the special permit today but he had requested that both applications be deferred as a matter of fairness to the people in the neighborhood.

Mr. Pammel moved to defer VC 2004-DR-098 and SP 2004-DR-041 to September 21, 2004, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion.

After a brief discussion concerning the appeal that was scheduled to be heard on September 21, 2004, Mr. Pammel moved that the Board defer decision on the applications submitted today for one week to enable the Board to consider all three cases as the same time.

Mr. Hart said he would support the motion to defer the decision on the deferral for one week; however, he was concerned about whether or not the resubdivision plat would bring the request to over 2 acres which would change some of the requirements. He said he did not understand how that would work and thought it was important to discuss, for the purposes of the appeal, the issues that would and would not be in violation. He requested that the Board be allowed to sort that out with the staff coordinator the following week and determine whether staff wanted to move forward with it at that time.

Mr. Hammack noted that the appeal concerned a situation that existed before the property was enlarged and that may become moot; however, he said the Board would still be asked to uphold or reverse the Zoning Administrator on his decision as it existed when the Notice of Violation was issued.

Susan Langdon, Chief, Special Permit and Variance Branch, advised that the gatehouse would still be in violation because it was in the minimum required front yard, and no matter how large the property, it could not stay there. Insofar as the fence was concerned, she said she didn't have an answer at this time; however, if the applicant kept the lights on top of the fence they would still be in violation. She noted that if there was more than 2 acres, a 7-foot fence would be allowed in any yard.

Mr. Pammel asked staff to provide the Board with any relative information concerning the building permit that was issued and to let them know if the gatehouse and fence were on that plan and had been approved as part of the building permit process, or was exempt.

The motion carried by a vote of 7-0.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. ROBERTON C. WILLIAMS, JR. AND JANE C. HILDER, VC 2004-LE-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. with eave 6.3 ft. from side lot line. Located at 5707 Norton Rd. on approx. 12,192 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((12)) 7.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Hilder, 5707 Norton Road, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition, the first story consisting of a carport enclosure, 6.7 feet with eave 6.3 feet from a side lot line. A minimum side yard of 12 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.3 feet and 2.7 feet, respectively, were requested.

Ms. Hilder presented the variance request as outlined in the statement of justification submitted with the application. She said the application had been submitted to solve a problem with a substandard structure and she and her husband had, for the last 20 years, been trying to figure out what to do with it. She said that because of the configuration of the ground she wasn't sure that they could obtain a building permit for a new

carport because it did not meet the criteria because it couldn't be open in the back and on part of the side. Ms. Hilder said that the carport was in such bad repair that they had to do something about it.

Ms. Hilder said she was aware of the Cochran case only through what she had read in the Washington Post. Mr. Hart explained that since April 23, 2004, the Board had not been able to grant variances on a lot that already had a house on it. He said the Board had made decisions on variances where people asked them to and they had also deferred decision at the request of an applicant. Mr. Hart asked Ms. Hilder if she wanted the Board to vote on the application today, or defer the decision. Ms. Hilder said that her choice would be to defer. Mr. Hart then asked about the addition, noting that she planned to enclose the carport and put another story above it. Ms. Hilder said that she had asked a builder to do a plan that would be within the footprint of the current carport. It had been determined that the new carport would be 1 foot wider than the original. In response to several questions from Mr. Hart, Ms. Hilder said she thought the builder may have chosen to make the carport 1 foot wider to save them from having to replace the driveway which did not line up with the carport. The carport was 14 feet wide, and the new addition would make it 15 feet wide. It was a one-car garage, and they planned to use the upper level to extend their dining room and add a study. Her neighbor on the side of the carport did not have any problem with their plans, and the floor of the garage would be at the same level as the current carport, with the roof at the same level as the current roof.

Chairman DiGiulian said that if she agreed to a deferral it would help if she changed the proposal so that it would be within the footprint of the existing carport.

Mr. Beard said this was another example of a perfectly reasonable request to remodel and improve an existing deteriorating residential situation. He said he hoped that this type of situation could be resolved soon.

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

Mr. Hart suggested that Ms. Hilder take advantage of the time she had before the next hearing to speak to her elected representatives about the situation that the Board was in.

Mr. Hart moved to defer decision on VC 2004-LE-102 to March 8, 2005, at 9:00 a.m., with the record to remain open for written comment. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. CECELIA C. PANICH, TRUSTEE, DEORMAN L. ROBEY, JR., TRUSTEE AND FREIDA E. ROBEY, TRUSTEE, VC 2004-PR-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2524 Avon La. and 2525 Ogden St. on approx. 6.21 ac. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 166, 167A, 167B and 168. (Deferred from 6/29/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-PR-058 had been administratively moved to January 18, 2005, at 9:00 a.m., for notices.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. JAMES REED, JR., VCA 93-P-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 93-P-160 to permit construction of second story addition 10.0 ft. with eave 9.5 ft. from rear lot line and 8.5 ft. from side lot line such that side yards total 35.8 ft. and deck 8.0 ft. from rear lot line and 7.8 ft. from side lot line. Located at 10506 Marbury Rd. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-2 ((16)) 29. (Moved from 4/13/04 for notices.) (Deferred from 6/1/04 at appl. req.)

Chairman DiGiulian noted that VCA 93-P-160 had been withdrawn by the applicant.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit building addition, site modifications and increase in land area. Located at 9105 and 9111 Backlick Rd. on approx. 1.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B and 27. (Admin. moved from 5/18/04 and 7/6/04) (Deferred indefinitely from 5/25/04)

Chairman DiGiulian noted that SPA 87-V-070 had been administratively moved to November 30, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:00 A.M. OSCAR HINOJOSA, SP 2004-PR-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.67 ft. with eave 7.67 ft. from the rear lot line and 5.0 ft. with eave 4.0 ff. from the side lot line. Located at 2927 East Tripps Run Rd. on approx. 8,932 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((13)) (3) 56. (Decision deferred from 8/10/04)

Chairman DiGiulian noted that SP 2004-PR-037 had been deferred for decision only from August 10, 2004, to allow for receipt of additional information.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Hinojosa, 7227 Joel Drive, Annandale, Virginia, the applicant's son, replied that it was.

Bill Sherman, Staff Coordinator, stated that the additional information requested by the Board had been submitted in a memorandum dated September 7, 2004.

Mr. Hart, referring to the copy of the contract referenced in the memorandum, said the name of the contractor was obscured and asked for the name of the builder and how it was spelled. Mr. Hinojosa said the name on the contract was Henriquez Builders Group. Mr. Hart said he wanted to do a computer check to determine whether the builder had a license with the Department of Professional and Occupational Regulation Office in Richmond, Virginia. He said that organization promulgated regulations for contractors which required that contracts made for home improvements were in writing and that it referenced compliance with ordinances, permits, and regulations. He said there were many things missing from the applicant's contract.

Mr. Hammack noted that the building permit listed Vinnie's Express as the contractor and asked if it was the same group. Mr. Hinojosa said yes and indicated that he was the one who pulled all the permits in his father's name and they did not know what the contractor had done.

Mr. Hammack asked if the Board had been asked to approve an expansion of the garage because it was not indicated on the contract and asked the applicant to point it out. Mr. Hinojosa stated that after his father had signed the contract for the addition he realized that his garage was too old. He said at that time his father had asked the contractor if he could build a two-car garage and was told that it could be done. He said the contractor had submitted a price and stated that he would take care of everything. They heard nothing more after that. Mr. Hammack said he did not see any building permits that applied to a garage addition and that it was hard to tell because they were very sketchy. Mr. Hinojosa stated that his father had been handed several permits and he didn't know what they were for, he just assumed that the permit for the garage had been obtained. He noted that when that contractor did not finish the work, his father had to hire someone else to finish it.

Mr. Hinojosa said that the contractor had informed his father that he had declared bankruptcy and would not be finishing the work. He said that in discussions with lawyers the applicant had been told that it would cost more to sue the contractor than what they might actually be able to get from him and that was why they didn't follow up with a lawsuit.

Mr. Hart referred to the building permit that listed Vinnie's Express with the name of Shelby Figerone (phonetic) with an address on Nicholson Court in Kensington, Maryland, with an 800 phone number. He said the contract listed the Henriquez Builders Group on Brookfield Road in Silver Spring, Maryland with a 301 phone number. Mr. Hart said the two did not seem to go together. He then asked if Shelby Figerone and Vinnie's Express were the same as the Henriquez Builders Group. Mr. Hinojosa said they really didn't know because the permits had been pulled by Edgar Henriquez. In response to Mr. Hart's question as to who went bankrupt, Mr. Hinojosa responded that it was Mr. Henriquez and he thought he had hired subcontractors. Mr. Hart said that was another question because the contract before the Board showed only the scope of work and there were no signatures on it. In answer to Mr. Hart's query, Mr. Hinojosa responded that there were no other pages to the contract and indicated that he had the original that had been given to his father.

Ms. Gibb said she thought the original question was whether the applicant was painting other people's cars because there were a number of cars on the property. Mr. Hinojosa stated that his father had approximately five cars belonging to the family. He said three cars and a motorcycle registered on Olney Road belonged to his brother-in-law. Mr. Hinojosa stated that the cars parked at his father's house belonged to the family and were constantly there because they visited every day.

Chairman DiGiulian called for speakers

Oliver Morales, 1716 Olney Road, Falls Church, Virginia, came forward to speak. He stated that the applicant was his father-in-law, and he had three cars which were used by himself, his wife, and his children who visited with the applicant and his wife every day. He stated that there was no basis for the neighbor's concerns that his father-in-law was painting other people's cars because he was not doing that, and all of the cars noted in the complaint belonged to family members. The garage was being used for storage of the applicant's equipment as well as an antique car that he was renovating.

Mr. Beard asked what the term "rough plumbing" meant that was referenced in the contract. Mr. Hinojosa said it referred to the plumbing in the second story addition which had two bathrooms. He stated that there was no plumbing in the garage.

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

Ms. Gibb moved to approve SP 2004-PR-037 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OSCAR HINOJOSA, SP 2004-PR-037 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.67 ft. with eave 7.67 ft. from the rear lot line and 6.0 ft. with eave 4.0 ft. from the side lot line. Located at 2927 East Tripps Run Rd. on approx. 8,932 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((13)) (3) 56. (Decision deferred from 8/10/04) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant met the required Standards A through G for a special permit.
3. The applicant testified that a contract was signed, and he provided a copy of the contract, which did not speak to the garage that the applicant testified was done as an afterthought.
4. The applicant testified that the contractor filed for bankruptcy, and the applicant was not able to get the contractor to complete the job.
5. The applicant presented convincing testimony that he acted in good faith and the noncompliance

- was through no fault of the property owner.
6. The zoning inspector found no evidence that the painting of vehicles was being done in the garage.
 7. The applicant testified regarding the ownership of the vehicles.
 8. The Board was provided with certificates of title for the vehicles that are routinely parked at the property.

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

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

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

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

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

1. This special permit is approved for the location of a detached garage, as shown on the plat prepared by Jorge L. Bernal, dated March 24, 2004, revised through June 11, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:30 A.M. VICTOR L. AND TRACY A. PRICE, A 2004-DR-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Contractor's Office and Shops and a Storage Yard and have accumulated outdoor storage which exceeds the maximum allowable area on property in the RE District in violation of

Zoning Ordinance provisions. Located at 770 Keithly Dr. on approx. 5.01 ac. of land zoned R-E. Dranesville District. Tax Map 6-2 ((4)) 1.

Chairman DiGiulian noted that A 2004-DR-018 had been withdrawn.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:30 A.M. CG (TEXAS), INC./THE CONTAINER STORE, A 2004-PR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have installed or allowed the installation of a shipping container in the parking lot of the site without site plan approval nor a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 8508 Leesburg Pi. on approx. 1.87 ac. of land zoned C-7, HC and SC. Providencia District. Tax Map 29-3 ((1)) 47. (Admin. moved from 6/8/04 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-008 had been withdrawn.

//

~ ~ ~ September 14, 2004, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for noticas.) (Decision deferred from 7/20/04)

Margaret Stehman, Deputy Zoning Administrator for Appeals, stated that the decision on this appeal had been deferred after the public hearing because there were several issues that had been raised by members of the Board.

Elizabeth Stasiak-Perry, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated September 3, 2004. She said this was an appeal of a determination that the appellants were allowing the parking of four commercial vehicles (tractor trailer trucks) on property in the R-C District in violation of Zoning Ordinance provisions. She said there was no record of a business license associated with the subject property, which supported staff's position that the use was never legally established or permitted. In the absence of a business license, business personal property tax or any other indication of a legally established business, there was nothing to support that the use of the property to park tractor trailers was ever legally established or permitted under Zoning Ordinance provisions and, therefore, the appellants' use of the property was not nonconforming and was in violation of Zoning Ordinance provisions.

Mr. Hammack asked if Mr. Phillips and the Crabtrees' had had an opportunity to view the photographs described by staff. Ms. Stasiak-Perry stated that the appellants were not with her at the time she had reviewed the aerial photography; however the photographs were public record and the appellants could go to the Mapping Services Branch office and review them with the help of a staff member.

Mr. Ribble asked if the Mapping Services staff could bring the photographs to the Board so they could see them. Ms. Stasiak-Perry said she could make that request.

Mr. Beard referred to the reference in the staff report that research had been done through the Department of Motor Vehicles office in Richmond, stated that two of the vehicles had been under the name of Mr. Pennington and listed them as being garaged in Manassas. He asked about the other vehicles. Ms. Stasiak-Perry stated that those records had been pulled by the inspector, John Zemlan, for the staff report. She indicated that Mr. Zemlan was present and could answer the question.

John Zemlan, Inspector, Zoning Enforcement Branch, said the referenced vehicles were the only two he had seen on the property. In answer to Mr. Beard's question he indicated that his inspection had taken place at approximately 1:00 p.m. in the afternoon.

Jerry Phillips, the appellants' agent, presented the arguments forming the basis for the appeal. He asked the Board if they had received a copy of his 3-page response to staff's memorandum. The members of the Board stated that they had not. Mr. Phillips stated that he would summarize the response. He said he had requested that staff address three matters. The first was whether a business license was required in 1955, the year in which the appellants began storing vehicles. He said licenses were not required by the County until 1969; however, that was not what they were charged with in the Notice of Violation; they were charged with parking four vehicles. Mr. Phillips said they were in a legal position at the time and the fact that they may or may not have had a business license after 1969 would not affect the Zoning issue because they could get a business license and that would not mean that they were still in compliance with the Zoning regulations. He said that was a non-issue because they were not charged with that and he didn't think the information given by staff showed that they were operating a business. Mr. Phillips said the appellants were storing those vehicles, just as they had done since 1955. He stated that the uncontradicted evidence in this case was that only two other residents lived there and they were operating Fairfax Paving. The other person was Mr. Meadows who had operated a similar type of service since 1956. He advised that the only reason Mr. Meadows hadn't appealed his notice was because he had sold his property.

The second point was the request from the Board for aerial photographs. He indicated that the first one had been taken in 1953 and the next one many years later. He said that since the photographs had been taken in the daylight, and the elderly appellants and the other witnesses had indicated that the trucks left the property at approximately 2:00 a.m. and returned at approximately 3:30 p.m. Mr. Phillips said the photographs were irrelevant and the full testimony was uncontradicted since no one had complained between 1955 and the present. He said Mr. Pennington had stored those vehicles on the appellant's property since then.

The last item the Board had requested that he provide was information on the use of the parcels, which he considered to be the critical issue, and what was going on in the neighborhood. He said he had an aerial photograph and was not sure why the County wouldn't reproduce them because staff had been able to provide a copy to the Board in Attachment 4 of their July 9, 2004 staff report. He indicated that that photograph had been taken a year before the County received the complaint. He displayed the photograph on the overhead projector. Mr. Phillips pointed out that the photograph that had been taken the year before the complaint showed the property owned by the complainant, Roger Hancock. He pointed out that in that year Mr. Hancock had parked his school bus and three vehicles on the property as well as a carry-on flatbed on which he carried race cars. He indicated that Mr. Hancock also stored race cars on the property and had other trucks stored in the rear of his property as well. Mr. Phillips pointed out the location of the appellant's property. He advised that Mr. Hancock sold his property and moved to Stafford, Virginia, two months prior; however, the photograph was taken the year before the complainant moved and it showed the character of the neighborhood. He pointed out Mr. Meadows' property which was located across the street. He said Mr. Meadows had owned his property since 1956 and had had the same notice filed on him for storing more than three vehicles. Mr. Phillips said that Mr. Meadows' defense in his application was that he had been there since 1955. He said Mr. Pennington and his son were present to address their appeal. Mr. Phillips stated that Mr. Pennington also had a wood chipping business that had been ongoing since 1956. He stressed that because of all the problems with his neighbors, Mr. Hancock had decided that it was time for him to move and he stopped his operation. He said the most important information was the evidence that had been submitted and the testimony that the Board had heard that the vehicles were fenced in, they had been there since 1955, they weighed less than 12,000 pounds; however, when they returned to the property they were empty and did not carry additional weight. He said the operation had been continuous since 1955 and this was a classic case of grandfathering a nonconforming use and there was nothing that the County staff had presented that indicated otherwise. Mr. Phillips said he had presented clear and convincing information that it was the character of the neighborhood from the past to the present. He said the appellants and their witnesses had presented truthful testimony. He reiterated what he had said about Mr. Hancock and his property and noted that the other complainant in this case had moved onto the property in 2003 and they were well aware of what was going on and that complaint should not be taken into consideration. Mr. Phillips stated that the issue in this case was a legal one which was had there been sufficient proof to the Board that the character of the neighborhood under the 1941 Zoning Ordinance was exactly as had been described. He said he thought that the only photograph that staff had presented to the Board corroborated the appellants' position not staff's. He advised that the appellants had a less intensive use because the neighborhood was quiet during the day, they drove very carefully, and there was no endangerment. An inspection by the Fire Marshall indicated that there was no hazardous material being stored or no spillage. He said the appellants had shown that they were not in violation of the charge of storing four vehicles since they had been grandfathered in.

Mr. Beard asked staff where the personal property tax was being paid for the two vehicles owned by Mr. Pennington and garaged in Manassas. Ms. Stasiak-Perry stated that there was no record in Fairfax County of any business/personal property tax paid by Pennington Trucking or anything associated with the subject property. Mr. Beard then asked if the Zoning Administrator was assuming that the stickers on the windshield of those vehicles would be from Prince William County. Ms. Stasiak-Perry responded that that may be true and the only information she had was that there was no record of them paying taxes in this County. Mr. Beard stated that he had no question about the truthfulness of the appellants. He said that at the first hearing he had stated that he had no problem with the appellants operating the business. He said his problem, as presented by the Zoning Administrator, was that subsequent owners of the property could continue to use the property for tractor trailer storage in perpetuity if the use was found to be nonconforming.

Mr. Hammack asked staff if the appellant would lose the right to the nonconforming use if he ceased parking his own trucks on the property for more than two years. He said he understood that the appellant had other persons' trucks parked on the property, that they were not registered in Fairfax County or to the appellant; therefore, they were taxed and treated as if they were someone else's property. He noted that this was a common problem where an owner of a business-operated vehicle chose to have them taxed in another location for a particular reason. Ms. Stehman said it was staff's position that the trucks were never legally parked at the site; however, the Ordinance had never allowed parking of tractor trailers in a residential district by anyone. She said the Ordinance also did not allow commercial vehicles to be parked on residential property that was owned and operated by anyone other than the owner of the dwelling.

Mr. Hammack asked if the appellants would lose the right to argue a nonconforming use if they had four trucks in 1949, had retained two of them, had a third party own the other two and the situation had been ongoing for more than two years. Ms. Stehman said she thought that they would because there was no evidence of a commercial business having been established. She said the best determination that staff could come to would be that it was a home occupation and home occupations had to be owned and operated by the owner of the dwelling.

Mr. Hart said he still had problems with the issues raised at the public hearing that dealt with the trucks being parked on the property since the mid-'50s. He noted that the Board had a memorandum describing some aerial photographs but no visual evidence had been presented, and for that reason he considered the issue to be largely unsubstantiated.

Ms. Stehman said staff relied on the Ordinance provision as well as whether those uses were in harmony with the character of the neighborhood and whether they had been legally established under the Ordinance. She indicated that no evidence had been presented that they were legally established or were in harmony with the intent of the Agricultural District in the 1941 Zoning Ordinance, and there was no evidence in the street files that any businesses had been established in that vicinity. Ms. Stehman stated that when Ms. Stasiak-Perry had looked at the 1953 aerial photographs, she had determined that there was no evidence of commercial establishments in the general vicinity and the uses at that time were purely agricultural. She noted that in a few of the cases she had dealt with in the past, staff had relied on the applicant's ability to show a nonconforming use and staff did not have any public documentation that showed that any of the uses had been legally established in that area; therefore, staff could not agree that the uses in this case were nonconforming.

Mr. Hart requested that the aerial photographs be brought to the hearing since they couldn't be copied.

Chairman DiGiulian called for speakers.

Hugh Crabtree, no address given, came forward to support the appellants' position and stated that he was the appellants' son. He stated that the trucks had been on the premises since 1955, that he had driven an asphalt truck with Arlington Asphalt when he was a teenager, that the trucks wore his father's life, and if they were taken away, his father would die.

Ms. Stehman reiterated staff's position that in researching this issue they found no evidence that this use or any other uses in that area were legally established in the mid-50s and the use was clearly not allowed by the Zoning Ordinance from 1959 to date. She said there was a requirement that if there were commercial vehicles parked on a property only one was currently allowed and must be owned and operated by the resident under Paragraph of 10.102. She said it was clear to staff that this was a nonconforming use and that it had not been legally established.

In his rebuttal statement, Mr. Phillips stated that the overwhelming proof was that the appellants had been storing four vehicles on the property and they had met the burden, under the Ferris case, and had shown that with uncontroverted testimony and photographs. He asked the Board to find for the appellants.

Mr. Hart stated that he had not seen Mr. Phillips' memorandum and requested copies for the Board to review. Ms. Stehman indicated that staff had not seen the memorandum.

Mr. Beard asked Mr. Phillips if Mr. Crabtree had any vehicles parked on the property that were registered to his nephew. Mr. Phillips responded that according to the appellants' son, all four vehicles were registered to his father. Mr. Beard stated that was not what the records showed and asked if he was disputing staff's research. Mr. Phillips indicated that he was not sure which vehicles staff had referred to.

Hugh Crabtree stated that there were no tractor trailers parked on site that were registered to his father. Mr. Beard asked if the appellants' nephew paid him to park his vehicles on the property because he needed to know if the appellants' income would be jeopardized if the vehicles couldn't be parked there. Mr. Crabtree responded that his uncle took care of his mother and father by doing the mowing and attending to their needs in return for storing his vehicles on their property and there was no financial arrangement. He said his uncle would continue to take care of the property should anything happen to his parents, that if he inherited the property he would keep it and let his uncle, Mr. Pennington, take care of it, or it would be sold.

Mr. Phillips said that there was a form of compensation in that the appellants had agreed to permit the storage of Mr. Pennington's vehicles in return for his taking care of them and their property. He said that if the use was not permitted, the appellants' health and well being could be placed in jeopardy.

At the Board's request, Ms. Stasiak-Perry went to the mapping office to find out if the aerial maps could be brought to the Board Auditorium for review.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in this case would be affected.

The Board recessed at 10:33 a.m. and reconvened at 10:44 a.m.

Ms. Stasiak-Perry returned to the Auditorium with the 1953, 1968 and 1970 aerial maps of the area in question. A brief discussion ensued among the members of the Board, staff, and Mr. Phillips.

Mr. Beard moved to continue A 2004-SP-004 to September 28, 2004, at 9:30 a.m. Mr. Hammaok seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 14, 2004, After Agenda Item:

Status Update
Grace Presbyterian Church, SPA 73-L-152-02

Bill Sherman, Staff Coordinator, in a memorandum dated August 31, 2004, stated that a motion had been made at the March 9, 2004, meeting to request a status update from the applicant on the progress made by the church in ensuring that the requirements of Development Condition 7, concerning parking provisions, were being met. He said staff had contacted representatives of the church and they had indicated that they would provide the requested information and intended to appear at the September 14, 2004, meeting of the BZA to present it. He noted that as of August 31, 2004, at 9:30 a.m., the applicant had not provided any information to staff regarding the current parking situation.

Russ Waddell, Elder, Grace Presbyterian Church, stated that the church had submitted a letter outlining the actions they had taken following the March 9, 2004, meeting. He said the issue had been addressed from the pulpit, in the bulletins each week, in a newsletter to the parishioners, in a letter to all groups using the church's facilities, and with signs that had been posted on Bath Street and on church property.

In answer to Mr. Hammack's question, Mr. Waddell said he had not seen a copy of the letter and photographs that had been submitted by Ina Sadler, dated September 14, 2004. Mr. Hammack provided him with one. Mr. Waddell briefed the Beard on his frequent observations of the street during and after church services as well as when outside groups were meeting. He said that some of the cars parked on the street

had handicap stickers, and there were several vehicles parked on the opposite side of the street that belonged to local residents.

Mr. Hart asked if staff had a position as to whether there was a current violation. Mr. Sherman said no and stated that the follow-up had been initiated following the request that had been made when the Special Permit Amendment had been approved.

In answer to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board had requested that the applicant return with information on parking. She indicated that if the Board wanted an inspection one could be requested.

In response to Mr. Hart's query, Mr. Waddell stated that no one was parking on park property.

Ina Sadler, 4504 Sleaford Road, Annandale, Virginia, owner of the property at 7435 Bath Street, said the photographs she had submitted had been taken at the time the quilters and choral groups were meeting. She said the parking situation had been improved but it had not been solved. Ms. Sadler said the photographs had been taken on a Saturday when the choral groups had been present from morning to evening.

Mr. Hammack suggested that the church be more emphatic in explaining the provisions of the Special Use Permit and make a more concerted effort to ensure that the parishioners and outside organizations understood them and complied with them.

Mr. Hart requested that staff make periodic inspections to ensure that the provisions were being met.

Jeff Davis, no address given, assured the Board that every effort had been made to reinforce the request that no one park on the street and they had seen significant improvement.

Mr. Hammack moved that an additional progress report be presented to the Board on January 11, 2005, regarding SPA 73-L-152-02. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 14, 2004, After Agenda Item:

Request for Additional Time
Trustees of Singh Sabha Gurdwara, SP 99-S-058

Mr. Pammel moved to approve 16 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was October 21, 2005.

//

~ ~ ~ September 14, 2004, After Agenda Item:

Request for Additional Time
Richard H. Rica, Jr., VC 00-V-049

Mr. Pammel moved to approve 90 days of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The new expiration date was October 16, 2004.

//

~ ~ ~ September 14, 2004, After Agenda Item:

Approval of September 17, 2002;
March 25, 2003; April 15, 2003; May 6, 2003;
May 13, 2003; and May 20, 2003 Minutes

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

//

Ms. Gibb referred to the last paragraph in a letter to Martin Walsh, Walsh, Colucci, Lubeley, Emrich and Terpak, PC, dated August 25, 2004, from Barbara Byron, Director, Zoning Evaluation Division, which stated "previous determination on your question....", and asked if the determination had been made orally or in writing. Susan Langdon, Chief, Special Permit and Variance Branch, said she would find out.

//

Mr. Hammack moved that the Board recess and go into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and to other specific legal matters requiring the provisions of legal advice by counsel pursuant to Virginia Code Section 2.1-344 (A) (7), with respect to the letter received from the County Attorney that he can no longer represent the Board of Zoning Appeals in any legal matters. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:21 a.m. and reconvened at 12:19 p.m.

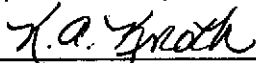
Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board during the Executive Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 8, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 21, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. JERRY L. WINCHESTER, VC 2004-MV-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.3 ft. with eave 10.3 ft. from both side lot lines and stoop 8.0 ft. with stairs 3.0 ft. from one side lot line and stoop with stairs 6.0 ft. from other side lot line. Located at 6430 Fourteenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (10) 31 and 32. (Reconsideration granted on 6/29/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frederick Winchester, son of the applicant, 702 Vanderbilt Terrace, Leesburg, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the case was originally heard in June of 2004 and denied, and a reconsideration request was subsequently granted. The applicant requested a variance to permit the construction of a replacement of a single-family detached dwelling on a residential lot within a 100-year floodplain and a resource protection area. The house was located in the New Alexandria area and had been damaged by flooding from hurricane Isabel. The requested variance would permit the construction of the dwelling 11.3 feet with eave 10.3 feet from both side lot lines, a stoop 6.0 feet with stairs 3.0 feet from the southern side lot line, and a stoop with stairs 6.0 foot from the northern side lot line. A minimum side yard of 12 feet is required; however, stoops and stairs are permitted to extend 5.0 feet into the minimum side yard; therefore, variances of 0.7 foot, 0.7 foot, 1.0 foot, 1.0 foot, and 4.0 feet, respectively, were requested. Ms. Langdon noted that the Board had received a copy of a proposed Zoning Ordinance amendment, which would be heard by the Planning Commission on October 14, 2004, and the Board of Supervisors on November 15, 2004, which related to the reconstruction of certain single-family detached dwellings that had been destroyed by casualty. She said she understood the applicant's property would qualify under the Zoning Ordinance amendment.

Mr. Winchester presented the variance request as outlined in the statement of justification submitted with the application. He said if the subject property truly qualified as an R-3 corner lot, an 81-foot wide home could be built without a variance, and the applicant was requesting a variance to build a dwelling 27.5 feet wide. He said the bulk of the width of the house that had been built in 1940 was 35 feet wide. His parents wanted to rebuild rather than repair because they wanted to live there indefinitely. He explained that two thirds of the home was elevated three feet, and the other third sat at ground level, so there was no way to raise the entire house, and one third of the house would have to be destroyed in order to elevate it. Mr. Winchester stated that at the hurricane disaster relief meetings in October of 2003 the applicant had been told specifically that under no certain circumstances without a variance could the house be rebuilt on the old footprint, but they subsequently learned that had not been true. He said that replacing a house that was 35 feet wide with one that was 27 feet wide and would only extend three feet beyond where the old house existed should not cause an egregious violation of the Ordinance. Mr. Winchester said it was only after the applicant had come before the Board a second time with the nonconforming challenge that Zoning Administration began to work with them and told them that the new house fit 97 or 98 percent within the old footprint, and only an additional nine inches for the last few feet was needed to rebuild the house.

Mr. Beard asked why the case had not been not deferred until after the Board of Supervisors' action, which would resolve the issue and was right around the corner. Ms. Langdon said that moving the hearing outside of 90 days would have to be done at the applicant's request. Mr. Winchester said the hearing had been scheduled months prior when it was thought that the Supreme Court might change its opinion. He said the other option the applicant had was to sue Zoning Administration on the interpretation of the non-compliance, but the applicant was not going to do that because the Board was now taking action.

Mr. Beard asked when the soonest the hearing could be scheduled after the anticipated action on November

15, 2004, and Ms. Langdon said November 16, 2004.

Mr. Hart said there was sympathy for the applicant, but he had thought that the applicant would have appealed the interpretation about whether a variance was required or not. He said that given the Cochran case, the Board must obey what the Court had told it, which meant there had to be a legislative solution, either something in the Ordinance or the General Assembly had to put things back the way it was prior to April 23, 2004. Mr. Hart said he did not see how the Board could grant a variance on something like the subject case even if it wanted to, but if there was a special exception category available shortly, that would be the quickest route.

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

A discussion ensued regarding the timing of the Board of Supervisors' action and the resultant application process. Ms. Langdon advised the Board that the Director of the Zoning Evaluation Division had stated to the applicant that he could apply, and the application would be held for scheduling until after the amendment had been adopted.

Mr. Hart moved to defer decision on VC 2004-MV-055 to January 11, 2005, at 9:00 a.m. Ms. Gibb seconded the motion.

Mr. Pammel said that the application was unusual, and despite the Cochran decision, there was merit in the request, and to further put off the decision would damage the finances of the involved family, and he thought the application should be approved and would not support the motion.

Mr. Beard said all the Board members were deeply moved by the situation, but as he understood the Cochran decision, if there was beneficial use, the Board could not grant the variance. He said that he would support anything that could be done to expedite the situation.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-1-1. Mr. Pammel voted against the motion. Mr. Hammack abstained from the vote.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. JAMES P. & CECILIA BANHOLZER, VC 2004-BR-051 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. with eave 15.7 ft. from rear lot line. Located at 10434 Stallworth Ct. on approx. 9,480 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 68. (Decision deferred from 6/15/04)

Chairman DiGiulian noted that the Board had received a request for a deferral of the decision to April 5, 2005.

Mr. Pammel moved to defer decision on VC 2004-BR-051 to April 5, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. SEYMOUR SCHNEIDER, VC 2004-SP-047 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. with eave 19.5 ft. from front lot line of a corner lot. Located at 9325 Walking Horse Ct. on approx. 10,990 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((5)) 198. (Decision deferred from 6/15/04)

Chairman DiGiulian noted that VC 2004-SP-047 had been withdrawn.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. GAYLON L. SMITH AND KAREN L. MARSHALL, VC 2004-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6006 Grove Dr. on approx. 8,640 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 32. (Decision deferred from 5/4/04 and 6/15/04)

Chairman DiGiulian noted that VC 2004-MV-026 had been deferred for decision from May 4, 2004, and June 15, 2004.

Deborah Hedrick, Staff Coordinator, said she had made repeated attempts over the prior two weeks to reach the applicants' agent, but had been unable to do so. She said the agent was not present, and she did not know how the applicants wished to proceed.

Chairman DiGiulian said he would call the case again later in the meeting.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. FABIAN RIVELIS, VC 2004-PR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. with eave 13.7 ft. from rear lot line. Located at 9314 Christopher St. on approx. 20,066 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 61. (Decision deferred from 6/15/04)

Chairman DiGiulian noted that the Board had received a request for a deferral of the decision to March 8, 2005.

Mr. Pammel moved to defer VC 2004-PR-049 to March 8, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at 3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273. (Decision deferred from 6/15/04)

Chairman DiGiulian noted that the decision on VC 2004-MA-059 had been deferred from June 15, 2004.

Susan Langdon, Chief, Special Permit and Variance Branch, said she had tried repeatedly to contact the applicant's agent, had not even reached an answering machine so was not able to leave any messages, and she did not know the applicants' intent.

Chairman DiGiulian said he would call the case again later in the meeting.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. ERIC R. WILDER & PRESCILA B. WILDER, VC 2004-MV-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed lots C-2 and C-3 having a lot width of 12.02 ft. and to permit carport on proposed lot C-1 12.3 ft. and roofed deck 10.5 ft. from front lot line. Located at 3111 Douglas St. on approx. 1.05 ac. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 101-2 ((1)) 51. (Admin. moved from 7/13/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MV-077 had been indefinitely deferred at the applicants' request.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit an existing church to add a child care center and nursery school. Located at 7100 Columbia Pl. on approx. 2.03 ac. of land zoned R-4, CRD, HC and SC. Mason District. Tax Map 71-1 ((4)) 145 and 146.

Chairman DiGiulian noted that SP 2004-MA-042 had been administratively moved to October 26, 2004, at 9:00 a.m., at applicants' request.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 8.4 ft. with eave 6.9 ft. from side lot line. Located at 2913 Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A. (Decision deferred from 5/11/04 and 6/15/04)

Chairman DiGiulian noted that the Board had received a request for a deferral of the decision to mid-October.

Mr. Ribble moved to defer decision on VC 2004-PR-027 to October 26, 2004, at 9:00 a.m. Mr. Hammack seconded the motion.

Mr. Hart asked why the requested date for the deferral of the decision was not farther out as it had been on the other cases which involved the Cochren decision. Lori Greenlief, the applicants' agent, Greenlief Consulting, LLC, 14368 Nandina Court, Centreville, Virginia, said the applicants were meeting with Briarwood Association the following evening to seek approval of the plan, and they wanted to go forward.

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

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. KEVIN E. DRISCOLL, VC 2004-MA-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 4.5 ft. from side lot line. Located at 3714 Rose La. on approx. 15,248 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((4)) (E) 18. (Decision deferred from 6/15/04)

Chairman DiGiulian noted that the decision on VC 2004-MA-050 had been deferred from June 15, 2004.

Bill Sherman, Staff Coordinator, said that the applicant was not present and would not be attending. He said he spoke with the applicant the day prior to the hearing and received an e-mail from him which requested a further deferral to March of 2005.

Mr. Pammel moved to defer decision on VC 2004-MA-050 to March 8, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF MT. CALVARY BAPTIST CHURCH, SPA 62-V-013 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 82-V-013 previously approved for a church to permit a change in development conditions, increase in land area, building addition and site modifications. Located at 6418-A Quander Rd. and 2221 Emmett Dr. on approx. 1.60 ac. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 40, 41 and 41A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, the applicants' agent, Greenlief Consulting, LLC,

14363 Nandina Court, Centreville, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 82-V-013, previously approved for a church, to permit an increase in seating capacity and land area, the building of an addition, and site modifications. The additional land area consisting of Lots 41 and 41A would increase the size of the subject property from 0.5 acres to 1.5 acres. The existing church consisted of 5,042 square feet of gross floor area. The proposed addition and existing single-family dwelling would increase the gross floor area for the site to 10,051 square feet. The floor area ratio (FAR) for the entire site would drop from 0.23 to 0.16, with the additional space being used for offices, classrooms, and meeting space. Although the application included an increase in the number of seats to 200, construction of the new seats was not proposed. 200 seats existed; however, at the time the existing special permit was approved, Development Condition 7 limited the church to 126 seats because that was the number of members of the church. Mr. Sherman noted that the applicants had submitted a revised plat with a final revision date of August 31, 2004, which was the plat that should be referenced in proposed Development Condition 1. Staff recommended approval of SPA 62-V-013 subject to the proposed development conditions.

Ms. Greenlief presented the special permit amendment request as outlined in the statement of justification submitted with the application. She pointed out that there were several members of Mt. Calvary Baptist Church present in the auditorium in support of the application. The church had existed in its present location since 1954, and at that time the church had a sanctuary building and later added a small annex building behind the sanctuary to use as a fellowship hall/meeting space that was on Lot 40. In order to modernize and have some elbow room, the church purchased two adjacent lots, Lots 41 and 41A, for the planned addition, which consisted of offices, classrooms, and a meeting space. Also proposed was a re-grading of the parking area and planting of Transitional Screening 1 along the side and rear of the lot. Ms. Greenlief said the existing house would remain, and even with the addition, the FAR would be reduced from 0.23 to 0.16. She said there would be no change in the operation of the church and clarified that although in the '70s they had 128 members, there had always been 200 seats. Ms. Greenlief said she thought that all the issues raised during the review of the application had been resolved, and the church agreed with all the development conditions in Appendix 1. She stated that the church had been an integral part of the neighborhood for over 50 years. She said the proposal was in conformance with the Comprehensive Plan at three to four dwelling units per acre, was in conformance with the R-4 Zoning District, was well below the allowable FAR, and met the building setbacks. With the addition of Transitional Screening 1, a well-designed building, and the addition of stormwater management facilities to the site, Ms. Greenlief said she believed the community would be enhanced. She submitted a petition signed by eleven of the adjacent homeowners.

Chairman DiGiulian called for speakers.

Willis Faltz, 2220 Emmett Drive, Alexandria, Virginia, came forward to speak. Mr. Faltz said his primary concern related to stormwater management and the sheeting of water during heavy rains that flowed from the subject property to his property, and he would like to see the water diverted down and between the properties at 2220 and 2300 Emmett Drive as part of the stormwater management. He said if that could be done, he would not oppose the application.

In her rebuttal, Ms. Greenlief said the water issue had been discussed with Mr. Faltz, and the engineer had said that the water had to be contained. She said that there currently was no storm sewer system in the neighborhood, and water did sheet flow off of Quander Road and from across Emmett Drive and did sit on Mr. Faltz's property, but was not only from the subject site. The northwestern area of the site was where the stormwater management facility would be, and the property could be graded along the front on Emmett Drive to go into the stormwater facility and could be piped underneath Emmett and probably all the way to Quander Road School. Ms. Greenlief said she had met with DPWES, and the resolution to the problem was to contain the water and not let it sheet flow across Emmett Drive.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said proposed Development Condition 12 required the applicant to provide on-site stormwater detention and best management practices, and basically the practices did not allow any additional water to flow off the site than would flow under normal circumstances. He said Condition 12 would hopefully alleviate the problem, but the applicant could not be allowed to exacerbate the problem.

Mr. Hammack moved to approve SPA 82-V-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF MT. CALVARY BAPTIST CHURCH, SPA 82-V-013 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 82-V-013 previously approved for a church to permit a change in development conditions, increase in land area, building addition and site modifications. Located at 6418-A Quander Rd. and 2221 Emmett Dr. on approx. 1.50 ac. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 40, 41 and 41A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 2004; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Trustees of Mount Calvary Baptist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 6418A Quander Road, 2221 Emmett Drive (1.51 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys International, LLC, dated November, 2002, revised through August 31, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum seating capacity in the main sanctuary shall be 200.
6. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
7. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
8. Transitional screening shall be modified along the northern and eastern lot lines as shown on the Special Permit Plat. A planting plan shall be prepared and submitted for review and approval by the Urban Forestry Management Branch which includes ornamental trees and shrubs to be planted along the northern and eastern lot lines with the intent to soften the building lines. A plan for planting the areas of Transitional Screening 1 along the southern and western boundaries of the site shall be

submitted for review and approval by the Urban Forestry Management Branch. The planting plans shall include, but not be limited to the following:

- plant list detailing species, sizes and stock type of trees and other vegetation to be planted
 - soil treatments and amendments if necessary
 - mulching specifications
 - methods of installation
 - maintenance
9. The barrier requirement shall be waived along all lot lines.
10. All trees not marked as "Trees to be removed" on Sheet 2 of the Special Permit Plat shall be saved. A tree preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Management Branch. At the discretion of the Urban Forestry Management Branch, existing trees that are dead or dying may be excluded from the tree preservation plan. Particular care shall be given to save the 24 inch sycamore and the 15 inch maple located directly to the south of the existing church building.
11. The area depicted as "Future Dedication" on the Special Permit Plat, ten feet from the edge of pavement along the entire frontage of the site on Quander Road, shall be dedicated, in fee simple, to the Board of Supervisors at the time of Site Plan approval.
12. The Applicant shall provide onsite storm water detention and best management practices in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. These facilities shall be constructed in the general locations shown on the Special Permit Plat. The location of these facilities shall not encroach into any required areas of Transitional Screening or result in the displacement of any existing or proposed vegetation as shown on the Special Permit Plat. Notwithstanding what is shown on the plat, the applicant may meet the requirements through the provision of Low Impact Development (LID) techniques as determined appropriate by DPWES.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and become final on September 29, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ September 21, 2004, Scheduled case of:

- 9:00 A.M. MAREC CORPORATION, VC 2004-DR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with SP 2004-DR-041). (Deferral request deferred from 9/14/04)
- 9:00 A.M. MAREC CORPORATION, SP 2004-DR-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain in a minimum required front yard. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map

19-2 ((4)) 2. (Concurrent with VC 2004-DR-096) (Deferral request deferred from 9/14/04)

Chairman DiGiulian noted that the Board had received a request for a deferral and had deferred its decision regarding the request on September 14, 2004.

Chairman DiGiulian called the applicant to the podium. Frederick R. Taylor, the applicant's agent, 2000 North 14th Street, Suite 100, Arlington, Virginia, came forward to speak. He requested a six-month deferral on both applications and said that it was obvious the variance did not meet the threshold set in the Cochran decision, and the two applications related to each other. He said he would like to be permitted to withdraw if the Board chose not to grant the deferral request.

Chairman DiGiulian called for speakers to address the issue of the deferral request.

Joe Gibson, 966 Towlston Road, McLean, Virginia, came forward to speak. He said he was opposed to the legal appeal, the variance, and to the special permit for the gatehouse at 1000 Towlson Road. He stated that the matter had drag on for many months, discussed the timing of some of the events related to the applications, and said he and the neighbors wanted the matter resolved. Mr. Gibson said the applicant's legal arguments had no merit and were attempts to argue with staff about how seven feet was defined in the Zoning Ordinance, and the variance was beyond the limited authority permitted by the Supreme Court and did not fall within the scope of the Board's authority to grant. He began to comment on the height of the gatehouse, and Chairman DiGiulian stated that Mr. Gibson was to speak only to the question of the deferral request. Mr. Gibson said that he wanted the matter to be resolved at the current hearing.

Chairman DiGiulian asked whether the Board would have to defer for at least one week. Susan Langdon, Chief, Special Permit and Variance Branch, said that was correct because first class notices would have to be sent.

Mr. Hammack asked how long it would take to act on the applicant's request for additional property. Ms. Langdon said she understood that a subdivision request had been filed, but did not know where in the process the request was with the Department of Public Works and Environmental Services. Mr. Taylor said the request had been filed, and staff had been provided with a control number. He said the gentleman who had prepared the plat and would have a better sense of the schedule was present.

Mr. Pammel asked whether it was correct that the fence was higher than the seven-foot height that would be exempt under the provision even if the applicant acquired additional acreage to bring it to two acres. Ms. Langdon said it was her understanding that there would still be points above seven feet even if the light standards were removed. She said Ed Tobin from Zoning Enforcement was present if the Board had any questions for him.

Mr. Hart suggested that the Board wait to make its decision regarding the deferral request until after the applicant's appeal was heard, which was scheduled for later in the meeting. Chairman DiGiulian stated that the Board would table the discussion regarding the deferral until later in the meeting.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:30 A.M. T. WILLIAM DOWDY AND SHIRLEY M. HUNTER, TRUSTEES, A 2001-LE-023 Appl. under Sect(s) 16-301 of the Zoning Ordinance. Appeal of determination that appellants' property is being used as a junk yard and storage yard, a portion of which is located in a floodplain, and that such activities are in violation of Zoning Ordinance Located on the W. side of Cinder Bed Rd., approx. .37 mi. N. of the Hill Park Dr. intersection on 36.6 ac. of land zoned R-1. Lee District. Tax Map 90-4 ((1)) 6B. (Admin moved from 10/30/01 and (continued from 1/22/02 and 4/30/02) (Deferred for decision only from 6/4/02, 9/10/02, 2/4/03, 5/20/03, 10/7/03, 12/16/03, and 3/16/04) (Admin moved from 5/6/03)

Chairman DiGiulian noted that A 2001-LE-023 had been withdrawn.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:30 A.M. MAREC CORPORATION, A 2004-DR-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has installed a masonry fence in excess of seven feet in height in the side and rear yards of the lot and in excess of four feet in height in the front yard of the lot in violation of Zoning Ordinance provisions. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Deferred from 4/6/04.)

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal was of a notice of violation that included a fence that exceeded the maximum allowable fence height. The property was 1.94 acres, which was less than the two acres required for a seven-foot fence. The fence however, did at points exceed the seven feet even if the property line was adjusted to increase the area to two acres. She noted that staff had received a letter dated August 30, 2004, from Frederick R. Taylor, the appellant's agent, which had been provided to the Board along with a memorandum on September 10, 2004, requesting an interpretation of the grade and how fence height was determined as well as whether or not the light standards would be included in the height. She said staff had requested additional information from Mr. Taylor and the engineer relative to elevations, and staff had not yet responded to the letter.

Ms. Gibb asked whether Ms. Stehman was able to answer any of the questions, particularly about the light fixtures. Ms. Stehman said the light fixtures would count in the height of the fence, but staff had not been able to answer the questions relative to grade because they had not received the elevations.

Ms. Gibb asked whether a retaining wall was part of the calculation. Ms. Stehman responded that a retaining wall was generally not included in the height calculation; however, it had been staff's interpretation that there was not a retaining wall based on the inspections.

Mr. Taylor, the appellant's agent, 2000 North 14th Street, Suite 100, Arlington, Virginia, presented the arguments forming the basis for the appeal. He said that in response to questions raised by Ms. Gibb at a previous hearing regarding why the owner thought the property was more than two acres, in researching the file he was able to find plats and grading permits that were prepared by the Yeonas organization, who had sold the property to the present property owner. He said there were additions put onto the new house, and all the plats that were provided showed 2.08 acres, so the owner in good faith thought that was the number of acres. Mr. Taylor said the owner had submitted a boundary line adjustment plat or plat of resubdivision that would increase the size of the property to more than two acres, had authorized him to commit to the Board that the lights would be removed, and had authorized an engineer to prepare and submit revised grading plans to Fairfax County that would attempt to address any issues regarding the wall that remained after the hearing. He said that after the resubdivision of the property and removal of the lights, most of the wall would be in conformance, and because Towlston Road was a major thoroughfare, there could be eight-foot high walls along Towlston under certain circumstances.

Mr. Taylor stated that the violation notice found that the owner had constructed approximately 800 linear feet of masonry wall approximately nine feet in height in the front, side, and rear yards of the lot, and he and the owner took the notice to mean the full stone masonry wall, not the low stone wall with an iron fence on it. He said there was approximately 700 feet of full stone masonry wall and 350 feet of the small wall with the fence on it. Mr. Taylor said the notice indicated that the manner of measurement should be from the highest point of the structure to the natural grade, but he could not find natural grade in the Ordinance, and the property had been through two iterations of grading, one when the original house was built and another when the addition was put on, so the natural grade would have been disturbed. He said that because the property graded down from the rear to Towlston Road, the only way the owner felt he could practically and aesthetically build the wall was to step it down. Mr. Taylor said the grade for the stone wall remained true horizontal, and if it had followed the grade, it would be questionable whether or how it could be constructed, but if so, it would not have served any purpose for privacy, security, or aesthetics. He said that based upon the violation notice, Tri-Tek Engineering conducted an outside measurement of the critical points, the conclusion being that the average height of the wall was less than seven feet, and he said the structure should be viewed the way other structures were measured, by an average grade and average height.

Mr. Taylor said it was the position of the owner that the walls served as a retaining wall. He said that in the staff report staff had concluded that the test of a retaining wall was whether it retained soil, and he believed it did serve as a retaining wall because the inside grade was a foot higher than the outside grade.

Ms. Gibb asked whether Mr. Taylor was saying that aside from the lights the only place the wall exceeded

seven feet was at the retaining wall. Mr. Taylor said that was not what he was saying. He said there were point-by-point studies done, and there were the two places where it was in violation at the front corners of the property, which could be appropriately addressed with a grading plan, but it was not 800 feet of the wall that was in violation. In response to Ms. Gibb's question regarding how the grading plan would address the issue, Mr. Taylor said that when an adjoining property owned by a related corporation was developed and combined with the subject property to create a compound, a grading plan would be prepared and submitted, and the grading would be such that it would be compatible with the subject property and would be raised so that any of the wall common to the adjoining property would not violate the seven-foot height. He indicated that the wall would not be changed, only the grade, and the light fixtures would come down.

Mr. Beard asked what the adjustment of the grade would do to the retaining wall theory. Mr. Taylor said that the retaining wall argument was not being made throughout, and by raising the grade, it would bring the ground up to the wall to make the wall seven feet. He said that if the retaining wall argument was accepted and it was demonstrated engineering-wise that it functioned as a retaining wall, then the grade would stay as it was, but if it was not an accepted argument by Fairfax County, the choice would be to raise the grade to have a seven-foot wall.

Mr. Beard asked whether that would meet the criteria of natural grade. Mr. Taylor said natural grade was two grades prior, and there would be standards for the submitted grading plan that dealt with water flow, siltation, and other issues that would need to be met. He said that only when the grading plan was approved could the change in grade occur.

Mr. Hart asked whether the building permit dated October 11, 1999, contained in the staff report was issued in response to the Attachment 4 building permit application that said "according to approved plans, application, and restrictions of record to build stone wall with fence on top." Mike Adams, Zoning Administration Division, said the plan was attached to the building permit. Mr. Hart said he wanted to make sure the application that was Attachment 4 corresponded to the computer printout for the permit. Ms. Stehman said the computer printout had been included as part of the appeal application and was the same permit as contained in Attachment 4.

Mr. Hart asked whether it was correct that some agent of the Zoning Administrator had approved something where it said zoning "10-11-99 SS" in the routing section of the Attachment 4 application. Ms. Stehman said that was correct.

Mr. Hart asked whether the drawing contained in the staff report from Lessard Architectural Group corresponded to the phrase "approved plans" on the computer generated building permit, which said "Marec Corporation has permission, according to approved plans..." Ms. Stehman said she thought the drawing was the same as the page that was attached to the building permit.

Mr. Hart asked whether it was correct that on October 11, 1999, someone on behalf of the Zoning Administrator signed off on a building permit with the plans showing a fence height of 10 feet, four inches, seven feet at property line, showing spikes and things projecting even higher. Ms. Stehman said she was not seeing the spikes on the plan, although she saw where it said seven feet for the wall. Mr. Adams said the page with the heading "The Lessard Architectural Group" was for a retaining wall, and the second floor of the Zoning Permit Review Branch who signs off on the building permits would not see it because they do not sign off for retaining walls.

Mr. Hart asked what the approved plans were that were referred to on what was approved on October 11, 1999, referencing "according to approved plans" for the stone wall with fence on top. Mr. Adams said the approved plans referred to the drawing on the page following the building permit application that was Attachment 4 in the staff report. He said those were the only two pages that were connected.

Mr. Hart asked whether it was correct that the elevation from the architect was not part of the approved plans. Mr. Adams said that was correct.

Mr. Hart asked why there was a later violation written for the difference between the four- and seven-foot heights in Ed Tobin's letter if on October 11, 1999, someone on behalf of the Zoning Administrator signed off on a building permit application that said under remarks "per approved GP on file, maximum height seven feet." Ms. Stehman said the drawing showed a four-foot fence in the front yard and seven feet on the sides and rear, but the building permit said maximum of seven feet because that was the maximum allowed in the side and rear.

Mr. Hart said it was very confusing because the drawing in one place said 4.0-foot stone wall and in another place said 7.0-foot fence on top, the permit referred to a wall with a fence on top, and the application said maximum height seven feet, but did not say maximum of four feet for anything. He asked why it was being said that going from four feet to seven feet was a violation if an application was approved for a maximum height of seven feet. Ms. Stehman agreed that it was confusing and said that it was possible that an error had been made during the review of the permit application, but that the violation before the Board was for a fence or wall in excess of seven feet. She said that because the lot had not yet been increased to two acres, only four feet in the front and seven feet on the sides and rear would be allowed, and the existing fence exceeded four feet in the front yard and seven feet in parts of the side and rear.

Mr. Hart asked whether the fence that was built was different from the one on the site plan, setting aside the gatehouse. Mr. Adams said that the fence for the side and rear was close to the right height, but was over seven feet. The one in the front said four feet, but the metal fence was not included on top of the four feet.

Mr. Hart said he had trouble relating the permit with what the approved plans were and what information was on them. He asked whether the appellant's position was that the elevation with the fence height that did not dimension the light fixtures, the spikes, or the curlicues at the top above the bar was part of the approved plans. Mr. Taylor said they believed it was. He said what he had submitted as part of the appeal application was whatever his client had as part of the process. He had anticipated the file would have been pretty thick because the property was rebuilt, the permitting process had occurred, and there were notices, but the street file on the second floor of the Herrity Building for 1000 Towlston Road was empty.

Mr. Hart asked why the gatehouse was built more toward the entrance when the different site plans showed it to the right and further to the rear. Mr. Taylor said he had asked that question to the president of Marea Corporation and understood that as the wall was being built, it seemed a logical conclusion to locate the gatehouse central to the picket fence for aesthetic reasons, but he did not know who decided its location.

Mr. Hart asked whether the accessory structure in the front yard needed some other approval besides the building permit or whether it was a violation because it was not in the location shown on the site plan. Mr. Taylor said the gatehouse was not cited in the violation, and while the variance plat was being reviewed, the County contacted the appellant and said it should be addressed separately with a special permit. Ms. Stehman confirmed that the gatehouse was not a part of the violation.

Chairman DiGiulian called for speakers.

Joseph Gibson, 966 Towlston Road, McLean, Virginia, came forward to speak. He referred to Mr. Taylor's letter of May 27, 2004, to the Board that noted the Supreme Court decision, that another variance would be filed to take care of the fence, and that two or more lots would be consolidated or adjusted to net two acres. Mr. Gibson said the request for the subdivision had not occurred until September. He said he had contacted staff in the site plan office and was told an engineer had not been assigned, and it would take two to three weeks for the engineer look at it, who would request comments from the neighbors by letter over a 60-day period. He said that based on the testimony about building a compound, there would be two forts in the neighborhood, and the neighbors would respond strongly. Mr. Gibson said the perimeter fence to the back and side was in excess of seven feet in height, at the northeast corner the fence was 8.5 feet and 10.5 feet with the lamp, and areas in the double front yard on the corner lot exceeded the height limit of four feet when the pipe fences were included. He said the natural grade question could be solved by looking at where the grade was outside of the walls, and all of the posts facing Towlston Road on the east side of the property exceeded seven feet.

Mr. Hart said that a 7.0-foot fence on wall was clearly noted on the site plan that had a Health Department stamp dated April 28, 1999, which was established to be the approved site plan that went with the building permit, and he asked whether that was being approved with the building permit. Ms. Stehman replied that it would be approved, but approved in error. Mr. Hart asked whether anyone had done anything about it for 60 days, and Ms. Stehman said no one was aware of it for 60 days. Mr. Hart asked whether it would be approved since the statute said that it would be approved if nothing was done to correct an error for 60 days. Ms. Stehman said she did not think it would be the case if it was a factual error. Mr. Hart said the 60-day rule would not apply if it was a case of fraud or malfeasance, but an error would always be a factual error if someone made a mistake, and the General Assembly was trying to limit the ability to go back years later.

Mr. Hart said that even with his architectural degree, he could not figure out where the fence started and stopped on the drawing, and he asked if anyone knew. Ms. Stehman said it was unclear on the plan that was submitted. Mr. Gibson said that the straight lines with the circles were the masonry fence, and the part

with the bends with the double lines and boxes rather than circles was where the masonry wall with the iron pipe fence was located.

Mr. Beard asked that the appellant explain the plat. Mr. Taylor said that at the top was the stone wall shown along the entire lot line, and on the left was a notation of the seven-foot fence marked as a seven-foot fence on wall. He said he presumed the squares on the weaving double line were pillars, and that migrated back to the gatehouse.

Mr. Hart asked whether the seven-foot fence on top of the wall went all the way around or started and stopped somewhere. Mr. Taylor said it showed as going all around because it showed the change in the type of fence. He said it was the appellant's position that what was approved was a seven-foot fence, but within the bounds of the approval, what was shown on the plan marked with the Health Department stamp was a four-foot wall.

Mr. Hammack said that he was trying to compare the January 16 site plan with the plat before the Board, and it looked like the house was constructed in a different location, the wall relocated, and the gatehouse moved. He asked if it was known whether the buildings met the appropriate setbacks and other zoning requirements and whether there was any violation when someone built a structure in a different location from the site plan. He said the fence seemed to be built all the way out to the corner, but on the site plan it was shown as meandering through the front yard. Ms. Stehman said that she did not know of a specific violation if it was not built in accordance with the site plan other than it must be built in accordance with Zoning Ordinance provisions, so if a structure was moved so that it was within the required yard, then that would be a violation. She said that was part of the reason for having an "as built," so that if there were discrepancies, then that discrepancy would be recorded.

Mr. Hammack noted that there was no building restriction line shown on the "as built," but there were wood retaining walls and a rock pond shown. Mr. Taylor said that on the plat with the Health Department stamp, there were building restriction lines shown. Mr. Hammack said the dimensions were different on the site plan from the "as built."

Ms. Stehman said that although there had been a lot of discussion, the fact remained that the lot was 1.94 acres; therefore, a fence in the front yard of over four feet in height was not allowed, and the constructed fence wall was over seven feet in height in large part, and that violation remained.

Mr. Taylor stated that the appellant was in agreement that the lot was 1.94 acres. He said the Board had in front of it approvals by Fairfax County which reflected seven feet. Mr. Taylor said he was aware of the front yard requirements unless it was more than two acres, and it was a work in progress in an attempt to bring the use into conformity.

Mr. Beard asked when it was anticipated the adjustment would be made to increase the acreage. Ted Britt, Tri-Tek Engineering, said that typically it would take the County 60 days for the first review of the plat, and he expected the comments, if any, would be fairly minor, which would be addressed, if necessary, fairly quickly, and the plat would be resubmitted. He said he felt it would take approximately four to six months to ultimately get it approved and recorded because of the steps involved to get it through the process, including the County Attorney's review of the deed once the plat was approved.

Ms. Gibb referred to the questions asked by Mr. Taylor in his letter that staff had not yet answered. Ms. Stehman said that relative to the first and second questions, staff had requested additional information regarding elevations so staff could see what was being proposed and whether it would actually result in a retaining wall, thereby reducing the fence height, and staff had not yet received the information. She said that with respect to the question about the lights, the appellant had indicated the lights would be taken down, but staff would count them as part of the height.

Ms. Gibb asked whether the owner and his engineer's contention was valid that the first foot of the wall served as a retaining wall and should not be part of the calculation. Ms. Stehman said staff wanted to see the engineer's drawings to see whether it was a retaining wall and what it retained. She said the inspections had not suggested that it was a retaining wall.

Ms. Gibb referred to the second question of Mr. Taylor which asked whether the new grade created by the submission of a grading plan and/or actual grading to the new grade be the correct point of measurement for determining the height of the wall since the existing grade on 968 Towlston was lower than the grade on 1000 Towlston. Ms. Stehman said it depended on what the plan showed to determine whether it was an

approvable plan, but it could result in a new grade.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to uphold the determination of the Zoning Administrator. He said the narrow issue was clearly the height of the fence, and staff's interpretation was that if any portion of a fence exceeded the height of seven feet on the side and rear, that would be a violation of the Ordinance. He stated that the Ordinance did not refer to an average fence height, and because the lot was less than two acres, it violated the four-foot provision in the front yard. Mr. Pammel said the April 28, 1999 site plan clearly designated a stone wall four feet in height in the front yard, and nothing was noted about wrought iron above it. Mr. Pammel suggested that staff continue to work with the applicant to determine whether what was submitted relative to the grade would bring some aspects into conformance. Mr. Hammack seconded the motion.

Mr. Beard made a substitute motion to defer decision on A 2004-DR-002 for six months. He said he was hesitant to suggest a deferral because of the concern of the neighbors, but because the appellant had started the process on the acreage issue, the deferral would give adequate time to complete the process. The motion failed for lack of a second.

Mr. Hammack commented that it was a long fence, and he did not understand why the gatehouse was not included since it was attached to the fence, although the gatehouse was another issue. He said he found the case confusing because of the plats, and it was not known how much of the fence was in noncompliance even though the appellant conceded that with the light fixtures, probably all of it was noncompliant. Mr. Hammack said he wanted to know more about what was and what was not in compliance, but upholding the Zoning Administrator would be a technical decision because the site plan attached to the staff report showed a four-foot iron fence on a two-foot stone wall, and the "as built" was at least 1.5 feet higher than what had been submitted.

Ms. Gibb said she agreed with Mr. Hammack. She said she felt she did not know what she was looking at, and if the lights were taken off the table, and forgetting the six months it would take for a subdivision, maybe a shorter deferral would be in order for someone to show on the plat where and how much the fence was too high.

Chairman DiGiulian said he would go along with the deferral, but there had been testimony from the appellant that the fence was too high, and it really was a simple case of was it or was it not too high.

Mr. Pammel said the fence height was the issue before the Board, and the Code was clear that it restricts the height of fences, walls, and so forth to no higher than seven feet, so this was a clear-cut violation regardless of where it was located on the line. He referred to Sect. 10-104, paragraphs 3B and 3C.

Mr. Hart said he would have had a slightly different motion to uphold the Zoning Administrator in part because he thought part of a seven-foot front yard fence was approved because of the building permit, the note on the application of maximum height of seven feet, and the reference on the plat in at least two locations, but the fence was over seven feet, and largely what was built did not correspond to the drawing that seemed to go with the permit. He said he was thinking that the issue of whether the retaining wall counted or not might be an issue for another day because it was not squarely raised in the notice of violation. He said his motion would have been to uphold except on the two sides forward of the garage and to the right of the exercise room because he thought the drawing approved a seven-foot fence on top of a four-foot stone wall.

Mr. Beard asked whether there was a motion on the floor. Chairman DiGiulian said the pending motion, which was seconded, was to uphold the Zoning Administrator.

Mr. Hart made a substitute motion to uphold the Zoning Administrator in part and take out the issue of the fence over four feet in a front yard being a violation with respect to a fence on top of a wall forward of the garage on the left and to the right of the exercise room at the top as shown on the April 28, 1999 drawing. The motion failed for lack of a second.

Chairman DiGiulian called for the vote on Mr. Pammel's motion to uphold the Zoning Administrator. The motion passed by a vote of 5-0-1. Mr. Hart abstained from the vote. Mr. Ribble was not present for the vote.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. MAREC CORPORATION, VC 2004-DR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with SP 2004-DR-041). (Deferral request deferred from 9/14/04)

9:00 A.M. MAREC CORPORATION, SP 2004-DR-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain in a minimum required front yard. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with VC 2004-DR-098) (Deferral request deferred from 9/14/04)

Chairman DiGiulian called VC 2004-DR-098 and SP 2004-DR-041, on which the discussions had been earlier tabled at the hearing.

Mr. Hart said he would not be ready to vote on the special permit until he knew how everything would be sorted out because everyone would be working together to try to fix the issues, and if the applicant got the two-acre subdivision approved, there would be a different workout than if he did not. He said he thought a six-month deferral would be appropriate.

Mr. Pammel moved to defer VC 2004-DR-098 and SP 2004-DR-041 to March 8, 2005, at 9:00 a.m., at the applicant's request. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:30 A.M. MOE NOWROUZI, BELLE VIEW TEXACO, A 2003-MV-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has erected two freestanding lifts in association with the service station located in the C-6 District without special exception approval in violation of Zoning Ordinance provisions. Located at 1800 Belle View Blvd. on approx. 16,479 sq. ft. of land zoned C-6. Mt. Vernon District. Tax Map 93-2 ((1)) 4. (Admin. moved from 10/28/03 and 12/9/03 at appl. req. to 2/3/04) (Moved from 2/3/04 due to inclement weather) (Deferred from 3/9/04 and 3/16/04 at appl. req.) (Decision deferred from 5/18/04)

Chairman DiGiulian noted that A 2003-MV-037 had been withdrawn.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. GAYLON L. SMITH AND KAREN L. MARSHALL, VC 2004-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6006 Grove Dr. on approx. 8,640 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 32. (Decision deferred from 5/4/04 and 6/15/04)

Deborah Hedrick, Staff Coordinator, said she had been able to contact the applicant's agent, Brian Lewis, who had requested that the decision be deferred until March of 2005.

Mr. Pammel moved to defer decision on VC 2004-MV-026 to March 8, 2005, at 9:00 a.m., at the applicants' request. Mr. Beard and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ September 21, 2004, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front

lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at 3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273. (Decision deferred from 6/15/04)

Susan Langdon, Branch Chief, Special Permit and Variance Branch, said the applicants had still not arrived, and she had not heard from their agent. She asked whether the Board wanted to defer the decision, and she would continue to attempt to reach the applicants or their agent.

Mr. Pammel moved to defer VC 2004-MA-059 to March 8, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ September 21, 2004, After Agenda Item:

Approval of January 7, 2003; March 4, 2003; March 11, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ September 21, 2004, After Agenda Item:

Request for Additional Time
Ali A. Aalai and Nahid Azadfrouz, VC 01-D-125

Mr. Pammel moved to approve twelve months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date was August 20, 2005.

//

~ ~ ~ September 21, 2004, After Agenda Item:

Approval of September 14, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

The meeting recessed at 10:56 a.m. and reconvened at 11:59 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

Mr. Hammack moved to have the Board adopt a resolution, with reference to the matter that the County Attorney's Office would no longer provide such representation, to have Brian McCormack make an appearance on the behalf of the Board of Zoning Appeals and provide such representation as may be required with respect to certain on-going litigation as may be required, and he be compensated

appropriately, in the following cases: The Coalition for Rural Conservation, Inc., Linda Clary and Mary Jane McWilliams vs. Board of Zoning Appeals, At Law Number 213532; second case, James H. Falk, Jr., (phonetic) vs. Fairfax County Board of Zoning Appeals, At Law Number 190111; third case, Martin Kebaish, et al., vs. Board of Zoning Appeals, et al., At Law Number 193641; fourth case, Golf Park, Inc., vs. Board of Zoning Appeals, At Law Number 200072; and, fifth case, Commonwealth Construction Management and Ira and Virginia Cox, LP vs. Board of Zoning Appeals, At Law Number 210690. Mr. Hammack noted that for the last case mentioned, Mr. McCormack be employed only to represent the Board of Zoning Appeals in the appeal of that decision which had gone to the United States Supreme Court to distinguish it from some other enforcement activities that were ongoing in Fairfax.

Mr. Beard asked for clarification on the motion regarding the County Attorney representing the Board of Zoning Appeals for only certain cases because he was under the impression that the Board of Zoning Appeals was not to be represented at all by the County Attorney. Mr. Hammack responded that he thought he said in view of the County Attorney's decision that it could not represent the Board of Zoning Appeals. He said the resolution should be prefaced with because the County Attorney had declined to represent or withdrawn to represent the Board of Zoning Appeals in future cases, that the Board of Zoning Appeals needed Brian McCormack to make an appearance on its behalf in the cases. Mr. Hammack explained further that the cases he referred to were ones that the County Attorney had represented the BZA in the past, and the County Attorney was in the process of withdrawing or had withdrawn their representation.

Mr. Beard asked whether the Board had received notice of the County Attorney's withdrawal. Mr. Hammack answered that as far as he knew there were two cases where the County Attorney had withdrawn, and he had been told there may be a third one. As far as notice went, Mr. Hammack said the Board had received some copies of the orders of withdrawal.

Mr. Hart and Mr. Hammack agreed there was a notice for the Golf Park case. Mr. Hart said there was something for one of the Cox cases and the Davis Store.

Mr. Hammack added that all the cases involved were still in court in some posture, he thought two of them dormant, and Mr. McCormack was needed basically to protect the Board of Zoning Appeals' interest as may be required in those cases.

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

//

As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: February 24, 2009

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

J.F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 28, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and Paul W. Hammack Jr. John F. Ribble III was absent from the meeting.

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

~ ~ ~ September 28, 2004, Scheduled case of:

9:00 A.M. EDWARD C. GALLICK, TRUSTEE, ET. AL., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with preposed Lot 1 having a lot width of 95.14 ft. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129. (Reconsideration granted on 2/10/04) (Deferred from 5/18/04 at appl. req.) (Admin. moved from 7/20/04

Chairman DiGiulian announced that this case was administratively moved to February 1, 2005.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:00 A.M. CLARENCE F. SWANSON, III AND JANIS K. SWANSON, VC 2004-SU-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.96 ft. with eave 3.96 ft. from the side lot line such that side yards total 17.16 ft. Located at 14100 Roamer Ct. on approx. 13,682 sq. ff. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((8)) (11) 15.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clarence Floyd Swanson III, 14100 Roamer Court, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit construction of an addition 4.98 feet with an eave 3.96 feet from the side lot line such that side yards total 17.18 feet. A minimum side yard of 8.0 feet with total side yards of 20.0 feet is required; however eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 3.04 feet, 1.04 feet and 2.84 feet, respectively, were requested.

Mr. Swanson presented the variance request as outlined in the statement of justification submitted with the application. He said his daughter, Amanda, had a severe handicap, which was sustained at birth, and that she was incapable of caring for herself and would require extensive life-long care. He and his wife had planned for Amanda's care since her infancy and in anticipation of her care, made accommodations to their home, but when Amanda grew into her teen years, her size and weight had rendered their home inappropriate to service a handicapped person with extensive needs. He asked the Board to approve their proposal to renovate their home to allow wheelchair accessibility, a customized bathroom, and a bedroom expansion that conformed to the guidelines of the Virginia Neurological Birth-Related Injury Act Compensation Program. He said that the medical and physical equipment necessary for Amanda's care had crowded their modest home and there was no longer room to house it all. Mr. Swanson assured that the architectural integrity of their home would be maintained and that there was no impact on the surrounding residences. He said the variance would enhance the life of their little girl and would afford her a chance at a better life. Mr. Swanson said he believed Amanda deserved the Board's consideration.

In response to Mr. Hart's question concerning whether there was a Zoning Ordinance provision that allowed special accommodations/renovations for special need people that did not require a variance, Ms. Hedrick explained that there was a provision in the Zoning Ordinance that permitted encroachments into minimum required yards and that she would work with the applicant and the Zoning Administration Division to determine if the provision was applicable in this situation.

Chairman DiGiulian called for speakers.

Jonathan Haight, 1007 Copley Lane, Silver Spring, Maryland, agent for the applicants, said he was the

construction manager for the Virginia Birth-Related Neurological Injury Compensation Program of which Amanda was a client, and the intention of the program was to build a handicapped accessible addition for the Swanson family. He requested that the variance be granted for two reasons: to maintain Amanda's proximity to her sister in the adjacent bedroom; and, to expand Amanda's bedroom into an operational suite that would accommodate her care. Mr. Haight quoted a letter from the program's director, George Deebo, who noted the severe disability of Amanda and the fact that she was permanently disabled and would always be dependent upon lifetime assistance for her daily living. The Program's benefits would provide housing modifications, Mr. Deebo wrote, which included adding a handicapped accessible bedroom and/or bathroom to the home and with Amanda's growing needs, both were required. The letter continued with respectfully requesting the approval of the variance so that the Swansons need not suffer unnecessary hardship in the basic care activities.

Ms. Gibb pointed out that the Board was currently under severe restrictions for approving variances.

Mr. Haight said he was aware of the Cochran decision and that many Boards in Virginia were routinely denying variances. He said he sought to make the case on how minimal the encroachment was and how the reasonable use of the property was hampered with how extraordinary Amanda's needs were.

Ms. Gibb concurred that the encroachment was minimal. She noted that the Board struggled with the rule that an applicant must be denied all reasonable beneficial use of the property in order for a variance to be granted. She pointed out that the smaller the variance, the less likely it was that one was denied all reasonable beneficial use. Ms. Gibb submitted that the Board was placed in a terrible position and that she was heartsick over cases such as this. She said the Board was encouraging legislative relief, and pointed out that it was on a motion of hers that the Supreme Court had based its decision, and the variance requested was only one foot. Ms. Gibb said that a legislative change was necessary and perhaps the Board of Supervisors could create a category of special permit that would allow approval of such cases as the Swansons.

Mr. Hart said he was following up on Ms. Gibb's comments, and he believed that there were two possible remedies, one being that the Board of Supervisors could amend the Ordinance by creating a special permit category that addressed situations such as this. He noted that it would require one of the Supervisors to champion the action and that the County Attorney was opposed to such an Ordinance change. Mr. Hart stated that in his opinion, the Board of Supervisors should make the policy and that there should be some sort of relief, or safety valve, in the Ordinance but until political pressure was put on those persons in authority, there was no impetus for legislative change. He said that another solution would be at the State legislative level, and he encouraged Mr. Haight to contact his representative, explain the hardship of the Cochran decision and the compelling needs of the Swansons, and request a solution. Mr. Hart said that in the Board's current position, they were encouraging applicants to request a deferral of their decision in the hopes that a remedy was available at a later time.

Mr. Haight thanked the Board for its comments and suggestions, and requested a deferral date to April, 2005.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer VC 2004-SU-100 to April 12, 2005. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

Chairman DiGiulian announced that he would later return to the next case on the agenda as a speaker would be arriving late.

//

~ ~ ~ September 26, 2004, Scheduled case of:

9:00 A.M. LODI G. GYARI, SP 2004-DR-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. with eave 4.3 ft. from side lot line. Located at 1602 Woodmoor La. on approx. 11,025 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((29)) 60.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norbu Gyari, the daughter of the applicant, 1602 Woodmoor Lane, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a one-story addition to remain 7.0 feet with eave 4.3 feet from the eastern side lot line. A minimum side yard of 12.0 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, variances of 5.0 feet and 4.7 feet, respectively, were requested.

Ms. Gyari read her father's statement of justification. She said that because of his diagnosis of diabetes, his doctor recommended regular exercise which was why he had enclosed the garage area to convert it into an exercise room. She pointed out that the garage area initially had a knee-high brick wall around it, and a laborer had been contracted to dry-wall the remaining opened space. Only after a visit from a County Zoning inspector, Bruce Miller, was Mr. Gyari informed that the construction was illegal and they immediately halted construction. In response to Mr. Hammack's question of whether the Gyaris' had performed other renovations on their property, Ms. Gyari said her family never before had performed work on their property and they were unaware of procedures. She submitted that they had not contacted the County for instructions, and they did not have a written contract with their laborer.

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

Mr. Hammack moved to deny SP 2004-DR-044. Mr. Pammel seconded the motion, which failed by a vote of 2-4. Chairman DiGiulian, Mr. Beard, Ms. Gibb and Mr. Hart voted against the motion. Mr. Ribble was absent from the meeting.

Ms. Gibb then moved to approve SP 2004-DR-044 for the reasons stated in the Resolution.

Mr. Hart said he supported the motion as he believed that the applicant may have reasonably concluded that the carport could be enclosed because it was partially enclosed already. He said he thought the case had unique facts and he believed the error was done without bad intent and that it would be a hardship to have it ripped out.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LODI G. GYARI, SP 2004-DR-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. with eave 4.3 ft. from side lot line. Located at 1602 Woodmoor La. on approx. 11,025 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((20)) 60. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards.
3. Under Section B, it is determined that the error was done in good faith.
4. Although the applicant should have consulted the County for the building requirements before commencing construction, he was unfamiliar with the process and had hired a laborer to do the work.
5. There already was a partial wall there.
6. The error in building location occurred through default rather than an active fault on the owner's part.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard

Requirements Based on Error in Building Location, the Board has determined:

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

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

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

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

1. This Special Permit is approved for the location of an addition, as shown on the plat prepared by Ned A. Marshall, dated June 16, 2004, as revised through June 24, 2004, submitted with this application and is not transferable to other land.
2. Within 30 days of approval of this special permit, the applicant shall obtain a building permit for the addition and approval of final inspections or this special permit shall be null and void.

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

Mr. Beard seconded the motion, which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted against the motion. 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 October 6, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:00 a.m. RIDGEMONT MONTESSORI SCHOOL, INC. AND IGLESIA PALABRA VIVA, SPA 85-D-070-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-D-070 previously approved for a church with nursery school and private school of general education to permit change in permittee, increase in enrollment and change in development conditions. Located at 6519 Georgetown Pi. on approx. 1.43 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 4B. (Admin. moved from 9/28/04 at appl. req.)

Chairman DiGiulian announced that the case was administratively moved to October 12, 2004.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:00 A.M. ROBERT AND CYNTHIA MCELROY, VC 2004-MA-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.6 ft. with eave 17.1 ft. from the rear lot line, fence greater than 7.0 ft. in height to remain in the side and rear yards and to permit minimum rear yard coverage greater than 30 percent. Located at 3911 Sandalwood Ct. on approx. 15,893 sq. ft. of land zoned R-2 (Cluster). Masen District. Tax Map 59-3 ((16)) 26. (Admin. moved from 6/15/04 at appl. req.)

Chairman DiGiulian announced that the case was administratively moved to March 1, 2005.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1685 and 1889 Virginia Ave. on approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44. (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04 and 7/27/04)

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1865 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-081). (Admin. moved from 8/3/04 and 7/27/04)

Chairman DiGiulian announced that VC 2004-DR-081 and SP 2004-DR-027 had been administratively moved to November 30, 2004, at 9:00 a.m., at the request of the applicants.

//

~ ~ ~ September 26, 2004, Scheduled case of:

9:00 A.M. CLIFTON H. COLEE AND GIUSEPPINA A. COLEE, SP 2004-BR-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.7 ft. with eave 14.7 ft. and stairs to remain 11.4 ft. and 11.8 ft. and deck to remain 12.6 ft. from front lot line. Located at 9585 Pine Meadows La. on approx. 9,773 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((21)) 1. (Admin. moved from 10/12/04 at appl. req.)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clifton and Giuseppina Colee, 9585 Pine Meadows Lane, Burke, Virginia, each replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction to minimum yard requirements based on an error in building location to permit an addition to remain 15.7 feet with eave 14.7 feet from a front lot line of a corner lot; stairs to remain 11.4 feet and 11.8 feet from a front lot line of a corner lot; and a deck to remain 12.8 feet from a front lot line of a corner lot. A minimum front yard of 20.0 feet is required, eaves are permitted to extend 3.0 feet, and stairs are permitted to extend 5.0 feet; therefore, reductions of 4.3 feet, 2.3 feet, 3.6 and 3.2 feet, and 7.2 feet, respectively, were requested.

Clifton Colee presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife, each being mature in years, purchased their house because the floor plan designed their living quarters on one level. To accommodate his family, especially the grandchildren, he and his wife wanted to enlarge the family room to have the children play on the main floor, and not downstairs where they would be unsupervised. He explained that the deck was built out so as to enjoy the outdoors and to remedy a rather steep drop off from the rear of the house. Mr. Colee explained that his builder was given approval from the County for the renovations but in error, had neglected to obtain

the necessary permits. He said construction was ceased in March as soon as they became aware of the violation, and the entire procedure of working with the County and obtaining permits had become an administrative nightmare. He noted that at one time, the County had deemed it was his responsibility to apply for a variance to allow the community's fence that bordered his property, and the issue was resolved after three months of his efforts, when the County renamed the fence a noise wall. Mr. Colee informed the Board that he had contracted a professional company to do the work, and his builder was present to answer questions.

Mr. Hart questioned staff on the significance of a County's stamp of approval on a plat.

Mr. Sherman said that an approval of a plat was one of the procedures, in a number of required steps, one underwent to process and gain approval of a requested construction/development action. He said it was a step on the check-list, but also pointed out that there was no approved permit.

Mr. Colee explained that their plan, which was stamped approved by the County, was the initial phase of their process, and that his contractor assumed the project was approved and commenced construction immediately to take advantage of the favorable weather conditions. It was after much of the work was finished when they learned the proper permits were not obtained, and Mr. Colee believed it was his contractor's responsibility to take care of the necessary requirements. He submitted the builder's contract for the Board's review.

Chairman DiGiulian called for speakers.

Mr. Colee's builder/contractor, Craig Oliver, Dominion Building & Construction Corp., said he assumed full responsibility for the error in the Colee's renovations, affirming that the Colees had no part in the matter. He explained that his company's procedure, before accepting a job, was to first consider the Colee's contract, determine that their lot was a corner lot with an eight-foot community fence surrounding it, engineer a plan, and then take the plan to the zoning office. He said they utilize a permit service for submitting the plats/plans and because the initial plan was stamped approved, he erroneously assumed the project was approved. He pointed out that the Colee's lot was extraordinary in that the lot was considered to have two front yards with the applicable front yard setbacks, but that the construction was in compliance to side yard setbacks, which created a five-foot problem. Mr. Oliver stated that the construction had no visual or negative impact on the neighbors because the renovations/additions were on the street side of the house with an 8-foot brick wall surrounding it. He again stated that he took full responsibility for the mistake; that it was not the fault of the Colees; and that the construction phase was practically complete. Mr. Oliver said he was unsure how the mistake could be undone; and that it would be an extreme hardship for the Colees if required to undo the mistake.

In response to Mr. Pammel's question concerning the contract, Mr. Colee explained that Mr. Oliver's contract stated that the builder had 120 days to complete the project but with the inclement weather, construction was sporadic. He went to the County to find out when the building permit was issued so as to establish a timeline, and at that time, February, 2004, he learned his project was cited for a violation. He clarified that the contract with Dominion Building & Construction was signed in August, 2003, construction commenced in October, and February, 2004, the project was halted, and at no time was there any notification from the County that they were in violation. Responding to Mr. Beard's question concerning the project stage, Mr. Colee said that when construction ceased, the family room's shell was practically completed, that five out of the six windows were installed, the roof extended and blended onto the house, and the deck's surface was laid. He concurred with Mr. Beard's observation that the project was well under way, and with Mr. Hammack's surmise that substantial funds were already expended.

Responding to queries from Mr. Hammack and Mr. Hart concerning County permit processing procedures, Margaret Stehman, Deputy Zoning Administrator for Appeals, explained that both approved and denied permits were available for review on-line at the Department of Public Works and Environmental Services (DPWES) Web Site but denied permits were not retained in the record. She said that without a building permit one could not determine what had been stamped approved in October. She explained that people bring in plats when applying for a building permit but it is not required that the particular issue be noted on the plat, and only when an accompanying plat is stapled to an approved permit can one determine what was approved.

Mavis Stanfield, Senior Staff Coordinator, said staff would take the plat back to DPWES and have them determine what was approved, and inform the Board accordingly.

Mr. Hart suggested that as a matter of policy, if a document were stamped approved by the County, a copy of that document should be retained in the record thereby establishing a time-line if a question of approval later arose and the County had to determine whether the 60-day period for the County to take revocable action had lapsed.

Chairman DiGiulian called for speakers in opposition to the application.

Arthur H. Bair, 9577 Pine Meadows Lane, Burke, Virginia, said he opposed the Colee's project, and that he understood the permit procedure because he had personally undertaken it. He wanted to correct the record by pointing out the brick fence surrounding the Colee's property was six feet high not eight. Mr. Bair said he chaired the homeowners' Architectural Review Board and was speaking on its behalf. He asked the Board if it would have approved the special permit if the documentation was received before construction began, and whether the Board believed that the system may have been manipulated in order to gain approval by constructing first and then requesting forgiveness afterwards, and in his opinion, a Class A builder would know about the permit process as his license depended on it. He said the Colee's plans were submitted to the Architectural Review Board, and the Board approved only a portion of the plan. Mr. Bair presented a brief history of the process of building the Colee's home, the recent addition and deck; the fact that he overheard a heated disagreement between Mr. Colee and the project manager over the house's placement; and that he, himself, specifically informed Mr. Colee that a building permit was required. He pointed out that Mr. Colee's project went forward even after he was advised that the Architectural Review Board rejected the lattice work design and the fact that he required a permit.

Mr. Hammack clarified for Mr. Bair that the Board of Zoning Appeals did not deal with a project's aesthetics but only the location of the improvement. He also noted that a homeowners association had a separate remedy for a violation of a covenant.

Rima Gulshan, 9583 Pine Meadows Lane, Burke, Virginia, said she was the next door neighbor and that she opposed the project because the Colees had not obtained a permit and because of damage to her yard during the construction. She submitted a photograph of a beecat (tractor) driven by Mr. Colee onto her property when he moved dirt, and the fact that she had specifically requested that he not cross through her yard. In response to Ms. Gibb's question of whether the damage had been repaired, Ms. Gulshan said Mr. Colee promised a written statement to correct the damage, but to date she had received nothing. Mr. Colee had filled the ruts with sod but the grass immediately died and she reseeded and was watering the area herself.

In rebuttal, Mr. Colee explained that the fence's scallop design was rejected by the Architectural Review Board and remedied by a board design that matched the existing fence, and that they were allowed a foot of lattice along the top. He clarified that his request to expand the deck was not to increase the floor area square footage but to determine what railing types were permissible. Mr. Colee submitted that perhaps Mr. Bair had confused him with someone else because there never was a problem with how his home was situated and the only discussion he had with the builder was to have his garage extended three feet and to have bay windows installed. He agreed that it was a mistake to have driven the beecat 12 inches onto the Gulshan's property, explaining that he had to move 18 cubic yards of dirt to terrace his back yard due to the steep slope and that it had nothing to do with the application before the Board. Mr. Colee said he filled the ruts with expensive top soil, which he seeded and watered daily, and he could not recall committing to a written statement, that he thought he was a good neighbor and he would do whatever needed to be done to remedy the situation.

Mr. Pammel pointed out that the deck's proposed enclosure could not be approved by the Board of Zoning Appeals as it was considered a further encroachment, and he suggested that the Colees redesign it after consulting with staff to determine the Code requirements.

Mr. Sherman informed the Board that recent information indicated that the Colee's building permit was neither approved nor disapproved but pending by Building Plan Review, DPWES, and their December 12, 2003 letter sent to the Colee's contractor had advised them of that fact. He again pointed out that there was no approved building permit in the files.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he was dissatisfied with how the County apparently handled this building permit application and would make a motion to defer decision so as to receive the facts. He mentioned a law where if substantial funds were invested and there was no revocation within 60 days, that the project shall be

approved.

Mr. Beard commented that he could not support a motion to defer because he said he believed it would be a hardship for the Colees and he thought they had already undergone enough.

Responding to Mr. Hammack's question of whether or not he had received anything from the County advising that their building permit was not approved, Mr. Oliver said he was unaware of receiving notice from the County, but correspondence normally went directly to the people hired for processing the permit. He said it was the applicant, Mr. Clee, who had informed him that they did not have a permit.

Mr. Sherman clarified that DPWES would have written the letter concerning a permit's approval or denial, and neither Zoning Evaluation's files nor the street file contained an approved building permit.

Mr. Hart said he was not sure what was going on, whether the building permit was pending, and if a letter was sent to the builder to inform him that the permit was denied. He questioned staff why there was no copy in the file.

Ms. Stehman explained that building permits were primarily a function of DPWES and that they kept records of their permits. She was unsure of all that was retained in their files, and that they did not keep records over many years. She clarified that it would have been DPWES who sent the letter regarding the status of the building permit.

Mr. Pammel commented that he viewed the issue as one of zoning. He saw no permits of which zoning had signed off on, and it appeared that nothing had occurred within 60 days of when there was an approved signed plat.

Ms. Stehman said that staff had advised the Board of all it knew at that point and more research was necessary to answer further questions. She said staff did not know what was approved on the plat because there was no accompanying permit.

Mr. Beard said he thought, with the current information, the Board could proceed on the case and that it seemed as if the Board was piling on staff, pointing out that staff assured it would investigate.

Mr. Pammel said he agreed with Mr. Beard and he was prepared to make a motion.

Mr. Hart said that he was persuaded with the record presented that there was no manipulation or bad faith; the applicant had a written contract; there was a plat with a stamped approval; it was the builder's responsibility to have acquired the necessary permits; and for the zoning purposes and given the circumstances, the applicant had satisfied the applicable standards. He stated he would support a motion to approve.

Although he was sympathetic to the applicant, Mr. Hammack said, he opposed the motion because he wanted to review the 60-day statute and any and all evidence that could be produced.

Mr. Pammel then moved to approve SP 2004-BR-047, for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CLIFTON H. COLEE AND GIUSEPPINA A. COLEE, SP 2004-BR-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.7 ft. with eave 14.7 ft. and stairs to remain 11.4 ft. and 11.8 ft. and deck to remain 12.8 ft. from front lot line. Located at 9585 Pine Meadows La. on approx. 9,773 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((21)) 1. (Admin. moved from 10/12/04 at appl. req.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 2004; and

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

1. The applicants are the owners of the land.
2. Under the Virginia Code, Section 15.2-23-11, Subsection C, the 60-day timeframe has lapsed during which the County can make changes to or revoke an approved permit.
3. Although staff said that based on their most current information, a notation indicates that a permit is still pending, the fact is moot because if the permit were disapproved, the 60 days has more than lapsed from the period a plat in the record was submitted showing approval with the signature of the Building and Environmental Section of the County and the Zoning Administrator.

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

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

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

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

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

1. This special permit is approved for the location of an addition, stairs and deck, as shown on the plat prepared by Bryant L. Robinson, dated March 15, 2004, revised July 13, 2004, submitted with this application and is not transferable to other land.
2. Building permits shall be obtained from the County with all applicable inspections as required by the building code.

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

Mr. Beard seconded the motion, which carried by a vote of 4-1. Mr. Hammack voted against the motion. Mr. Beard moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the votes. 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 October 6, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ September 26, 2004, Scheduled case of:

9:00 A.M. DWAYNE A. & LAURA L. CARABIN, VC 2004-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear and side lot lines. Located at 6234 Yellowstone Dr. on approx. 10,999 sq. ft. of land zoned R-3. Mascn District. Tax Map 61-3 ((7)) (J) 6.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dwayne A. Carabin, 6234 Yellowstone Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an accessory structure, consisting of an 18.0 foot high detached garage, 2.0 feet from the eastern side and the rear lot lines. A minimum side yard of 12.0 feet is required; and a minimum rear yard of 18.0 feet is required; therefore, variances of 10.0 feet and 16.0 feet, were requested.

Mr. Carabin presented the variance request as outlined in the statement of justification submitted with the application. He said he had resided in the house since he was a child, was raising his children in the home, had long-time roots with the community, and that he wanted to stay. He said he wanted to construct a garage to house his classic cars. He said the project had the support of all but one of his neighbors, and although he did not know the rules or regulations, he had designed a rather large unit but if required would reduce the size dramatically. He pointed out that the layout of his yard restricted where a garage could be placed.

Mr. Pammel said that the 900-square-foot size proposed was far too big; each foot of height required a foot setback, and that one must meet side and rear yard setbacks and the Zoning Ordinance standards.

Mr. Hart stated that the 30-by-30-foot design was probably too large even without the Cochran decision and a garage two feet from the lot line was too close. He suggested that staff advise the applicant what may be allowed by-right.

Chairman DiGiulian called for speakers.

David Isaac, 3033 Silent Valley Drive, Fairfax, Virginia, said he assisted Mr. Carabin with the garage design and that the current size, 30 by 30, was larger than the average, that most were 24 by 24 which allowed two cars to be parked and to have a little space. He said that there was no design he could propose that would not require some kind of a variance.

Lynn O'Toole, 6306 Yellowstone Drive, Alexandria, Virginia, came forward to speak in support of the proposal. She said that perhaps the Board could grant Mr. Carabin a little leeway on the dimensions as the rear of his property bordered a park which would not be developed, and that the Carabins were good neighbors who kept their property in good condition.

Carolyn McCloskey, 6232 Yellowstone Drive, Alexandria, Virginia, came forward to speak in opposition. She said that they were the adjacent neighbors and most adversely affected; that the variance request was two feet from their property line; their view of the park behind their house would be obstructed; the structure's size was too huge; and, they were concerned about the precedent it might set. Ms. McCloskey said she and her husband were not opposed to neighbors building structures that complied with the Zoning Ordinance, but requested the Board's consideration in this matter.

In rebuttal, Mr. Carabin said his request was simple, he only sought to build a garage for his classic cars, and as his contractor Mr. Isaac had stated, any unit would require a variance. He distributed pictures of the McCloskey's property to evidence what condition it was in.

Mr. Pammel requested that the McCloskeys come back to the podium and he asked if they had obtained a building permit for their Quonset hut looking garage.

The McCloskey's assured they had a permit, and that they met the required setbacks.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that if there was to be any relief from the Cochran decision, the statutes were to change July, 2005, and that before the Cochran case, the Board had approved some minor variances after dimensions were reduced or adjusted. He recommended that Mr. Carabin talk to his elected officials about the Cochran decision and if he believed there should be approval of variances.

Mr. Hammack moved defer SP 2004-BR-047 to July 12, 2005. Mr. Hart seconded the motion which carried by a 5-0 vote. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3. (Deferred from 9/21/99, 11/9/99 and 11/28/00). (Def. From 3/27/01 and 9/25/01) (Deferred for decision from 9/24/02 and 9/23/03)

Walter L. Hamilton, III, identified himself as the agent for the appellant.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff memorandum dated September 20, 2004. This was an appeal of a Notice of Violation issued in June of 1999 that alleged the appellant was maintaining a second dwelling unit on the referenced property. The appeal was deferred several times to allow the appellant time to acquire additional land for a minor lot line adjustment, to obtain a rezoning from the R-1 District to the R-2 District, and a subdivision approval. Staff denied the appellant's plan because he had not acquired a full acre of land nor had he revised his rezoning application to include his property and a portion of his neighbor's. At the time of the last deferral request in September of 2003, staff informed the appellant that the minor lot line adjustment required a minimum of 60 days, the rezoning process approximately 6 months, and the subdivision process a minimum of 60 days. The appellant indicated during his September 23, 2003, public hearing that he would complete the minor lot line adjustment but, to date, nothing had been recorded. Staff was concerned that, given the time line, the appellant should have made further progress towards resolving the violation and nine months had elapsed before the appellant began the rezoning process. She noted that it was five years since the BZA first deferred the issue on appeal and staff remained concerned whether the issues on appeal would be able to be resolved. Staff recommended that the BZA take action to uphold the June 4, 1999, determination that the two dwelling units on the appellant's property constituted a violation of Zoning Ordinance provisions.

Chairman DiGiulian noted that there was a request for a further deferral and asked Mr. Hamilton to address that matter.

Walter L. Hamilton said this matter was a classic case of a misunderstanding and miscommunication which led to a misrepresentation. He pointed out that there had been significant progress over the last nine months, that they met with County staff September, 2003, regarding its opinion on a lot line adjustment as opposed to a subdivision, and at that meeting the Dukes indicated that they would pursue attaining the paper work and a portion of land from their adjacent neighbor so as to complete the one acre. There was a contract purchase agreement and their engineering firm, Huntley, Nyce and Associates, Ltd., had prepared a rezoning plat application to address the deficiencies. Mr. Hamilton submitted that the comments staff made on their rezoning application were interpreted that staff was to inform the applicant of the status of the resubdivision of Lots 1 and 3 and whether the resubdivision was required as a part of the rezoning application or after the rezoning application. He stated that the Dukes had not realized that the lot line adjustment was to be executed before staff would accept the rezoning application.

Mr. Hart asked Mr. Hamilton how long he anticipated it would take for them to complete the process and have their application accepted by staff. He said he wanted to know why they were requesting a year deferral.

Mr. Hamilton said in a matter of days they were ready to submit the lot line adjustment, but could not venture a guess on how long it would take staff to process their application. He said they had no control over the time staff took to review documents and then, after review, they would have to respond to the documents and staff comments or questions. Because Mr. Duke was unable to work full time, there were not sufficient funds readily available to pay for all the required County and professional services. Mr. Hamilton said his clients would accept a shorter deferral time, perhaps three months, instead of one year.

Ralph Duke, 9935 Corsica Street, Vienna, Virginia, approached the podium and said he wished to speak to the issue of deferral. He said he went through quite a few things to resolve the issues; throughout the process it took considerable resources because of the fees and professional services; that staff took three months to accept the application; and that it was a complex and difficult procedure to get the property into compliance.

Referencing the Duke's August 25, 2003, letter which indicated the Dukes would submit a lot line adjustment, Mr. Hamilton again explained that the documents had not been submitted because Mr. Duke was under the impression that staff was to advise him whether or not the lot line adjustment was a requirement for their rezoning application. He said they were prepared to move forward and were close to resolving the matter.

Mr. Duke said he had to refinance his home to have the necessary funds, which was close to \$75,000, to correct the situation; that he purchased the property not realizing it was not in compliance; that he has continued to pay taxes on it; and, that he would continue to take the necessary steps to resolve the matter.

Mr. Pammel commented that this was a zoning violation of long standing; that the appeal was five years old, and the Board had been very sympathetic to Mr. Duke's problem, but as promised last year when they granted the last deferral, there was still no resolution. Mr. Pammel then moved to uphold the Zoning Administrator's determination.

Mr. Beard said that although he was not on the Board at the beginning of the case, he agreed with the appellants that the taxes were continually paid, and although a five-year ordeal, there appeared to be many nuances throughout the process. He said he believed another three to six months deferral would not be hurtful but helpful to an onerous situation for the appellant. Mr. Beard said he could not support the motion.

The motion to uphold the determination of the Zoning Administrator was seconded by Mr. Hart, which carried by a vote of 3-2. Chairman DiGiulian and Mr. Beard voted against the motion. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (Deferred from 4/15/03, 10/14/03, and 1/6/04). (Deferred from 4/13/04 at appl. req.)

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7901 and 7828 Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/03, 10/14/03, and 1/6/04) (Deferred from 4/13/04 at appl. req.)

Chairman DiGiulian announced that he would recuse himself from both appeal cases.

Vice Chairman Hammack assumed the Chair and acknowledged a request for a brief recess.

The Board recessed at 11:31 a.m. and reconvened at 11:38 a.m.

Vice Chairman Hammack noted that there was a request for deferral for the two appeals. He called upon

staff for comment.

Jayne Collins, Staff Coordinator, Zoning Administration Division, explained that the lots owned by the appellants, were abutting lots, were located on Cinder Bed Road, contained a total of approximately 17.0 acres, and were split zoned I-6 and R-1. Appeal 2002-LE-031 was an appeal of the determination that the appellants have allowed the property to be divided into individual lots on which tenants had established contractors offices and shops, storage yards, and a motor vehicle impoundment yard on Lots 1 and 2 without site plan, building permit, or Non-Residential Use Permit (Non-RUP) approvals, and that some of the uses were established within the 100-year floodplain for Long Branch tributary and a portion of the property zoned R-1. Appeal 2003-LE-001 was an appeal of the determination that the appellant had expanded the pre-cast stone concrete mixing and batching plant on Lots 3A and 3B without the approval of a special exception and that some of the storage and construction equipment had spilled over into the 100-year floodplain for Long Branch and the R-1 zoned portion of the properties. Ms. Collins noted that the two appeals were related because the properties were abutting lots, and the pre-cast concrete mixing and batching plant had access via a roadway crossing through the R-1 zoned portion of Lots 1 and 2 within the floodplain. She noted that Mr. Diana was an appellant in both appeal applications and all four of the subject lots were included in the focus of the Cinder Bed Road Task Force with the Notices of Violation issued two years prior in August and December of 2002. Almost a year after the first Notice of Violation was issued, June 25, 2003, the appellants' attorney filed three special exception applications, which if approved, would remedy some but not all of the problems on the site, and during the two years since the notices were issued, the appellants had not sought to remedy any of the zoning violations through actions other than an approval of a special exception. Ms. Collins pointed out that the violations not remedied by the special exception included the presence of uses that were not allowed in the R-1 zoned portion of the property and allowing industrial uses to remain without obtaining site plan, building permit and Non-RUP approvals for those uses allowed but which had not been legally established. She also noted that the appellants had not pursued any measures to correct environmental problems, nor pursued the rezoning of the R-1 zoned portion of the property to the I-5 or I-6 District to allow industrial uses in those areas. Ms. Collins said she would conclude her presentation after Cathy Lewis, Staff Coordinator, Zoning Evaluation Division, informed the Board about the appellants' special exception applications. Responding to Vice Chairman Hammack's question concerning the deferral request, Ms. Collins said staff opposed a deferral.

Vice Chairman Hammack said the Board would hear the staff report first and then consider the deferral request.

Cathy Lewis, Staff Coordinator, Zoning Evaluation Division, said Silvio Diana filed three concurrent special exception applications October 7, 2003, on the subject site. SE 2003-LE-028 sought approval of a use in a floodplain in order to permit an existing private roadway to cross a major floodplain, and to permit existing fill and storage of concrete products in a floodplain. SE 2003-LE-029 sought approval to allow an existing driveway to Cinder Bed Road through an R-1 zoned property to serve uses located in the I-6 District. SE 2003-LE-031 sought approval for a heavy industrial use, a concrete mixing and batching plant. She noted that large portions of the R-1 zoned portion of the property were excluded from the special exception applications. Staff recommended denial of the applications because the proposal had not given priority to environmental reclamation and protection; staff was not provided the information needed to fully evaluate whether the special exception proposals complied with the Zoning Ordinance requirements; the applicant proposed to continue utilizing portions of the floodplain for the concrete manufacturing plant although other areas on the site outside of the floodplain were available; and, that the applicant sought special exception approval to continue using the floodplain for storage and a roadway without providing staff with the information to measure and mitigate the impact that the uses would have on the site. Ms. Lewis noted that the Planning Commission's public hearing was originally scheduled for April 7, 2004, but was deferred for six months to October 7, 2004, to allow the applicant the opportunity to address the outstanding issues raised in the staff report, and since the April 7th public hearing deferral, staff met with the applicant to discuss the issues but few of the issues raised in the staff report had been addressed by the applicant, and therefore, staff continued to recommend denial of the special exception applications. Ms. Lewis noted that one major issue resolved by the applicant was the storage within the floodplain of concrete products and compressed gas, and the applicant had amended his special exception plat in May to show that all storage within the floodplain would be removed, but site visits revealed that storage continued to remain within the floodplain.

Ms. Collins said staff was concerned that the appellants had focused all their attention on the special exception applications and had not proceeded to remedy the other elements of the Notices of Violation which remained unlawful even if the special exceptions were approved. She stated that the appellants had unlawfully expanded its business without amending their special permit, filled in the floodplain without approval, established industrial uses in the R-1 zoned portions of the site, and leased out other portions of

the property to other uses without site plan, building permit or Non-RUP approvals. She noted that staff continued to recommend denial of the three special exception applications and given the length of time, almost two years, that had elapsed since the Notices of Violation were issued, and the appellants failure to attempt to remedy those violation elements that were not subject to special exception approval, the lack of progress in seeking special exception approval, and the environmental damage that persisted, staff could not support any further deferrals of the applications and urged the Board to uphold the Zoning Administrator's determination of August 15th and December 13th 2002.

In response to Mr. Beard's question concerning whether staff believed the appellants were diligent in striving to resolve the violations, Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the three special exception applications submitted were wrought with problems, and the appellants had taken few steps to resolve those elements of the violations that could only be resolved through special exception. Staff's position was that the appellants could have taken steps to remedy many of the items in violation but had not addressed them satisfactorily, and the special exception applications had not progressed in a timely fashion. Regarding the environmentally sensitive issues, staff noted that there was no change in the uses that caused the environmental problems on the site, and although the appellants recently indicated that they would address a liquid petroleum issue and some of the storage in the floodplain, to date nothing had been implemented.

In response to Mr. Hart's question concerning staff's opposition to any of the several deferrals requested by the appellants, Ms. Collins said staff opposed the last deferral in April.

Vica Chairman Hammack called upon the appellants' agent.

Jerry K. Emrich, Esquire, Walsh, Colucci, et al., Arlington, Virginia, said they intended to go forward with the October 14th Planning Commission public hearing, that they have continued to meet with the Lee District Land Use Committee, and that there was the possibility the Planning Commissioner would defer his October 7th decision. He requested a further deferral of the appeals to allow the special exception applications to be heard by the Board of Supervisors in January of 2004. Although there were a number of issues, staff's two major concerns was the storage in the floodplain and the roadway in the floodplain, which were documented in its March of 2003 staff report in which they recommended denial of the special exceptions. Mr. Emrich explained that during the April 15, 2003, Board of Zoning Appeals meeting, he indicated then that they would withdraw their special exception request for storage in the floodplain, and he was to understand from discussions with staff, that that was the issue, which now was addressed, and the other issues could be easily resolved. He briefly listed the remaining issues in the March staff report: Item 1 concerned staff's position that the appellants were unwilling to produce the information necessary to evaluate the special exception proposals. He submitted that, at that time, he had not fully understood what staff was talking about, and that to date, he still was unsure of what staff was talking about as he believed the required information was provided. Item 2 concerned the appellants continued use of portions of the floodplain; he affirmed that they were not seeking a special exception for that issue. Mr. Emrich noted that the appellants had been working with staff on the relocation of the road way with the understanding that there was no issue with it going from Cinder Bed Road back to the I-6 uses, as it has been for years. The issue of limitation of uses, they were still talking to staff and had proposed some limitation on some of the uses and discussions were ongoing. Regarding the appellants not including the entire site in the special exception application, the appellants met with staff in May of 2003 and had agreed to a covenant to protect the R-1 portion of the property but clearly stated they did not want to include those portions in the application. He said they had concerns at the time of site plan that staff would require improvements along the 900 feet of frontage of the R-1 property, and that he was told staff would consult with other County staff to determine whether the R-1 portions were required in the SE application, and to date, nothing had been clarified, that staff was still working on it. Mr. Emrich said that, because the BZA and Planning Commission hearings were approaching, he had made several requests of staff to make a determination on their May, 2003, submittal, and he was informed that staff could give no comments as they had not had time to staff the matter. Mr. Emrich stated that the issues cited in the March 25, 2004, special exception staff report concerning the floodplain location, the RPA, and various technical issues, all were resolved as was the issue of the removal of a trailer, and concerns over the private well and septic system which had been addressed through tests to determine problems and which, if warranted, appropriate action would be taken. He noted that an issue with signage would be soon resolved, and that at the time of site plan approval, all expansions of the concrete plant would be cited to assure Zoning Ordinance compliance. Mr. Emrich said that a Phase I site plan was being conducted to be completed in October of 2004; he assured that all materials and equipment would be removed from the floodplain; that the ongoing issue of the illegal tenant was being pursued through the courts to accomplish eviction; and, the issue of the caretaker/watchman residing on-site was presumed legal under an industrial use but if not, arrangements would be made for him to vacate the premises. Mr. Emrich

said that copies of all documents evidencing the actions taken would be distributed; that progress was on-going; that they were proceeding in good faith; and, that they were making substantial progress.

Discussion followed among Mr. Hart, Mr. Bakos, and Mr. Emrich concerning the Notices of Violation. Mr. Bakos explained that because there were several owners and as many as 50 tenants, the notices were sent to the property owners.

Mr. Emrich clarified that his clients had as many as eight tenants, one of whom was Campbell's Gas who was in violation because of its stored liquid petroleum and who was being taken to court to facilitate their removal.

Vice Chairman Hammack asked if there was anyone present who wished to speak to the matter of deferral, and receiving no response, called upon the Board for action.

Mr. Beard suggested granting a deferral because the special exception applications were eminent. He then moved to defer Appeal A 2003-LE-001. Mr. Hart seconded the motion for purposes of discussion.

Mr. Hart noted that many Cinder Bed Road cases had been deferred over the years, but in his opinion, he was unsure that the special exception applications would remedy all the problems on the site. He said regardless of the Board's vote, the special exceptions would continue and Campbell's Gas would still be taken to court. Mr. Hart said he was concerned that the entire process would have to be repeated because Campbell's Gas never received the Notice of Violation, but he did recognize that five deferrals were a lot. Mr. Hart suggested that they hold the public hearing and defer the decision.

Mr. Pammel said he opposed the motion to defer the decision.

Vice Chairman Hammack said he supported the motion to defer and called for a vote on the motion to defer decision of A 2003-LE-001 to January 25, 2005. The motion carried by a 3-1. Mr. Pammel voted against the motion. Chairman DiGiulian recused himself. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Hart suggested that staff consider sending an information letter concerning the Notices of Violation to each of the tenants so as to decrease the possibility that because the tenants were not notified, another deferral would be warranted. Ms. Stehman assured that staff would look into the matter.

//

Chairman DiGiulian resumed the Chair.

//

~ ~ ~ September 28, 2004, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ff. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04) (Continued from 9/14/04)

Chairman DiGiulian noted that the case was continued from September 14, 2004, for additional information.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the case was continued and revolved around a violation for keeping four tractor trailer trucks. The Board gave the appellant's agent the opportunity to collect aerial photographs to show whether or not the use was on the property in 1955.

Jerry M. Phillips, Esquire, 10513 Judicial Drive, Suite 100, Fairfax, Virginia, agent for the appellants, informed the Board that there were no aerial photographs for 1955, the County had only topographical copies, and a private Winchester firm had none of the area for that time. He refuted staff's position as contained in the staff report and addendum, that the Crabtrees had not demonstrated concrete evidence to prove that tractor trailer trucks were parked on the property in the 1950s. He pointed out that it was the

appellant's position through their personal testimony and that of their family members, as well as several witnesses who professed the use existed fifty years ago. Mr. Phillips utilized the overhead projector to show photographs and asked that Mrs. Crabtree identify the pictures.

Beulah M. Crabtree, 5401 Ruby Drive, Fairfax, Virginia, pointed out a dump truck that was parked about one year after they moved onto the property.

Responding to Mr. Phillip's questions, Curtis A. Crabtree, 5401 Ruby Drive, Fairfax, Virginia, said he purchased the property from Mr. John Vermcoy in 1956, that his profession was a truck driver for Mr. Vermooy's paving business, that there were as many as ten trucks utilized for the business, and there were several other similar businesses requiring trucking in the area. Mr. Crabtree said there were four trucks on the property since 1955, as there were currently.

Mr. Phillips clarified that the nature of the violation was that Mr. Crabtree was storing more than one commercial vehicle on the property. He noted that he had been parking several trucks since 1956, it was not a business that required a license, that it was in harmony with the character of the neighborhood, and that the use was grandfathered.

In response to Mr. Beard's question concerning a nonconforming use, Elizabeth Stasiak, Staff Coordinator, Zoning Administration Division, explained that a nonconforming use runs with the land and not the property owner, and that it could continue provided that the nonconforming use did not cease for more than two years.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that the decision was difficult because of how long ago the use may have commenced, the fact that there was not explicit recordation for either side, and the question of what was the character of the neighborhood at that time. He said that in his analysis, the appellants had not overcome the determination of the Zoning Administrator. Mr. Hammack then moved to uphold the determination of the Zoning Administrator. Mr. Pammel seconded the motion.

Mr. Hart said that determining the issue of this case was difficult, because there was not explicit recordation from fifty years ago. He said that he was persuaded on the evidence before the Board, the Zoning Ordinance language and based on testimony from witnesses and other activities within the neighborhood, the parking of trucks could be under a permitted scope, but there also was now an off-site ownership component. Mr. Hart said two tractor trailers continuously from 1955 and forward would have been nonconforming but there appeared to be some expansion with two tractor trailers and two dump trucks to four tractor trailers. He said he could not support the motion but he also did not believe that the four tractor trailer trucks were shown to be nonconforming.

Mr. Hammack pointed out that the recordation was unclear, and he agreed with Mr. Hart about the appearance of some expansion. He said he was concerned about the off-site ownership of some of the vehicles and that he believed it went outside the scope of the Ordinance. He said that as he understood it, the other uses that were referenced to establish nonconformance were illegal.

Mr. Beard suggested that the motion be modified to specify how many and what types of vehicles Mr. Crabtree would be allowed to keep.

Mr. Hart pointed out that the Board could determine to what extent the Zoning Administrator was correct or incorrect, and perhaps what was conforming or nonconforming, but the Board could not proceed to allow uses or, concerning specifics of a case, craft development conditions.

Mr. Beard commented that the Crabtree's situation seemed to have evolved from what may have qualified as nonconforming but could no longer be considered nonconforming, and he found the case very troubling as he would like to find for the appellants.

Chairman DiGiulian said he could not support the motion because he believed the two vehicles, or two just like them, were on the property since 1955.

Mr. Pammel said he could not find that the use was in harmony with the character of the neighborhood, nor could it be classified under the '41 Ordinance under an Agricultural and Forestry category.

Ms. Stehman pointed out that staff's position and the issue before the Board was that the four trucks were

never legally established. She said the Board was charged with either upholding or not upholding the Zoning Administrator's determination and that they could not attach limitations or conditions to that decision.

Chairman DiGiulian restated that the motion on the floor was to uphold the determination of the Zoning Administrator, and called for a vote.

The motion carried by a vote of 2-3 with Chairman DiGiulian, Mr. Beard and Mr. Hart opposed. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

Chairman DiGiulian noted that it would take four votes to overturn the Zoning Administrator's position and unless the Board deferred its decision to a date when all Board members were present and able to vote, the Zoning Administrator's position was upheld.

Mr. Hart then moved to uphold-in-part the determination of the Zoning Administrator, conditioning that two tractor trailers would be nonconforming based on the 1041 Ordinance language and the record before them.

Mr. Beard seconded the motion for purposes of discussion.

Mr. Hart clarified that the Board could and had upheld a part of the Zoning Administrator's position before. He said he did not believe the Board had the purview to dictate what trucks must be removed, but rather that two tractor trailer trucks consistently for 49 years under the '41 Ordinance were nonconforming, but with the stipulation that there be no more than two.

Discussion followed among Board members concerning the legality of operating trucks licensed in another jurisdiction, the fact that the dump trucks were not there for 49 years and the tractor trailer trucks were, the question of whether or not the business was established legally, and the question of deferral.

Mr. Beard made a substitute motion to defer the decision on Appeal 2004-SP-004 for one year to allow more time for research.

Mr. Hammack seconded the motion for purposes of discussion. He commented that the Board did not have the authority to make a use conforming or nonconforming but rather to allow a use to continue for a period of time at which time it could be terminated, and in this case, they did not have that authority. He said he had no objection for a deferral to allow more testimony or additional relevant information, but he thought the agent had researched diligently and attained what information was available, which was not a whole lot of facts. He pointed out that the use was within a residential area, and there was a question as to whether uses in the area were established legally as well as the fact that the Crabtrees were storing vehicles owned by another party and was that permitted under the Ordinance.

Mr. Beard called attention to his motion on the floor, and respectfully requested that the deferral be granted.

Mr. Hart commented that he thought a year deferral was too long, and that he would support a deferral to allow the full Board to vote.

Mr. Hammack said he concurred with a deferral to allow the presence of a full Board to decide the case.

Mr. Beard said he would amend his motion to defer A 2004-SP-004 to November 9, 2004.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Pammel requested that staff research for mere relevant facts relating to the agricultural district in 1941 and any other activities that may have occurred in that area, and if there were more aerial photos available, that could assist the Board in determining what lots may have been residentially developed.

Ms. Stehman said staff would double check aerial photographs for specific lots in the Vanooy development, and staff would provide a VCR tape of the public hearing for Ms. Gibb and Mr. Ribble.

//

~ ~ ~ September 28, 2004, After Agenda Item:

Approval of January 21, 2003; March 18, 2003; April 1, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 28, 2004, After Agenda Item:

Approval of September 21, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:11 p.m.

Minutes by: Paula A. McFarland

Approved on: April 8, 2008

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

J.F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 5, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit structure to remain 15.0 ft. with stoop 11.0 ft. from front lot line. Located at 4925 Twinbrook Rd. on approx. 5.16 AC. of land zoned R-1, Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with SPA 81-A-002-04). (Decision deferred from 3/16/04, 5/25/04, and 7/13/04).

Chairman DiGiulian noted that the applicant requested that VC 2004-BR-008 be deferred for decision to March 1, 2005.

Mr. Pammel commented that he did not understand why the applicant was required to go through the variance process when the building already existed and the problems were created by the taking of a right-of-way by the Virginia Department of Transportation (VDOT). He inquired as to why it could not be handled under a special permit. Susan Langdon, Special Permit and Variance Branch, explained that the provisions for a special permit for building in error were for buildings built in error. She said the subject building was built correctly and met the requirements that existed at the time it was built. She explained that there was a provision in the Zoning Ordinance that allowed up to a 20 percent reduction for any taking; however, it did not apply to the subject property as the taking was more than 20 percent. Ms. Langdon stated that the only option for the applicant was a variance.

Mr. Pammel asked why, if the State had taken more than the permitted 20 percent under a special permit, it had not acquired the entire property as it was no longer usable in its current condition. Ms. Langdon replied that the 20 percent allowable reduction was in the local Zoning Ordinance, and the structure was still set back from and not impacted by the road, so she said she assumed that was why VDOT had not also acquired the structure.

Mr. Pammel raised the question of whether there was truly a hardship with respect to the building and asked for staff's opinion. Ms. Langdon replied that staff felt it was a hardship.

Mr. Pammel moved to approve VC 2004-BR-008 for the following reasons. He said he felt the application clearly met the hardship provisions as specified under the Ordinance and State enabling legislation; the building currently existed, was approved at the time it was constructed, and met all the County requirements subsequent to its construction; VDOT acquired a right-of-way in front of the property creating the current situation; and under the provisions of the Ordinance, as staff noted, it fell under the variance procedure as opposed to the special permit procedure because the building met all the requirements of the Code at the time of construction.

The motion failed for lack of a second.

Mr. Hart moved to defer decision on VC 2004-BR-008 to March 1, 2005, at 9:00 a.m., at the applicant's request. Mr. Beard seconded the motion.

Mr. Pammel said he did not believe whatever would be done at the General Assembly would change the subject situation. He said the Board would be faced with the same situation at the later date and should instead move forward and allow the applicant to proceed with its project.

Mr. Hart indicated that he shared some of Mr. Pammel's observations about the case, but believed that under the rationale in the Cochran decision, the Board was not allowed to consider hardship without first clearing the hurdle of the owner being deprived of all reasonable beneficial use of the property taken as a whole. He said that although the subject case was closer than some of the others, the Board could not get to that point and was not allowed to consider hardship. He commented that by deferring decision as the applicant had requested, the Board would have an understanding of the results of the General Assembly,

and if matters were put back as they were before April 23, 2004, the Board could grant cases such as the subject application again.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0-1. Ms. Gibb abstained from the vote, and Mr. Hammack was not present for the vote.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. GEORGE C. VAN DYKE, TRUDI C. VAN DYKE, VC 2004-BR-104.

Chairman DiGiulian noted that VC 2004-BR-104 had been administratively moved to February 8, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. FREDERIC SURLS & MARY SURLS, SP 2004-SP-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.7 ft. from rear lot line. Located at 6159 Hatches Ct. on approx. 3,556 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 78-4 ((24)) 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frederic Surls, 6159 Hatches Court, Burke, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an addition, specifically an enclosed screen porch located under an existing approved deck, to remain 4.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a modification of 20.3 feet was requested. Ms. Hedrick reported that the applicants had purchased the property with the error existing and the statement in the staff report indicating the applicants had made the error was incorrect.

Mr. Surls presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife had purchased the property in August of 1993 from the original owners, who had owned the property since it was built in 1991 and had built a deck, for which they had a building permit, shortly after the original construction. He said the previous owners subsequently attached the screened porch onto the deck in the same footprint. He explained that as a result of a neighbor's complaint to the zoning authorities in April of 2004 that triggered an order to remove the porch, he and his wife had discovered that no building permit for the porch had been obtained by the previous owners, and it violated the required rear setback. Mr. Surls said they had purchased the home in good faith with no idea that the porch was unapproved and in violation, and he requested they be allowed to retain the porch through the approval of a special permit. He indicated he had a copy of Multiple Listing Service report that described the porch as an attribute of the home at the time of their purchase, which he offered to the Board.

Mr. Surls stated that the property was backed by County open space. He said he had a letter of support from the owners of the closest home, which was located to the right of their property on Lot 27 and whose deck was eight feet from the subject deck. He said the patio of the home located on other side of their property on Lot 25, which belonged to complainant, was approximately 70 feet from the subject deck. Mr. Surls stated that the porch was consistent with architecture of the community and did not detract from the appearance of the neighborhood or the value of neighboring properties, which he said several letters of support reflected. He stated that the homes on either side had been lived in for 10 to 13 years and at no time before April of 2004 did anyone approach them or the zoning authorities with concerns about the porch, and since no issues had been raised during the 11 years he and his wife had lived there, he said he wondered how serious the complaint was and whether it had resulted from other issues in the community. Mr. Surls said the removal of the porch would eliminate a significant amenity they paid for at the time of purchase and would adversely affect the value of the property. He pointed out that the porch appeared on the property tax description, and they had been taxed for it.

Mr. Pammel asked the applicants to confirm that they were not responsible for the construction or enclosure of the space beneath the deck, it had been done by the previous owners, and the property was purchased with the enclosed porch by the applicants, and Mr. Surls stated that was correct.

There were no speakers. Chairman DiGiulian noted that the Board had received one letter in opposition and three letters in support, and he closed the public hearing.

Mr. Hammack moved to approve SP 2004-SP-046 for the reasons stated in the Resolution.

//

CGUNTY OF FAIRPAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FREDERIC SURLS & MARY SURLS, SP 2004-SP-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.7 ft. from rear lot line. Located at 6159 Hatches Ct. on approx. 3,556 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 78-4 ((24)) 26. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 5, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants satisfied the required standards for the granting of a special permit under the mistake section.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the addition (deck and enclosed screened porch) as shown on the plat prepared by Alexandria Surveys, dated May 28, 2004, revised through July 16, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained within 30 days of approval of this special permit and approval of final inspections shall be obtained or this special permit is null and void.
3. The applicant shall seek administrative approval from the Zoning Administration Division, DPZ, to permit the deck, located 4.7 feet from the rear lot line (deck is permitted 5.0 feet from rear lot line), to remain, and to permit the enclosed screened porch, located 7.4 feet from side lot line (8.0 feet is required), to remain.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 13, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. RHODA Y. WATERS TRUST, VC 2004-BR-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 7.3 ft. from side lot line. Located at 8437 Chapelwood Ct. on approx. 12,091 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((23)) 19. (Admin. moved from 7/6/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-BR-066 had been withdrawn by the applicant.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1.

Chairman DiGiulian noted that SP 2004-DR-043 had been administratively moved to November 30, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. DONNA M. ECHOLS, VC 2004-LE-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory storage structure 5.0 ft. from side lot line, an addition 5.0 ft. with eave 4.0 ft. from side lot line and total side yards of 16.7 ft. Located at 7026 Polins Ct. on approx. 11,347 sq. ft. of land zoned R-2 (Cluster) and HD. Lee District. Tax Map 92-2 ((27)) 24. (Admin. moved from 7/6/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-LE-074 had been withdrawn by the applicant.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. BRAD CZIKA, VC 2004-BR-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30 percent and fence greater than 7.0 ft. in height to remain in rear yard and side yards. Located at 10411 Pearl St. on approx. 10,739 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with SP 2004-BR-020) (Admin. moved from 6/22/04 at appl. req.) (Decision Deferred from 6/29/04)

Chairman DiGiulian noted that the applicant had requested that VC 2004-BR-063 be deferred for decision to March 8, 2005.

Mr. Hammack moved to defer decision on VC 2004-BR-063 to March 8, 2005, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion.

Mr. Pammel inquired as to whether the concurrent special permit was included in the request for the decision deferral. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board had previously acted on and approved the special permit.

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

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. RICHARD G. WARGOWSKY, TRUSTEE, VC 2004-MA-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. with eave 2.5 ft. from side lot line and 12.5 ft. with eave 11.5 ft. from rear lot line. Located at 4503 Highland Green Ct. on approx. 5,741 sq. ft. of land zoned PDH-8. Mason District. Tax Map 72-1 ((26)) (2) 36.

Chairman DiGiulian noted that VC 2004-MA-103 had been administratively moved to April 5, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 2004-MA-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. with eave 9.0 ft. from one side lot line and 12.0 ft. with eave 11.0 ft. from other side lot line. Located at 6449 Hclyoke Dr. on approx. 9,413 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 31. (Admin. moved from 6/22/04 at appl. req.) (Deferred from 6/29/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MA-061 had been withdrawn by the applicant.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. RANDALL K. & SONJA S. BJORKLUND, SP 2004-BR-045 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 10708 Marlborough Rd. on approx. 22,965 sq. ft. of land zoned R-1. Braddock District. Tax Map 68-1 ((7)) 40.

Chairman DiGiulian noted that SP 2004-BR-045 had been withdrawn by the applicants.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:00 A.M. ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit an

increase in seats and land area, building additions and site modifications. Located at 6531 and 6525 Little Ox Rd., 10915 Olm Dr., 6400 Stoney Rd. and 6340 Sydney Rd. on approx. 16.7 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 34 and 87-1 ((1)) 2, 2A, 5 and 6. (Admin. moved from 2/10/04 and 5/4/04 at appl. req.) (Deferred from 6/22/04 at appl. req.) (Decision deferred from 7/13/04)

Chairman DiGiulian asked staff whether they had any additional comments. Mavis Stanfield, Senior Staff Coordinator, advised the Board that revised development conditions had been distributed to the Board at the hearing, one of which had been added by staff, which had been referenced at the previous hearing and provided that the permit would be null and void if the wetlands permit was not approved.

Chairman DiGiulian noted that the application had been deferred for decision only, and he called for a motion.

Mr. Hammack asked whether staff or the applicant had any objection to the revised development conditions. Ms. Stanfield stated that staff had no objection and explained that the applicant had submitted all of the revisions with the exception of the wetlands condition submitted by staff.

Regarding Development Condition 20 dealing with the proposed septic drainfield, Mr. Hammack asked what would happen if the effluent escaped from the containment tanks and caused contamination of the adjacent neighbor's well water or resulted in effluent being discharged into Burke Lake. Ms. Stanfield stated that she would defer to the applicant's consultant to answer the question.

Mr. Hammack asked whether the church would be shut down. Ms. Stanfield replied that it would be up to the judgment of the Health Department as to whether the contamination could be contained and the church could continue operation, but if it could not, the church would have to be closed down.

Regarding a letter received from the chairman of the Wetlands Board on Fairfax County stationery, Mr. Hart asked staff to address whether the Wetlands Board had any role in the approval of either the wetlands permit or the subject application. Ms. Stanfield said she had a letter dated September 20, 2004, from the staff for the Wetlands Board which stated that the Wetlands Board did not have jurisdiction over non-title wetlands.

Mr. Hart said he was referring to a different letter from Ms. Booth as the chairman of the Wetland Board, and he asked whether it was from Ms. Booth individually using Fairfax County stationery or from the Wetlands Board officially. He added that he thought it was the former. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not know whether the entire Wetlands Board had voted on the issue of sending the letter, but she stated that the Wetlands Board had no jurisdiction over non-title wetlands and only dealt with title wetlands.

Mr. Hammack asked whether all the Board members had seen the e-mail from Ms. Stanfield sent the prior day which noted that there were difficulties with the transmission to Chairman DiGiulian and Mr. Ribblo. Mr. Pammel said he had not received it. Ms. Gibb and Mr. Hart indicated they had seen it. Mr. Ribblo viewed a copy at the hearing.

Mr. Hart moved to approve SPA 90-S-057-2 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Beard stated that he would not support the motion because the size of the expansion was not harmonious to the proximity, particularly with regard to the septic and traffic situations. He said he found it interesting and compelling that the neighborhood and the people in the immediate area were not concerned about an expansion, but were only concerned about a reasonable expansion. He stated that there was no doubt about the integrity and the asset the church was to the community, but a reasonable expansion was what was called for. Mr. Beard stated that the proposed expansion was incompatible with the character of the surrounding area.

Mr. Pammel stated that he would not support the motion for the reasons given by Mr. Beard and also because, although there was support for an expansion, he had concerns regarding the application before the Board requesting a quadruple increase from a 400-seat to a 1,500-seat capacity for the church. He said that while looking through the tremendous amount of material in the record, he noticed the proposed activity level of functions every day of the week from 7:00 a.m. or 8:00 a.m. until 10:00 p.m., which he said was a lot of activity for the community to absorb. He said he could support something more modest, but not 1,500 seats.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTIOCH BAPTIST CHURCH, SPA 90-S-057-2 Appl. under Sect(s). 3-103 and 3-C03 of the Zoning Ordinance to amend SP 90-S-057 previously approved for a church to permit an increase in seats and land area, building additions and site modifications. Located at 6531 and 6525 Little Ox Rd., 10915 Olm Dr., 6400 Stoney Rd. and 6340 Sydney Rd. on approx. 18.7 ac. of land zoned R-1, R-C and WS. Springfield District. Tax Map 77-3 ((3)) 27, 34 and 87-1 ((1)) 2, 2A, 5 and 6. (Admin. moved from 2/10/04 and 5/4/04 at appl. req.) (Deferred from 6/22/04 at appl. req.) (Decision deferred from 7/13/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 5, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general standards for special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the Zoning Ordinance.
3. When the original SPA was approved, there were no speakers and a much smaller volume of correspondence received than on the current application.
4. The placement of churches in residential areas can be controversial, yet throughout Fairfax County, churches are integrated into residential neighborhoods.
5. The function of the BZA includes a determination of whether a church application has met the applicable standards in the Zoning Ordinance, and under the State Code, what Development Conditions might be appropriate to mitigate any impacts from the use.
6. The revised Development Conditions appropriately mitigate the impacts from the proposed facility.
7. To some extent, the size of the facility is maxed out, but given the BZA's consistency with other applications and how the impacts are mitigated, the Development Conditions are appropriate.
8. All the opposition may not be on the same page as to the size of the facility and how the square footage is computed.
9. The structure will not be as large as the National Cathedral, as some of the correspondence suggested.
10. The size of the new building is 80,000 square feet, not 130,000 or 140,000.
11. Things are measured in different ways with cellars and basements being construed in a uniform way throughout the Zoning Ordinance, with a basement counting and a collar not counting, and perhaps that is the reason for the difference.
12. Staff has carefully considered the church in the context of many other churches in residential neighborhoods.
13. The extensive Development Conditions have been modified, and in general those changes since the original public hearing are appropriate and further mitigate any impacts, particularly Development Condition 24, which provides that in the event that a wetlands permit is denied, the special permit shall be null and void.
14. The wetlands are non-title, a manmade farm pond created sometime in the '50s or '60s, which is not spring fed, and staff did not object to the proposed resolution through a land bank in Prince William County, with there being no alternative in Fairfax County.
15. Staff is recommending approval.
16. With the revised Development Conditions, the impact would not harm the adjacent properties.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Antioch Baptist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 6531 Little Ox Road, 6525 and 6531 Little Ox Road, 10915 Olm Drive, 6400 Stoney Road and 6340 Sydney Road and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Steven Edward Gleason, William H. Gordon Associates, Inc., dated May 8, 2003, as revised through April 22, 2004, sheets one (1) through eight (8) and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 1,500.
6. There shall be no seats/worship services in the building located on Lot 6; this building shall be converted to a fellowship hall with ancillary support uses.
7. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site. There shall be no overflow parking permitted along adjacent subdivision streets. The applicant shall make all members aware of this restriction. In addition, the applicant will encourage car-pooling among its members and shall designate a person within the Church administration to act as a contact for neighbors with traffic concerns.
8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat, with the following additions:
 - In the event that a storm sewer easement is not required on adjacent Lots 28 and 29, the easement area shown on the plat shall be preserved with existing vegetation and planted with additional trees commensurate with the other transitional screening areas along the northern lot line. If an easement is required and is obtained, a barrier shall be installed across the cleared area and plantings shall be provided, as determined by DPWES, on the north side of the barrier to minimize the view of the subject property.
 - Transitional screening consisting of a minimum of 25.0 feet in width shall be provided on the southern edge of the proposed septic drainage, along Little Ox Road to shield the view of the parking area and buildings from the road.

Notwithstanding that which is shown on the plat, the extent of tree preservation shall be the greatest extent possible on-site, as determined by the Urban Forest Management Branch, DPWES and supplemental plantings over and above that which is shown on the plat as determined by the Urban Forest Management Branch. The size, species and location of all supplemental and transitional screening plantings shall be determined in consultation with the Urban Forest Management Branch, DPWES and shall provide at a minimum Transitional Screening 1 along the northern and southern lot lines of Lot 2 and 2A and the northern lot lines of Lots 5 and 34.

A tree preservation plan shall be submitted to the Urban Forest Management Branch for review and approval at the time of site plan review. This plan shall designate, at a minimum, the limits of clearing and grading as delineated on the special permit plat in order to preserve to the greatest extent possible individual trees or tree stands that may be impacted by construction.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing a minimum of four feet in height to be placed at the dripline of the trees to be preserved.

Tree protection fencing in the form of a four foot high 14 gauge welded wire fence attached to six foot steel posts driven 18 inches into the ground and placed no further than ten feet apart, shall be erected at the final limits of clearing and grading and shown on the erosion and sediment control sheets. Tree protection fencing shall only be required for tree save areas adjacent to clearing and grading activities. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any construction work being conducted on the Application Property. A certified arborist shall monitor the installation of the tree protection fencing and verify in writing that the tree protection fence has been properly installed. Three days prior to commencement of any clearing and grading, the Urban Forest Management Branch shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

9. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with the Urban Forest Management Branch of DPWES.
10. The barrier requirement shall be waived, except for Lot 6 and as qualified by these conditions.
11. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with the Urban Forest Management Branch of DPWES, at the time of site plan review.
12. The limits of clearing and grading shall be no greater than as shown on the SP Plat or as modified by these conditions and shall be strictly adhered to. A grading plan which establishes the final limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forest Management Branch, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forest Management Branch, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
13. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. Low Impact Design (LID) facilities shall be provided as depicted on the plat, and as approved by DPWES. The underground stormwater management/Best Management Practices facility may be reduced in size or removed if it is determined by DPWES that the LID facilities can adequately accommodate stormwater volume and quality requirements. The applicant shall enter into an agreement with DPWES, in such a form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and procedure for the underground detention facility.
14. Right-of-way dedication shall be provided as depicted on the plat, or as determined by the Department of Transportation and the Virginia Department of Transportation (VDOT). The right-of-way 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.
15. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half after any event held at the church. Outdoor building-mounted security lighting shall be shielded to prevent off-site glare.
16. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
17. The applicant shall seek to abandon Stoney Road, where it bisects the subject application property, subject to approval of VDOT. Should the abandonment be approved, the applicant shall scarify the existing road pavement and revegetate the area, while allowing unimpeded pedestrian traffic from Lot 6 to the adjacent application properties. The applicant shall scarify and revegetate the roadway in accordance to procedures approved by the Urban Forest Management Branch, DPWES. In

addition, if the abandonment of Stoney Road is approved, the applicant shall provide a cul-de-sac in the general location depicted on the attached schematic (Attachment 1).

18. In order to ensure safe and expedient access to and from the church during Sunday morning church services, the applicant shall provide police assistance for traffic control. The police shall direct traffic at the main entrance to the Church. Additionally, the applicant shall install directional signs on site to assist motorists entering and existing the property.
19. The dwelling on Lot 27 shall be used only as a residence and occupied only by an employee or member of the church and his/her family.
20. The proposed septic drainfield shall be subject to review by the Fairfax County Health Department. Groundwater mounding and nitrate loading calculations shall be conducted and shall meet the required standards of the County and the State. Groundwater monitoring wells shall be provided in the areas shown on the special permit plat or in areas designated by the County. Pretreatment of effluent shall be provided. Finally, an equalization tank shall be utilized to mitigate peak flows. If the proposed septic drainfield cannot accommodate the application proposal, the applicant shall be required to apply for a special permit amendment.
21. The church building construction shall be generally consistent with the architecture presented in the attached elevations (Attachment 2). Building materials such as face brick, architectural precast stone, wood/vinyl siding or other building material which is residential in character shall be utilized to complement the surrounding communities.
22. If warranted at the time of site plan approval to provide storage capacity, the applicant shall design and construct a left turn lane on Little Ox Road, within the existing right-of-way, into the main entrance of the property.
23. The maximum building height shall be 35 feet per Fairfax County Zoning Ordinance definition of building height.
24. In the event that a wetlands permit is denied, this special permit amendment shall be null and void.

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

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

Ms. Gibb seconded the motion, which **FAILED**** by a vote of 2-5; **THEREFORE, THE APPLICATION WAS DENIED.** Chairman DiGiulian, Mr. Beard, Mr. Ribble, Mr. Pammel, and Mr. Hammack voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 13, 2004. This date shall be deemed to be the final decision date of this special permit.

**Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:30 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8)) (2) 2A. (Admin. moved from 3/16/04, 4/27/04, 5/11/04, and 6/22/04 at appl req.)

Chairman DiGiulian noted that the agenda indicated a withdrawal was pending.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellants had not complied with the notice requirements and were not present at the hearing. She explained that staff had been working with the appellants, and it was anticipated that the accessory structure which was the cause of the violation would be moved within approximately two weeks.

Chairman DiGiulian asked whether staff thought the Board should dismiss the appeal. Ms. Stehman replied that she would be in favor of a dismissal and pointed out that the violation was nearly one year old and that staff had worked with the appellants to administratively move the hearing date several times. She said that each time the hearing was moved, the appellants indicated they would have the issue resolved and have not done so.

Chairman DiGiulian noted that the staff report indicated that the appellants were working toward a resolution and had obtained two permits to move the shed, and he said he thought the Board should defer the appeal rather than dismissing it in the appellants' absence.

Mr. Hammack moved to defer A 2003-SP-055 for one week, following which he stated that would not be sufficient time to get the notices in order. The motion failed for lack of a second.

Ms. Stehman advised the Board that the appellants had not picked up the notice materials and instructions from the post office and had done nothing to notice the surrounding property owners. She explained that it was not a matter of correcting one or two notices, but rather staff preparing new notice materials and the appellants posting the notices. In answer to Chairman DiGiulian's question regarding the length of deferral necessary to put the notices in order, Ms. Stehman replied that it would take at least a month.

Mr. Ribble moved to defer A 2003-SP-055 to November 9, 2004, at 9:30 a.m., with notification to be given to the appellants that the appeal would be dismissed if they did not meet the notice requirements prior to the hearing. Ms. Oibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:30 A.M. ANDROULA DEMETRIOU, A 2004-MV-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's property contains two dwelling units in violation of Zoning Ordinance provisions. Located at 8618 Richmond Hwy. on approx. 9,583 sq. ft. of land zoned R-2, HC and CRD. Mt. Vernon District. Tax Map 101-3 ((1)) 65G. (Admin. moved from 7/27/04 at appl. req.)

Demetrios Pikrallidas, attorney for the appellant, came to the podium and stated that his co-counsel, Kevin Wright (phonetic), and the appellant were present.

Mr. Hammack gave a disclosure that he and the appellant's counsel owed interests in the same condominium and indicated that he would recuse himself from the public hearing.

Leslie Diamond, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 27, 2004. She stated that the appeal was of a determination that the appellant's property contained two dwelling units in violation of Section 2-501 of the Zoning Ordinance. She explained that as a result of a complaint from the Health Department alleging that the second floor of the property was being used as a second dwelling, Zoning Enforcement staff conducted a site inspection on March 26, 2004, during which a separate apartment was observed which included a kitchen, bathroom, living, and bedrooms on the second level of the dwelling, with the second dwelling having a separate exterior access and no interior

access from the lower level of the dwelling. Ms. Diamond reported that a Notice of Violation was issued to the appellant.

Ms. Gibb asked how the Health Department found out about the situation. Ms. Diamond stated she would defer the question to Michael Simms, Zoning Enforcement Branch. Mr. Simms stated that he was unaware of how the situation came to the attention of the Health Department. He explained that a complaint had been received by the Zoning Enforcement Branch from a health inspector, which indicated he had conducted an inspection and discovered the second dwelling.

Mr. Ribble asked whether it would make a difference if the upper level had access from the lower level. Ms. Diamond responded that having no access between the levels would indicate that it was a separate unit and did not have one family living in the dwelling.

Mr. Ribble asked Ms. Diamond to confirm that there was only the one exterior entrance to the upper level, which she confirmed and added that there was no interior access to the lower level.

Mr. Ribble asked whether it would make a difference if the lower level had an interior access to the upper level, to which Ms. Diamond replied no, probably not.

Mr. Hart asked whether there was a special permit application that would remedy the situation or a way to apply on the subject lot to have an accessory dwelling unit such as a finished off apartment in an upstairs. Ms. Diamond replied that the appellant could apply for a special permit.

Mr. Hart asked whether the lot was large enough to do so. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, indicated that she thought it would be difficult for the appellant to qualify not only because of the size of the lot, but also the size of the dwelling unit in relation to the area of the entire house.

Mr. Hart commented that often in letters of violation it says you have a violation, get rid of it, or you could fix it by, instead of tearing it out, filing an application to do something, but the subject letter did not say that. He said he thought at one point there was some effort to encourage affordable senior citizen apartments and houses and asked whether the subject house was eligible for a special permit to have an accessory dwelling unit upstairs, if correctly applied for. Ms. Stehman stated that there was no limit on the size of the lot if it was to be an attached dwelling, but there was a two-acre minimum lot size if the accessory dwelling was to be detached. She said there was a limitation that the floor area of the accessory dwelling unit shall not exceed 35 percent of the gross floor area of the principal dwelling unit, and the accessory unit could not contain more than two bedrooms. She said she was not certain what the square footage of each of the units were, but it appeared that the dwelling would be eligible for that type of special permit if it met that test.

Mr. Hart asked staff to clarify that aside from the requirements regarding who had to live in it, if the upstairs apartment was 35 percent or less, then theoretically the appellant could get a special permit to have an upstairs apartment if it were small enough, and Ms. Stehman said yes.

Ms. Gibb asked whether one of the occupants would have to be over 55 years of age or disabled. Ms. Stehman said that was correct and added that it did not matter whether the principal or the accessory unit had the elderly or disabled person as long as one of the units met that standard.

Mr. Ribble asked whether the square footage of the basement or cellar would be included in calculating the 35 percent. Ms. Stehman replied that the basement area would be included in the square footage only if it was finished living area.

Mr. Pikrallidas presented the arguments forming the basis for the appeal. He said he was unaware whether the Board members received the letter he had sent to the clerk stating the appellant's position. He stated that the appellant had purchased the property in 1986, and the condition had preexisted back to 1963. Mr. Pikrallidas indicated that through research he had received documentation, which he provided to the Board, indicating that on December 17, 1963, there were two apartments, and he stated that the appellant had made no structural change to the unit other than maintenance on the building since purchasing it in 1986. He said the appellant had resided at the property since 1969, and the building had not changed. He stated that this should be grandfathered in. Mr. Pikrallidas said that having seniors live in an upstairs apartment would seem counterintuitive given the fact that most seniors would have problems going up and down stairs if they had any type of physical ailment to the legs. He stated that the appellant had been taxed and the unit had been taxed since before 1976 as two apartments. He explained that although the bottom unit was

currently vacant, the appellant had been continuously renting to people through Section 8 housing, of which he said there was currently a shortage. Regarding health violations, Mr. Pikrallidas said there had been some issues with past tenants, and the easiest way to get action was to call the Health Department, but he said he did not believe the appellant had ever been cited with any type of health violation. He indicated that the applicable Zoning Ordinance took effect on August 14, 1976.

Ms. Gibb asked on what date the condition would have to have existed in order to be a nonconforming use. Ms. Stehman answered that it would have had to predate the 1959 Zoning Ordinance when the initial prohibition on two dwelling units was adopted into the Ordinance.

Ms. Gibb stated that the Board had received a copy of the tax assessment records provided by the appellant, and she asked how the appellant had obtained them. Mr. Pikrallidas said they obtained them from the real estate assessment office.

Ms. Gibb asked whether the information reflecting the two apartments was circled on the records, to which Mr. Wright replied affirmatively.

Ms. Gibb asked the appellant if they had any records earlier than 1958 and asked staff if that was the pertinent date. Ms. Stehman replied that the Ordinance had taken effect on September 1, 1959. Mr. Pikrallidas stated that the appellant had no evidence from 1958 and had only the 1963 document provided to the Board showing two apartments, and he added that there had been no violations since.

Ms. Gibb asked whether the applicant had requested any earlier tax assessment records. Mr. Pikrallidas said they had not because the information they had indicated the pertinent Zoning Ordinance took effect in 1978. He added that he would be surprised, given the age of the building and when it was built, if it had been changed or modified since it was originally built.

Ms. Gibb said the 1960 remarks in the document said no changes in value per complaint.

Mr. Hart commented that the current Zoning Ordinance was adopted in 1976, but that he thought the 1959 Ordinance had a provision preventing more than one dwelling on any one lot under Section 4.4.2. He said the Board would need to know whether the second apartment existed prior to 1959 in order to determine whether it was nonconforming, and in looking at the assessment card, the earliest entry was 1960 where it indicated no change in value per complaint, which he said suggested that something was there in 1960 that had not changed. He said that if there was an older page, it might say whether there was a house or two apartments. Mr. Hart commented that since the appellant did not live in the building, she would probably not be interested in a special permit.

Ms. Gibb noted that the Ordinance said one unit per parcel or lot and asked whether the fact that the dwelling was on three lots had any relevance. Ms. Stehman replied that it did not because if a house covered three lots, the lots were consolidated into one lot by virtue of the building permit and the dwelling.

Mr. Pammel asked when the structure was built. Ms. Stehman replied that it was built in 1938 according to the assessment records, and she said the County historic preservation planner was consulted and indicated that the dormer was a later addition that was likely added in the '50s or '60s when the shed dormers became more popular. Ms. Stehman stated that staff would dispute the idea that the house was constructed in its present configuration in 1938, and there was no evidence in the County's files to indicate that any building permits or other approvals were granted for the construction of the second dwelling unit.

Ms. Gibb commented that the applicant had not said it was built in 1938, but had said that it was built prior to 1978 and had evidence that it was built at least by 1960. She asked staff to clarify that it had to be built before September 1, 1959. Ms. Stehman replied that the September 1, 1959 Ordinance explicitly said no more than one dwelling unit was allowed on a lot, but she said that under the 1941 Ordinance, it was staff's position that only one dwelling unit per lot was allowed. She noted that there was an amendment to the Ordinance in 1946 to allow a duplex unit on a lot, and this amendment would not have been required if more than one unit on a lot were allowed. Subsequently, through amendment duplexes were eliminated and semi-detached units were allowed. Thus, she said staff would maintain that throughout the existence of the Ordinance, only one dwelling per lot was allowed.

Ms. Gibb asked whether Section 8 housing was administered through the County or the State. Ms. Stehman explained that Section 8 was a federal program that was operated by the Department of Housing and Urban Development and was operated in Fairfax County by the Fairfax County Housing Authority.

Chairman DiGiulian called for speakers. There were no speakers.

Ms. Stehman noted that staff had also contacted the Tax Administration Office the prior day upon receipt of the facsimile transmission regarding the assessment cards and was told that only the one card existed; however, she added that staff would support checking for another card. She said staff believed the dwelling unit would have to have been in existence prior to 1941 for it to be truly nonconforming.

Mr. Pikrallidas stated that they had no evidence to indicate that the building had been changed from its original structure, but the applicant would like the opportunity to check for the existence of any additional tax assessment cards.

Mr. Pammel commented that staff had indicated that duplexes had been added to the Ordinance in 1946, and he requested additional information regarding when duplexes were removed from the Ordinance. He said it might have some bearing because if the structure was built in 1938, a duplex conceivably could have been added during the time it was permitted by right. Ms. Stehman replied that duplexes were allowed only by a special permit. She reported that the special permit files and the minutes of the Board of Zoning Appeals were checked by staff, and there were no permits approved, but she said staff would provide the Board with the chain of the amendments.

Mr. Pammel moved to continue A 2004-MV-012 to December 21, 2004, at 9:30 a.m., for further information and decision. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

Ms. Gibb asked if a clearer copy of the tax assessment card or the original card could be provided at the continuation of the hearing.

Mr. Hart asked that the Board be provided with the exact text of the pertinent Ordinance provisions instead of staff's narrative regarding the dates. Ms. Stehman said the text of the verbatims reflecting the exact wording would be provided to the Board.

//

~ ~ ~ October 5, 2004, Scheduled case of:

9:30 A.M. WILLIAM P. AND MARY G. OEHRLEIN, A 2003-MV-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Talbert Rd. does not meet the definition of street as set forth in the Fairfax County Zoning Ordinance and, as such, lot width cannot be measured along Talbert Rd. for Lots 2 through 5 of the proposed Giles Glenn Subdivision. Located at 9000 Hoes Rd. on approx. 10.0 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 15. (Moved from 2/3/04 due to inclement weather) (Deferred from 3/2/04, 4/13/04, and 7/20/04 at appl. req.)

Chairman DiGiulian noted that a letter had been received from Jack Connor, the appellants' agent, requesting a withdrawal.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that the letter withdrawing the appeal had been received the prior afternoon, and when asked by Chairman DiGiulian whether a motion was needed, she replied that it was not required.

//

~ ~ ~ October 5, 2004, After Agenda Item:

Request for Additional Time
Victor S. Mahal, VC 99-Y-192

Mr. Pammel moved to approve 12 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was September 15, 2005.

//

~ ~ ~ October 5, 2004, After Agenda Item:

Approval of January 28, 2003; April 22, 2003; and June 3, 2003 Minutes

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

//

~ ~ ~ October 5, 2004, After Agenda Item:

Approval of September 28, 2004 Resolutions


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

//


As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: Kathleen A. Knoth

Approved on: November 2, 2004



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 12, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. John Ribble was absent from the meeting.

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

~ ~ ~ October 12, 2004, Scheduled case of:

ECONOMY BUILDING & SUPPLIES, INC., VC 2004-BR-066, in association with RZ 2004-BR-017.

Chairman DiGiulian noted that VC 2004-BR-066 had been withdrawn by the applicant.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE BETHLEHEM BAPTIST CHURCH (A/K/A) FAIR OAKS BAPTIST CHURCH, SPA 80-S-067-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-S-067 previously approved for a church and school of general education to permit a reduction in land area and change in permittee. Located at 4601 West Ox Rd. on approx. 29.08 ac. of land zoned R-1. Springfield District. Tax Map 56-1 ((1)) 11H; (Formerly known as 56-1 ((1)) 10, 11C, 11E and 11G.)

Chairman DiGiulian noted that SPA 80-S-067-02 had been administratively moved to November 2, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. MARY A. PETTIT, TR., VC 2004-SP-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. with eave 18.8 ft. from rear lot line. Located at 6668 Old Blacksmith Dr. on approx. 9,069 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Pettit, 6668 Old Blacksmith Drive, Burke, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition, specifically a sunroom, 19.8 feet with eave 18.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, variances of 5.2 feet and 3.2 feet, respectively, were requested.

Ms. Pettit presented the variance request as outlined in the statement of justification submitted with the application. She said her property was next to park land in the Cherry Run Subdivision. Ms. Pettit described the back yard as being very shallow and said the upper deck had been built eight years prior. She showed photographs of the property. She said in the previous few years there had been extreme mosquito infestations which had made it intolerable to use her deck. She expressed concern over the health issues associated with the West Nile virus and said that was why she wanted to enclose the upper part of the deck. Ms. Pettit noted a slope coming down from her property to Cherry Run and an underground stream draining into Cherry Run through her backyard and under part of her house, which was built on rock. She said the insect problem on her property resulted from it being located close to the park land and Cherry Run. Ms. Pettit said the houses behind her would not be impacted by the addition because they were built on a triangular cul-de-sac, and that the homeowners association and neighbors approved of the proposed addition.

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

Ms. Pettit said, in light of the Supreme Court decision, if it was the intent of the Board to deny the variance, she would request a deferral until March 22, 2005.

Mr. Hammack moved to defer decision on VC 2004-SP-105 to March 22, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. THE HEIRS OF RODERIC M. SWAIN, VC 2004-PR-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 10.0 ft. from a front lot line. Located at 10623 Marbury Rd. on approx. 1.0 ac. of land zoned R-1. Providence District. Tax Map 47-1 ((1)) 6. (Admin. moved from 7/6/64 at appl. req.)

Chairman DiGiulian noted that VC 2004-PR-067 had been withdrawn by the applicants.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. CARL J. UNTERKOFER, SP 2004-SU-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with VC 2004-SU-041). (Deferred from 6/1/04 at appl. req.)

9:00 A.M. CARL J. UNTERKOFER, VC 2004-SU-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. with eave 3.1 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with SP 2004-SU-012). (Deferred from 6/1/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-SU-012 and VC 2004-SU-041 had been administratively moved to March 1, 2005, at 9:00 a.m.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. CLIFTON H. COLEE AND GIUSEPPINA A. COLEE, SP 2004-BR-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.7 ft. with eave 14.7 ft. and stairs to remain 11.4 ft. and 11.8 ft. and deck to remain 12.8 ft. from front lot line. Located at 9585 Pine Meadows La. on approx. 9,773 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 89-3 ((21)) 1.

Chairman DiGiulian noted that SP 2004-BR-047 had been administratively moved to September 28, 2004, at 9:00 a.m., at the applicants' request.

Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that it had been moved up and heard by the Board two weeks prior.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. ROMULO AND BIANCA B. CASTRO, VC 2004-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.5 ft. from front lot line. Located at

2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 106. (Concurrent with SP 2004-PR-034). (Moved from 7/27/04 for notices)

9:00 A.M. ROMULO CASTRO, SP 2004-PR-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit trellis to remain 7.0 ft. from side and 3.0 ft. from rear lot line, accessory storage structure to remain 3.0 ft. from side and 3.0 ft. from rear lot line, roofed deck to remain 0.6 ft. from front and dwelling to remain 6.0 ft. from front lot line and 2.0 ft. from side lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 106. (Concurrent with VC 2004-PR-087). (Moved from 7/27/04 for notices)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Romulo Castro, 2822 Douglass Avenue, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 12.5 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 17.5 feet was requested. The applicant also requested a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit an accessory structure, specifically a trellis, 9.0 feet in height to remain 7.0 feet from the side lot line and 3.0 feet from the rear lot line; a shed to remain 3.0 feet from the side and rear lot lines; a roofed deck to remain 0.6 feet from the front lot line; and a dwelling to remain 8.0 feet from the front lot line and 2.0 feet from the side lot line. A minimum side yard of 10.0 feet, minimum rear yards of 9.0 feet and 11.0 feet and a minimum front yard of 30.0 feet is required; therefore, reductions of 3.0 feet, 6.0 feet, 7.0 feet, 8.0 feet, 29.4 feet, 24.0 feet and 8.0 feet, respectively, were requested.

Mr. Castro presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Castro said the house was too small for him. He said the distance from the property line to the house was six feet, and he wanted the addition to go cut to 12 feet or 12.5 feet. Mr. Castro said he was told he had to go 25 feet from the property line, and that would not leave much of a backyard for his children.

Mr. Castro replied to Mr. Hammack's question that he had owned the dwelling 12 years. He said the trellis had been there for more than 20 years and was there when he bought the house. Mr. Castro said the shed had been there for eight years and that he had added the shed after he purchased the house.

Mr. Sherman said the building permit from 1941 showed the house 20 feet from Douglass Avenue and five feet from the side lot line. He indicated that the original structure was built in 1922.

Mr. Hart asked whether the addition would be by right if it were shifted back so the front was 30 feet from the street. Mr. Sherman replied that it would be allowed by right if the addition were 30 feet from the front lot line and met the rear yard requirement.

Mr. Hart asked why a special permit was needed if the house was built in 1922 and it predated the Ordinance. Mr. Sherman replied that the building permit in 1941 showed the house had been constructed 20 feet from the lot line, and when they had accepted the building permit, they accepted it as an error in building location.

Mr. Hart asked why there was a building permit from 1941 if the house was built in 1922. Mr. Sherman responded that an addition and a shed had been added. Mr. Sherman said it came to the County's attention when the applicant requested a variance.

Ms. Gibb asked whether Douglass Avenue had been widened. Mr. Sherman said he was not sure. Mr. Castro said the County did widen the street in 1993 after he moved in. Ms. Lengdon explained that once the street was widened, it was measured from the new, and if it was less than 20 percent, it would be by right. She said that in this case it was more than 20 percent, so a special permit or a variance was needed, and it was accepted as a special permit for building in error since the original plat showed it 20 feet from the front lot line.

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

Mr. Pammel said since it was recorded in the last century, there were exclusionary provisions incorporated in

the deeds and titles as well as reversionary clauses, and those were all stricken in the 1960s when the law was amended to abolish those discriminatory practices that were recorded in the deeds. He stated that the applicant had presented a case before the board, particularly with regard to the special permit, because the structure today was the original foundation for the structure that was there in 1922. He said that the front yard had been reduced as a result of a taking, so it fell under the special permit provisions. Mr. Pammel commented that the conditions existed when Mr. Castro purchased the property in 1992.

Mr. Pammel moved to approve SP 2004-PR-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROMULO CASTRO, SP 2004-PR-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit trellis to remain 7.0 ft. from side and 3.0 ft. from rear lot line, accessory storage structure to remain 3.0 ft. from side and 3.0 ft. from rear lot line, roofed deck to remain 0.6 ft. from front and dwelling to remain 6.0 ft. from front lot line and 2.0 ft. from side lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 106. (Concurrent with VC 2004-PR-087). (Moved from 7/27/04 for noticas) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 12, 2004; and

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

1. The applicant is the owner of the land.
2. It appears the front yard was reduced by a taking.

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

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

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

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

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

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

1. This Special Permit is approved for the location of the dwelling, porch, shed and trellis as shown on the plat prepared by Lawrence H. Spilman, dated November 22, 2002, revised through March 28, 2003, submitted with this application and is not transferable to other land.

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

Mr. Hammack seconded the motion, which carried by a vote of 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 October 20, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Pammel explained that due to a recent Supreme Court decision, the Board could not grant a variance on a property where there was an existing dwelling structure. He added that he hoped there would be some changes forthcoming in the next six months and asked Mr. Castro if he wanted to defer the variance until March. Mr. Castro said that he wanted to defer.

Mr. Pammel moved to defer decision on VC 2004-PR-087 to March 22, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. WAYNE T. HENRICHS, VC 2004-DR-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory storage structure 5.8 ft. with eave 5.4 ft. from side lot line and 5.4 ft. with eave 5.0 ft. from rear lot line. Located at 2140 Haycack Rd. on approx. 10,295 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((6)) (E) 2.

Chairman DiGiulian noted that VC 2004-DR-106 had been administratively moved to February 1, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. SHAWN AND CATHLEEN BASSETT, VC 2004-MV-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 22.6 ft. with eave 21.5 ft., roofed deck 20.9 ft. with eave 19.6 ft. and a two-story addition 23.4 ft. from rear lot line. Located at 1606 Old Stage Road on approx. 12,136 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 5.

Chairman DiGiulian noted that VC 2004-MV-108 had been administratively moved to February 1, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. COMMONWEALTH HOMES LLC, VCA 94-D-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 94-D-153 to permit change in development condition. Located at 419 and 421 Walker Rd. on approx. 4.59 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 39A and 39B. (Deferred from 8/10/04 at appl. req.)

Chairman DiGiulian noted that VCA 94-D-153 had been administratively moved to January 11, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:00 A.M. RIDGEMONT MONTESSORI SCHOOL, INC. AND IGLESIA PALABRA VIVA, SPA 85-D-070-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-D-070 previously approved for a church with nursery school and private school of general education to permit change in permittee, increase in enrollment and change in development conditions. Located at 6519 Georgetown Pi. on approx. 1.43 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 4B. (Admin. moved from 9/28/04 at appl. req.)

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

Chairman DiGiulian noted that the Board had previously approved an intent to defer to November 16, 2004.

Mr. Hammack moved to defer SPA 85-D-070-02 to November 16, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to January 18, 2005, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ October 12, 2004, Scheduled case of:

9:30 A.M. JENNIFER CANTY/WILLIAM FRISCHLING, A 2004-DR-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are operating a Retail Sales Establishment and a Repair Service Establishment and are exceeding the home occupation use limitations on property in the RE District in violation of Zoning Ordinance provisions. Located at 802-A Olde Georgetown Ct. on approx. 2.77 ac of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 66C. (Admin. moved from 8/3/04 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-015 had been withdrawn by the appellants.

//

~ ~ ~ October 12, 2004, After Agenda Item:

Approval of BZA Meeting Dates for the last six months of 2005

Mr. Hammack moved to approve the meeting dates reflected in the September 28, 2004 memorandum from Kathleen A. Knoth, with the deletion of the following dates: July 5, 2005; October 4, 2005; and November 22, 2005. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ October 12, 2004, After Agenda Item:

Approval of June 10, 2003; June 17, 2003; and June 24, 2003 Minutes

Mr. Pammel moved to approve the June 10, 2003 and June 17, 2003 Minutes. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Mr. Hammack moved to approve the June 24, 2003 Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ October 12, 2004, After Agenda Item:

Approval of October 5, 2004 Resolutions

Mr. Hammack asked whether a request for reconsideration had been received regarding Antioch Baptist Church, SPA 90-S-057-2. Susan Langdon, Chief, Special Permit and Variance Branch, stated that no request had been received.

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

//

Chairman DiGiulian noted the Board had received a request for an intent to defer Sant Nirankari Mission, SP 2003-SU-045, from October 19, 2004, to October 26, 2004.

Chairman DiGiulian called for speakers to address the question of a deferral.

Cynthia Shang, 15121 Elk Run Road, Chantilly, Virginia, came forward to speak in opposition to the deferral request. She stated that she was appearing on behalf of the Pleasant Valley Community and noted that she had been appointed by the Board in August of 2004 to be the liaison between the Community and the applicant. She referred to an email sent to the Board regarding the deferral request. Ms. Shang said that according to the applicant, the request to not meet on October 19, 2004, was for the comfort of the Pleasant Valley residents, which she did not think was necessary. She said she did not see how a one-week deferral would provide any additional opportunity for the applicant to provide new changes and new instructions to the community considering the WFCCA Land Use Committee on September 21, 2004, denied their application until they reduced the size to be more harmonious, provided a left-turn stacking lane, and provided more transitional screening. She suggested that they meet on October 19, 2004, and asked the Board to deny the deferral request for October 26, 2004.

Mr. Hart said the applicant's agents wanted to go back to the WFCCA, which only meets once a month, and their meeting was scheduled for the evening of October 19, 2004, and they would need a one-week deferral if they met before the Board voted. Mr. Hart explained that the deferral request was due to a scheduling issue to allow them to return that evening. Ms. Shang said she did not see a need for them to attend the October 19, 2004 WFCCA meeting.

Mr. Hart moved to approve the intent to defer SP 2003-SU-045 to October 26, 2004, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that an Out of Turn Hearing Request had been received from Benjamin Leigh, the applicant's agent, regarding Flcris United Methodist Church, SPA 01-H-011.

Mr. Pammel gave a disclosure and indicated that he would recuse himself.

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

Mr. Leigh came forward to speak. He stated that Floris United Methodist Church had obtained special permit approval from the Board in September of 2001 for a church, nursery school, and day care center. He reported that in June of 2004 the County approved a site plan to allow construction to commence on the site, but in August of 2004 a number of issues arose involving discrepancies between the special permit plat and the site plan regarding the limits of clearing and grading. He said a contractor had made an error in clearing trees, and a special permit amendment application had been accepted by the County on October 5, 2004. He explained that the church had signed a contract with a commercial construction firm for \$6 million in June of 2004, but the County would not allow the contractor to pull the building permit, and the church faced a large delay damages claim from the contractor. He stated that the church had tried to expedite resolution with the community, and the neighboring homeowners association anticipated approval the following week of what it had agreed to regarding the landscaping plan. Mr. Leigh said the church was not planning to file litigation against the County, but it needed relief, and he requested that the hearing be scheduled in mid to late November.

Ms. Langdon advised the Board that the hearing was currently scheduled for the end of December. Mr. Leigh said it would be a problem if the building permit could not be pulled before then. Ms. Langdon explained that the application had been received on Thursday of the prior week and had been scheduled the following day for December 21, 2004, three weeks earlier than when it would have been routinely scheduled, and said to move it up earlier would make it difficult to meet the deadlines.

Mr. Leigh stated that the church had worked with the citizens concerning trees over 25 feet in height being transplanted onto the site, and the County had approved the site plan in June of 2004 based on that. He said the church had authorized the contractor to go forward, and the contractor would have a problem if it had to wait a few months.

Ms. Gibb asked if the issue for staff was amending the special permit with respect to the landscaping. Ms. Langdon said there were other potential issues, including parking and moving the playground. She reported that the interpretation request had shown that the applicant's limits of clearing and grading were incorrect and did not match the special permit plat, but were still submitted on the site plan, and the clearing had taken place. She said the position of the County was that the site plan was not consistent with the special permit.

Mr. Leigh said there had been no letter from the Zoning Administrator to appeal to the board. He said the clearing and grading was not consistent with the special permit, and the contractor had made an error and gone past the line. Mr. Leigh said the limits of clearing and grading shown on the special permit plat were different than those on the site plan. He pointed out that the property was zoned I-5, and the church was a by-right use.

Mr. Leigh asked that the hearing be scheduled on November 16, 2004. Ms. Langdon said that would be a very tight schedule for staff to meet.

Mr. Hammack asked how the applicant could be denied the building permits if the site plan had been approved. Ms. Langdon explained that the Zoning Administrator's interpretation indicated the Zoning Ordinance required conformance with both the site plan and special permit or special exception plat. Ms. Langdon said the applicant needed to amend the special permit plat.

Mr. Hammack moved to schedule the public hearing for SPA 01-H-011 on November 30, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

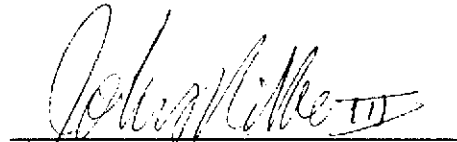
As there was no other business to come before the Board, the meeting was adjourned at 9:55 a.m.

Minutes by: Vanessa A. Bergh

Approved on: May 10, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 19, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. ROBERT L. HARLOW, JR., VCA 01-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 01-P-014 to permit construction of roofed deck 17.5 ft. with eave 16.5 ft., stoop 14.5 ft. and second story addition 24.5 ft. with eave 23.6 ft. and 25.5 ft. from front lot lines of a corner lot. Located at 2843 Summerfield Rd. on approx. 7,711 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with SPA 01-P-002).

9:00 A.M. ROBERT L. HARLOW, JR., SPA 01-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 01-P-002 to permit reduction in minimum yard requirements based on error in building location for carport to remain 1.6 ft. with eave 1.0 ft. from side lot line. Located at 2843 Summerfield Rd. on approx. 7,711 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with VCA 01-P-014).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pamela Harlow, 2842 Summerfield Road, Falls Church, Virginia, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit a carport to remain 1.6 feet with eave 1.0 foot from the side lot line. A minimum side yard of 10.0 feet with permitted extensions of 5.0 feet for the carport and 3.0 feet for the eave is required; therefore, modifications of 3.4 feet and 6.0 feet, respectively, were requested. The applicant requested a variance to permit the construction of a roofed deck 17.5 feet with eave 16.5 feet and a stoop 14.5 feet from the front lot line fronting Summerfield Road, and a second story addition 24.5 feet with eave 23.6 feet from the front lot line fronting Summerfield Road and 25.5 feet from the front lot line fronting Custis Parkway. A minimum front yard of 30 feet with permitted extensions of 3.0 feet for the eave and 5.0 feet for the stoop is required; therefore, modifications of 12.5 feet for the roofed deck, 10.5 feet for the eave, 10.5 feet for the stoop, 5.5 feet and 3.4 feet for the 2nd story addition and eave from Summerfield Road, and 4.5 feet for the 2nd story addition from Custis Parkway, respectively, were requested.

Referencing the special permit application, Ms. Harlow said that Mr. Harlow constructed the carport in good faith, and because the structure had no walls and was not enclosed, he had not realized it required a permit. She said the carport had no detrimental effect on the neighbors, and with respect to other properties and public streets, it did not create an unsafe condition. She pointed out that the carport had not increased the livable square footage of the building footprint. She emphasized that although Mr. Harlow should have consulted the County staff, to now force compliance with the minimum yard requirements by removing the structure would cause unreasonable hardship for Mr. Harlow.

Addressing the variance application, Ms. Harlow explained that the proposed addition would add a second bathroom, and as there was only one bath in the four-bedroom home, it would be very beneficial. The proposed renovation, she pointed out, would not increase the current footprint nor the square footage of the existing dwelling. Because the dwelling was constructed in 1946, she explained that it predated the current zoning regulations and neither met setback requirements nor any of the required standards for a variance. Ms. Harlow also noted that it was a corner lot, which effectively rendered it with two front yard required setbacks.

In response to Mr. Hart's question of whether they were aware of the Cochran case, Ms. Harlow said they knew about the Cochran decision, and if it was the Board's intent to deny the application, then they would request a deferral of the decision on the variance for a period of six months. She concurred with Mr. Hart's recollection about their special permit; that the Board had heard an initial request for a garage, which was approved and built; that Mr. Harlow then built the carport; that there was an existing driveway along

Summerfield Road to the carport; and that a small entranceway was constructed to the garage on the Custis street side.

Mr. Hart noted that there was great detail shown on the variance plat and pointed out four sheds, a hot tub, several areas of pavement, a landscape pond, and four fences. He then asked Ms. Harlow how her representation could assert that Mr. Harlow did not know a carport should be shown on the plat. Ms. Harlow clarified that because the carport was an open structure that was not enclosed, Mr. Harlow did not know a permit was necessary.

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

Addressing the special permit application, Mr. Hammack moved to deny SPA 091-P-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. HARLOW, JR., SPA 01-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 01-P-002 to permit reduction in minimum yard requirements based on error in building location for carport to remain 1.6 ft. with eave 1.0 ft. from side lot line. Located at 2843 Summerfield Rd. on approx. 7,711 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with VCA 01-P-014). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has not presented testimony indicating compliance with general standards for special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the applicable sections of the Ordinance.
3. There was no testimony indicating that the noncompliance was done in good faith or through no fault of the property owner or was the result of an error in building location.
4. There was no allegation with respect to the error in building location, only that the applicant did not think he needed a permit.
5. The applicant has had a long experience dealing with Zoning Administration and special permits and has received variances from the Board and has made other applications for building permits, and it is unsatisfactory for the applicant to not know, or at least inquire, as to whether he needed a building permit.

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

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 2004. This date shall be deemed to be the final decision date of this special permit.

//

Mr. Hammack moved to defer decision on VCA 01-P-014 to April 19, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., VC 2004-DR-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into three lots with proposed lot 1 having a lot width of 35.12 ft. and proposed lot 3 having a lot width of 36.04 ft. Located at 7421 Tillman Dr. on approx. 1.05 of land zoned R-4. Dranesville District. Tax Map 30-3 ((1)) 8A. (Admin. moved from 7/20/04 at appl. req.)

Chairman DiGiulian announced that VC 2004-DR-072 had been withdrawn.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. PETER & KATE GOELZ, VC 2004-MV-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. with eave 11.2 ft. from the front lot line. Located at 6060 Woodmont Rd. on approx. 15,058 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (4) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kate Goelz, 6060 Woodmont Road, Alexandria, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 11.7 feet with eave 11.2 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 18.3 feet and 15.8 feet, respectively, were requested. Mr. Sherman pointed out that an affidavit dated April 15, 2004, approved by the County Attorney's office was distributed the prior week.

Ms. Goelz presented the variance request as outlined in the statement of justification submitted with the application. She said they sought to update a 1928 kitchen, and because it was a corner lot, there were two setbacks with which to contend. She pointed out that an existing greenhouse was removed, that they hoped to replace it with a single-story addition, and that the footprint would remain the same. Ms. Goelz said their neighbors supported the project. She said she was frustrated that the Cochran ruling had negatively impacted so many by restricting efforts to update and improve property. She also noted that the variance process had cost them considerable funds to date.

In response to Mr. Hart's question, Ms. Goelz clarified that the size of the proposed addition was slightly smaller than the former greenhouse.

In reply to a question by Mr. Hart, Susan Langdon, Chief, Special Permits and Variance Branch, said the project would require a variance even if the exact footprint was utilized. She said the project could not be done by right.

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

Mr. Pammel moved to defer decision on VC 2004-MV-107 to January 25, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. ENRIQUE SUAREZ DEL REAL, VC 2004-PR-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.9 ft. from front lot line. Located at 2829 Cherry St. on approx. 6,500 sq. ft. of land zoned R-4. Providence District. Tax Map

50-2 ((11)) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Enrique Suarez Del-Real, 2329 Cherry Street, Falls Church, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a second-story addition 23.9 feet from the front lot line. A minimum front yard of 30 feet is required; therefore a variance of 6.1 feet was requested.

Mr. Del Real presented the variance request as outlined in the statement of justification submitted with the application. He said the rear part of his circa 1940s house had a second floor which he hoped to extend onto the front portion of the house. He stated that the staircase was at such a severe angle that one could not navigate a piece of furniture through the narrow area. He pointed out that the bedrooms were very small, and he wanted to add another bedroom to accommodate his growing family. Mr. Del Real said he found the variance process frustrating because of its complexity, the fees and pertaining costs, and the fact that very few variance applications were being approved due to the Supreme Court ruling concerning the Cochran decision.

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

Mr. Hart moved to defer the decision on VC 2004-PR-109 to February 1, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 at appl. req.)

Chairman DiGiulian announced VCA 2002-MA-176 had been administratively moved to March 1, 2005, at the applicant's request.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04 and 7/27/04)

Susan Langdon, Chief, Special Permit and Variance Branch, reminded the Board that during the prior week's meeting, the Board approved its intent to defer decision on this application to October 26, 2004.

Mr. Hart moved to defer decision on SP 2003-SU-045 to October 26, 2004. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. CRAIG AND KIRSTEN PRINDLE, SP 2004-SU-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from the side lot line. Located at 12203 Westwood Hills Dr. on approx. 21,867 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A.

Chairman DiGiulian announced that SP 2004-SU-050 had been administratively moved to November 9, 2004, at the applicants' request.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church, childcare center and nursery school to permit a church and a private school of general education. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 006-4 ((1)) 66B and 70A; 006-4 ((14)) A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Esquire, with the firm of Walsh, Colucci, et al., Arlington, Virginia, agent for the applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 83-D-022, previously approved for a church, child care center, and a nursery school, to permit a church and a private school of general education in lieu of the child care center and nursery school. The private school of general education would reduce the hours of operation previously approved for the child care center and nursery school use of 6:30 a.m. to 6:30 p.m., to 8:30 a.m. to 3:30 p.m. No other changes were proposed with the application; however, the previously approved, but as yet not implemented construction of Phases II and III of the church expansion, consisting of an additional 24,500 square feet of building space and an increase of 162 sanctuary seats, was being carried forward. Ms. Stanfield stated that staff recommended approval of the special permit amendment application, but only with the adoption of the proposed development conditions contained in Appendix 1 of the staff report as amended with two minor changes proposed by the applicant. Development Condition 6 would allow a maximum of 15 employees associated with the private school of general education, and Development Condition 10 would allow 30 days to coordinate with the Urban Forestry Management Branch for replacement of dead and dying trees. Ms. Stanfield said staff had no objection to either change.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the church was a part of the community for many years. The original sanctuary was constructed in 1852 and the parsonage in 1966; and, therefore, many of its improvements predated the requirements for special permit or special exception approval. She said that the church was the subject of several land use applications in recent years, and this application was to amend the most recently approved special permit. She noted that the same approved enrollment limitations applied; the hours of operation would be reduced; there were no physical changes proposed for the existing buildings or to the property; and there would be a less intense use than what was originally approved. Ms. Strobel distributed copies of the two development condition changes the applicant proposed. She requested that the 8-day waiting period be waived because a lessee of the school had requested immediate occupation.

Vice Chairman Ribble assumed the Chair.

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

Ms. Gibb moved to approve SPA 83-D-022-03 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church, childcare center and nursery school to permit a church and a private school of general education. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 006-4 ((1)) 66B and 70A; 006-4 ((14)) A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 2004; and

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

1. The applicant is the owner of the land.
2. The staff report recommends approval.
3. The applicant has met all the required standards.

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

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

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

1. This approval is granted to the applicant only, Trustees of the Dranesville United Methodist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 1089 Liberty Meeting Court (8.11 acres), and is not transferable to other land.
2. This Special Permit Amendment is granted only for the purpose(s), structures and/or uses(s) indicated on the special permit plat titled "Special Exception Application/Special Permit Application, Site Plan, Dranesville - CWS Site 14", prepared by C.D. Meekins & Associates, Inc., and dated September 20, 2000, as revised through May 30, 2001, and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. Other by-right, Special Exception uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit use.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a Non-Residential Use Permit (Non-RUP), the maximum daily enrollment for the private school of general education shall not exceed 90 children. Prior to issuance of a Non-RUP, any child care center or nursery school uses on-site shall cease to operate.
6. Upon issuance of a Non-Residential Use Permit, the number of employees associated with the private school of general education shall be limited to a maximum of fifteen (15) at any one time.
7. Seating in the church sanctuary shall be limited to a maximum of 400 seats.
8. All parking shall be on site, as shown on the special permit plat.
9. Upon issuance of a Non-RUP, the hours of operation for the private school of general education shall be limited to Monday-Friday, 8:30 a.m. to 3:30 p.m.
10. Transitional screening requirements shall be modified and barrier requirements shall be waived along the northern and southern lot lines. Existing vegetation shall be preserved and maintained along these lot lines and shall satisfy the requirements of Transitional Screening.

The applicant shall maintain Transitional Screening 1 along the eastern portion of the cemetery to screen the dwelling on Tax Maps 6-4 ((1)) 69A and 69B from the proposed Phase III addition to the

church and along the western portion of the site to screen the dwellings on Tax Maps 6-4 ((14)) 2 and 3 from the telecommunication equipment building. The transitional screening plantings shall include large evergreen trees with an ultimate height of 40 feet and a minimum height of 10-12 feet tall at the time of planting and medium evergreen trees with an ultimate height of 20-40 feet and a minimum of 6-8 feet tall at the time of planting. The minimum height of the trees at the time of planting shall apply only to the landscaping to be installed. The exact number, size and species of landscaping materials shall be determined by the Urban Forest Management Branch within 30 days of the issuance of a Non-Residential Use Permit (Non-RUP), all dead, dying or diseased plantings in the transitional screening yards shall be replaced in consultation with the Urban Forest Management Branch.

11. The following area shall be tree save areas in which existing trees shall be preserved, except for dead and dying trees: 1) the eastern portion of the site labeled "possible tree save area" on the plat, 2) the area in the western portion of the site outside the limits of clearing and grading after the location of the stormwater management facility has been determined and; 3) the mature stand of trees west of the cemetery and east of the telecommunication facility located in the conservation easement. No further clearing and grading shall be permitted except the minimum amount necessary for the development shown on the plat. The tree save area shall be protected by tree protection fencing in the form of four (4) foot high, 14-gauge welded wire, attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Prominent signs shall be placed on the fencing "TREE SAVE AREA - DO NOT DISTURB" to prevent construction from encroaching on these areas. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed immediately after root pruning has taken place and prior to any clearing and grading activities on the site, including the installation of the telecommunication tower. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading or demolition activities, the Applicant's certified arborist shall verify in writing that the tree protection fencing has been properly installed.
12. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
13. The existing structure utilized as an equipment building for the telecommunication facility shall be limited to the storage of telecommunication and carillon equipment only.
14. If a speaker system is utilized to broadcast the sound of bells the system must comply with the noise regulation of Chapter 108 of the Code of Virginia. The playing of music shall be prohibited between the hours of 6:00 P.M. and 7:00 A.M.
15. The existing residential dwelling unit shall be used only for the storage of the telecommunication and carillon equipment, and shall meet all applicable County, State and Federal building, structural and fire codes regulations as determined by DPWES. Access to the building shall be permitted only from within the fenced area located to the east of the building. The interior of the building shall be designed to include a wall that will prohibit access from the doors and windows located on the western façade of the building. The equipment building doors located on the eastern façade, within the fenced area, shall be locked at all times. The gate for the fence shall be locked at all times. The telecommunication equipment shall be located within secured metal cabinets or enclosures inside the equipment building and shall be locked at all times. The equipment cabinets may be unlocked only to perform maintenance and only in the presence of a maintenance worker. Signs shall be posted on the individual equipment cabinets, the doors to the equipment building and the fence that clearly states that they shall be locked at all times.

These development conditions incorporate and supercede all previous development conditions and shall be implemented with the first phase, unless otherwise noted.

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

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

commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammol seconded the motion, which carried by a vote of 6-0. Ms. Gibb moved to waive the 3-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 19, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Chairman DiGiulian resumed the Chair.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. TIMOTHY BOWERS, SP 2004-MA-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 10.9 ft. from rear lot line and covered deck to remain 20.3 ft. from rear lot line. Located at 3408 Slade Ct. on approx. 8,820 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((34)) 38.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Timothy A. Bowers, 3408 Slade Court, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit a deck to remain 10.9 feet from the rear lot line and to permit a covered deck to remain 20.3 feet from the rear lot line. A minimum rear yard of 25 feet is required with a permitted extension of 12 feet; therefore, modifications of 10.9 feet and 20.3 feet, respectively, were requested.

Mr. Bowers presented the special permit request as outlined in the statement of justification submitted with the application. He said the house was purchased in 1989 with the covered deck already existing. In 1994 they decided to expand their outdoor living space and contracted Dominion Deck Builders to implement a deck addition. Mr. Bowers stated that he was unaware that the required permits were not obtained until early 2004 when he submitted a variance application to modify the covered deck into a three-season room, and it was at that time the errors were identified.

In response to Mr. Hammack's question of who was to have filed the permits, Mr. Bowers said that Dominion Deck Builders were responsible for obtaining the permits for the deck expansion and the installation of the hot tub.

Ms. Stanfield informed the Board that staff had a copy of only the permit that identified the hot tub installation.

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

Mr. Ribble moved to approve SP 2004-MA-048 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY BOWERS, SP 2004-MA-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit

reduction to minimum yard requirements based on error in building location to permit deck to remain 10.9 ft. from rear lot line and covered deck to remain 20.3 ft. from rear lot line. Located at 3408 Slade Ct. on approx. 8,820 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((34)) 38. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 2004; and

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

1. The applicant is the owner of the land.
2. The error does exceed the 10 percent.
3. The noncompliance was done in good faith.
4. The application meets the other criteria under the appropriate sections.

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

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

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

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

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

1. This Special Permit is approved for the location of a deck and a covered deck, as shown on the plat prepared by Larry N. Scartz, dated April 9, 2004, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s). 3-103 and 6-105 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with VC 2004-HM-045). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.) (Continued from 7/6/04) (Decision deferred from 7/20/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor David N. Hunter, Spiritual House Church Planning, 2125 Ft. Donelson Court, Dumfries, Virginia, agent for the applicant, replied that it was.

Tracy Swagler, Staff Coordinator, said the application was heard July 20, 2004, with the decision deferred to October 19, 2004. The applicant sought approval of a special permit for a church with 200 seats and a child care center with 35 students. She noted her October 18, 2004 memorandum, which she distributed that morning, that responded to the Board's request for additional information on the agreements between the church and the adjacent property, Dulles Center LLC, concerning various transportation issues that included ingress and egress easements, improvements to Coppermine Road, which were proffered by the adjacent property owner under a recent rezoning, and the vacation of a portion of Old Centreville Road that was proposed under that rezoning.

In response to Mr. Hart's question concerning the submission of the site plan and recordation of an easement on Coppermine Road, Ms. Swagler explained that there were two easements under discussion, an easement that the church was agreeing to grant for the improvements to the Coppermine Road frontage and an ingress/egress easement to be granted by the adjacent property owner to the church to allow access to the proposed entranceway in the northeastern corner of the property. She stated that her understanding was that the shopping center's site plan was submitted, but not yet approved, and the easements would be required before the site plan could be approved.

Discussion followed between Mr. Hart and Ms. Swagler concerning the progression of the vacation and the status of the existing easement. Ms. Swagler said Department of Transportation staff was waiting for Dulles Center LLC to clarify several issues concerning the easement before the public hearing on the vacation could go forward. She concurred with Mr. Hart's summation that the Old Centreville Road vacation had to occur before the shopping center could give the church the easement in the northeast corner.

Chairman DiGiulian called for speakers.

Bahman Batmanghelidj, Dulles Center LLC, said he had committed to build the section of Coppermine Road that ran in front of the church and to grant the church an easement. He said it should be recognized that the church did exceptional work in the community, such as providing a food bank and offering assistance to minorities with finding work and establishing themselves in the County.

In response to Ms. Gibb's question concerning the shopping center's development, Ms. Swagler explained that if the shopping center was never developed, in order to proceed with its plan, the applicant would have to obtain an easement from the property owner of the shopping center for the small land section in the northeast area of the site for the church's entrance, and for safety reasons, it would have to construct the frontage improvements along Coppermine Road.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve SP 2004-HM-013 for the reasons stated in the Resolution.

Mr. Hammack stated that he was not opposed to the church, but did have a technical objection of its approval. He said that he believed it was premature to grant a special permit when a part of the special permit was contingent upon somebody else doing something on another site. Mr. Hammack said he thought that the easement should be in place before the church was allowed to go forward and that some of the

standards by which the Board evaluated applications were not satisfied.

Mr. Hart said he agreed with Mr. Hammack's statement that, indeed, there were several potential contingencies in the development conditions. He cited the new Development Condition 18 in which the applicant would be allowed to regroup in some way or could at least acknowledge that everything was not already set up. He said he hoped the applicant would not have to do a special permit amendment and that everything would fall into place. Mr. Hart said that this was a unique situation where the conditions had anticipated that there currently was a problem, but hopefully it would be resolved as everyone had anticipated and the application could still be evaluated with a conclusion that it met the standards.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF BEACON HILL MISSIONARY BAPTIST CHURCH, SP 2004-HM-013 Appl. under Sect(s) 3-103 and 8-105 of the Zoning Ordinance to permit a church with a child care center. Located at 2472 Centreville Rd. on approx. 1.44 ac. of land zoned R-1 and PDH-12. Hunter Mill District. Tax Map 16-3 ((1)) 7 and 32F pt. (Concurrent with VC 2004-HM-045) (**VARIANCE APPLICATION WAS WITHDRAWN**). (Admin. moved from 6/1/04 and 6/22/04 at appl. req.) (Continued from 7/6/04) (Decision deferred from 7/20/04) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution: This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Charles P. Johnson & Associates, Inc., dated March 12, 2004, as revised through July 9, 2004, which was submitted with this application, as qualified by these development conditions.

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 2004; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and PDH-12. The area of the lot is totally 1.44 acres.
3. The application has been considered and reviewed a number of times, and it is time for an approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 3-103 and 6-105 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only (Trustees of Beacon Hill Missionary Baptist Church) and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Charles P. Johnson & Associates, Inc., dated March 12, 2004, as revised through May 27, 2004, which was submitted 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 shall be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the director, Department of Public Works and Environmental Services (DPWES). Any plan submitted

pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 6-004 of the Zoning Ordinance.

5. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as shown on the SP Plat as approved by DPWES. Notwithstanding what is shown on the plat, the applicant may provide off-site SWM and BMP if determined appropriate by DPWES.
6. All lighting proposed on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
7. Signage shall be provided in accordance with Article 12 of the Zoning Ordinance.
8. The transitional screening and barrier requirements to the north/northwest and south shall be modified in favor of that shown on the SP. The barrier requirement to the south shall be waived in favor of a row of dense shrubbery as shown on the SP Plat.
9. Plantings, if deemed appropriate by the Urban Forest Management Branch, shall be provided along the southern boundary of the site to meet the peripheral parking lot landscaping requirements of the Zoning Ordinance.
10. The maximum hours of operation for the child care center shall not exceed 6:00 a.m. to 6:00 p.m.
11. No more than 12 children from the child care center shall be allowed in the outdoor playground area at any one time.
12. A total maximum daily enrollment of 35 children shall be allowed in the child care center. Additionally, until such time as the applicant has an approved parking reduction to allow 7 of the church parking spaces to be utilized by the child care center, the number of children in the center or the number of seats in the church shall be reduced to meet the parking requirements of Article 11.
13. There shall be a maximum of 150 seats in the sanctuary of the church. The maximum number of seats in the sanctuary may be increased to 200 if the applicant executes a formal shared parking agreement with an adjacent or nearby property owner, as approved by DPWES. This condition shall not be considered to be pre-approval of any such shared parking agreement, which must be approved on its own merits.
14. Parking shall be provided as shown on the SP Plat. All parking shall be on-site except as provided for in a formal shared parking agreement approved by DPWES.
15. At the time of site plan approval or upon demand, whichever comes first, right-of-way along Coppermine Road shall be dedicated to the Board of Supervisors in fee simple as shown on the SP Plat.
16. If the frontage improvements on Coppermine Road as shown on the SP Plat have not been completed by others, such improvements shall be constructed prior to the issuance of a Non-RUP for the church.
17. The applicant shall agree to the abandonment of the right-of-way for Old Centreville Road as shown on the SP Plat.
18. Should the interparcel access easement shown to Parcel 16-8 ((1)) 6 in the northeast corner of the site not be in place at the time of site plan approval, the applicant shall amend the Special Permit, or shall demonstrate how development of the site can occur in substantial conformance with the SP Plat without the easement.
19. Prior to the demolition of the existing church, the applicant shall consult with the Fairfax County History Commission to determine appropriate documentation and recordation of the site. Documentation and/or recordation as recommended by the Commission shall be completed prior to demolition, with the exception that, should a historical marker be required, such marker may be installed prior to issuance of a Non-Residential Use Permit.

20. The light wells shown along the southern side of the proposed building on the SP Plat shall not extend above grade.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:30 A.M. CEDAR KNOLL, INC., A 2004-MV-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance Appeal of a determination that appellant is displaying or allowing to be displayed a banner sign advertising a business in violation of Zoning Ordinance provisions. Located at 9030 Lucia La. on approx. 1.0 ac. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((1)) 5.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that Elizabeth Stasiak-Perry would present the staff report and that the inspector for this case, Rebecca Goodyear, was present to respond to questions.

Ms. Perry presented staff's position as set forth in the staff report dated October 8, 2004. This was an appeal of the determination that the appellant was displaying or was allowing to be displayed a banner sign advertising "Open - Lunch and Dinner - 7 days -- Great River View Dining," a business, in violation of Sect. 20-300 of the Zoning Ordinance. She noted that Paragraph 5 of Sect. 12-104 of the Zoning Ordinance in part prohibited any sign of which all or part was in motion by any means, including fluttering, rotating, or set in motion by movement of the atmosphere; the subject sign was a prohibitive sign; and the appellant was in violation.

For Mr. Beard's clarification that if the sign were a permanent sign, would it be acceptable under the provisions, Ms. Perry explained that the issue was that it was a prohibitive sign, it was a banner, and that was the nature of the violation.

Mr. Hart commented that if he understood staff's position, a banner was not allowed except in some rare instances and only for a temporary time. He asked staff whether there some special permit or special exception applicable if one wanted a special sign, something bigger, or perhaps an additional sign. Ms. Perry explained that if the sign was permissible, not a banner type or made of certain materials that were prohibitive, one could apply for a special exception.

Mr. Hart asked whether there had been any discussion to advise the appellant of any other way to correct the situation other than an appeal, and Ms. Perry acknowledged that there had been no discussion.

Mr. Beard asked staff whether there had been any complaint to the National Park Service. Ms. Perry said the National Park Service did not support the sign, and such signs were not permitted along any portion of the parkway. She submitted that staff had no documentation on the Park Authority's position, and although a Park Service representative was unable to attend the meeting, it was made clear that the Park Service did not want the sign to remain. Ms. Perry said the Park Service had jurisdiction over scenic easements, and such signs were not permitted at scenic easements anywhere along the parkway. She clarified that the restaurant was not on one of the easements.

Gant Redmon, Esquire, Redmon, Peyton & Braswell, LLP, 510 King Street, Suite 301, Alexandria, Virginia, the agent for the appellant, presented the arguments forming the basis for the appeal. He explained that the appellant was before the Board because the National Park Service, while pursuing its renovation program of the Parkway initiated in 1997, had changed signage and removed the restaurant's name, Cedar Knoll. He noted that at that time the sign had been visible both southbound and northbound from the parkway. He said he had several communications over the years with the Park Service and was assured that the international logo, knife, fork & spoon, would be erected in place of the restaurant's name, but only after the appeal was filed had the logo been placed. Although several instances were pointed out to the Park Service on the necessity that the restaurant's name be visible, the Park Service had been inflexible about allowing the name Cedar Knoll to be reposted because their position remained that only a street can be posted, not an area. Mr. Redmon pointed out that besides Mount Vernon, Cedar Knoll Restaurant was the only commercial establishment south of Alexandria, and with the lack of signage, there was no way tourists would know where the restaurant was. Mr. Redmon said that, as indicated in the appeal, they acknowledged that there were difficulties with the banner type sign, but pointed out that their one permanent sign was blocked by vegetation, and it was the Park Service's vegetation. Mr. Redmon said that the banner sign was in response to the decimation of the restaurant's tourist trade after 9-11. He said that the 7-year ordeal with the Park Service over signage was frustrating, and it was time for relief.

Raj Mallick, President of Cedar Knoll Incorporated, the owners of the property, spoke in support of the appellant's position. He said that historically some of the property dated back to George Washington's time, and to date, commercially, the business was in jeopardy of losing its very existence because of the decline in tourist trade after the 9-11 tragedy. Mr. Mallick said he believed the original sign was grandfathered and could not understand why it was taken down. He pointed out that there were numerous accidents or near accidents because potential patrons were not familiar with the restaurant's location and had braked suddenly. Mr. Mallick's position was that the restaurant had the right to exist, and it was important that it be allowed to exist. He added that it would continue to pay its taxes and pointed out that the property had been considerably improved and was considered a pride of the community. Mr. Mallick concluded by stating the sign was put up so that the restaurant could exist, which was a right, that the sign was not hurting anybody, that it was attractively placed, and that it hurt nobody's sensitivities.

Antonio Flores, President of Carousel Corporation, the property managers, thanked the Board for its consideration. He explained that it was his customers who had suggested placing a sign as the business had fallen off dramatically after the September terrorist attacks because many thought they had closed. He said the sign was only temporary until the word got around that the restaurant was opened for business. In response to Mr. Beard's question as to how long he anticipated keeping the sign, Mr. Flores did not have a definitive date, but acknowledged that it was a temporary sign and assured that the sign would be removed after business improved.

Mr. Redmon concurred with Mr. Hart as Mr. Hart clarified that the appellant had not obtained a sign permit, that the sign was visible from the parkway, and that the banner's purpose was to direct attention, identify, or to advertise. Mr. Hart said that it seemed to him that whether the Ordinance provision was fair or not as it applied to Mr. Redmon's client, the BZA's role was to determine whether the Zoning Administrator was correct in its determination that as this provision applied, this was a prohibited sign under Sect. 12-104. Mr. Hart asked Mr. Redmon if he had any authority for the proposition that the Board can grant relief from such a provision if the Zoning Administrator's determination was correct. Mr. Redmon said that only when the application of the Ordinance as written would produce a hardship on this particular property and only this particular property. He said that he would gladly research for a case and submit whatever authority he could find.

In response to Mr. Hart's question of why the appellant could not apply for a special exception, Ms. Stehman said staff had misspoke earlier and clarified that a special exception for a variance and a waiver of certain sign requirements was applicable only to the C&I Districts, and the restaurant was zoned R-3; therefore, there was not a special exception available. She noted that the use was nonconforming, and any signs that were existing at the time could be kept, but any additional signs would have to be in compliance with the Ordinance.

Mr. Redmon said he wanted it to be known that it was practically impossible to determine if the restaurant was open from the parkway's view because all the parking was behind the building and completely out of sight, and that was the reason why the banner advertised that the restaurant was opened seven days a week.

In response to Mr. Beard's question as to how long the appellant had to take the sign down if the Board upheld the Zoning Administrator's determination, Ms. Perry said 30 days.

There were no additional speakers, and Chairman DiGiulian asked if staff had any closing comments.

Ms. Perry reiterated that the sign currently posted was a prohibited sign; therefore, the appellant was in violation of Paragraph 5, Sect. 12-104. In response to Mr. Ribble's question of whether there were any other signs on the property that were not shown in the pictures, Ms. Perry said that there was one free-standing sign on the property as well as a neon sign in a front window.

In response to Mr. Ribble's question and comment that there were numerous rumors afloat, Mr. Redmon said that there have been many offers to buy the property, but there were no pending sales. He added that Mr. Mallick and his family had long-term plans to keep the property in the family.

The public hearing was closed.

Mr. Hammack commented that other Board members had expressed sympathy for the appellant's situation, and he concurred, but unfortunately he could not find any relief under the Ordinance that the Board could give the appellant in this particular situation. He said that there was no real dispute about the facts, only the effect of the sign. He said the appellant had acknowledged that the sign was temporary and he did not have a permit; the sign was visible from the parkway; and there were elements that made it a violation in this situation. He said he would have liked if the Board had some way to grant some relief, but there was not that discretion. Mr. Hammack then moved to uphold the determination of the Zoning Administrator. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, Scheduled case of:

9:30 A.M. HUNTERS VALLEY ASSOCIATION & HUNTERS VALLEY RIDING CLUB, A 2004-SU-021.

Chairman DiGiulian noted that Appeal A 2004-SU-021 had been administratively moved to November 2, 2004, at the applicant's request.

//

~ ~ ~ October 19, 2004, After Agenda Item:

Approval of July 1, 2003; July 8, 2003; and July 15, 2003 Minutes.

Mr. Pammel moved to approve the July 1, 2003; July 8, 2003; and July 15, 2003 Minutes. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

Mr. Pammel pointed out an inconsistency with the October 12, 2004 Resolutions in which he was the maker of a motion, but was listed as not present for the vote. He requested that the clerk research and correct it accordingly.

//

~ ~ ~ October 19, 2004, After Agenda Item:

Request for Intent to Defer Decision
Dong S. Shim and Jennifer K. Shim, VC 2004-PR-027

Mr. Pammel moved to approve the request for the intent to defer decision on VC 2004-PR-027. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 19, 2004, After Agenda Item:

Approval of October 12, 2004, Resolutions

Mr. Pammel moved to approve the October 12, 2004 Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

Ms. Gibb referenced an Information Item regarding a letter from Sheri Bulger, dated October 4, 2004, concerning SPA 81-P-068-03, Olam Tikvah. Susan Langdon, Chief, Special Permit and Variance Branch, clarified that the gate issue that was referenced in the letter had been rectified.

//

Chairman DiGiulian announced that the items on the agenda were concluded and now the Director of the Department of Planning and Zoning, Mr. James P. Zook, would address the Board.

James Zook, Director, Department of Planning and Zoning, stated that his purpose for addressing the Board was to convey an action recently taken by the Board of Supervisors (BOS) in response to a memorandum from Mr. Hart concerning the relation of the impasse with respect to the variance situation, and which directed staff to examine, in terms of application types, current variances that were on the books to determine if some of these variances should be converted to special permits in order to grant needed relief to property owners. Mr. Zook noted that staff was to return language to the BOS by December 6, 2004, that would advertise an amendment to the Zoning Ordinance provisions with regard to special permits. He said staff intended to address the BOS on November 15, 2004, with a strategy for dealing with various variances in terms of special permits, but not with the specific language. Mr. Zook pointed out that staff was under a quick pace with regard to the preparation of something for the public consideration, and in early January of 2005, there would be Planning Commission and BOS public hearings on the proposed amendments, with the dates to be determined. Mr. Zook requested the BZA's input throughout the strategy process of meeting the needs of the public because the BZA was ultimately the determining body that would hear the special permits. Because the time line was tight and Board members may have conflicting schedules, Mr. Zook requested that one or more BZA members be available each session with staff throughout the project, but at the present time, he did not have definitive dates that staff was to meet.

Mr. Beard asked Mr. Zook when he envisioned implementation if all time lines were met. Mr. Zook said he thought implementation would occur immediately after the ordinance was adopted, perhaps January or February of 2005.

In response to Ms. Gibb's question concerning whether the BOS had charged staff with any specific proposals, Mr. Zook explained that staff's directive was in response to Mr. Hart's memorandum, and the predominate variances mentioned were yards, and fence heights and locations. He clarified that the BOS asked staff to examine the situation with regard to variances and come back to them with a recommendation, but no expressed direction was given as to what kinds of variances should be special permits, what kinds should remain variances, or what kinds should become special exceptions. He said he believed the intent was to be responsive to the concerns raised by Mr. Hart and those concerns of the Board with respect to accommodating needed improvements to dwellings in a way that did not adversely impact the neighborhood or adjacent properties.

Recalling her experience when the BZA dealt with the Ordinance changes regarding illegal lots, Ms. Gibb commented that it was too late at the public hearing stage to educate people or change their minds. She said she was concerned because they would be receiving the proposed language after it was already drafted, and at that point people had already taken positions, and with short time frames, to re-review and submit proposals from a different perspective would be difficult.

Mr. Zook said staff should identify what might be included with special permits and then have a dialogue with the BZA board members prior to crafting the language. He said he thought staff should ascertain which variances, such as yards, were most frequently requested, prioritize those, and deal with them first because of the time constraints. He admitted that at this stage staff was at a disadvantage as it was difficult to determine how many application types could be dealt with at one time in terms of communication and language crafting.

In response to Mr. Ribble's suggestion of whether it was possible to transfer some existing variances

automatically to some categories of special permit usage once the procedure was established, Mr. Zook said staff would consider that possibility as they realized applicants had monetary as well as time considerations.

Mr. Hart said that his recent experience when meeting with staff on P Districts, which were pre-authorization of advertising because the details of what would be advertised was still being worked out, he believed that kind of process, analogous to what Policy and Procedures was doing, was preferable to what had happened with the illegal lots matter. He said that if the dialogue had taken place prior to the advertisement, he thought the scope and the text might have been different. Mr. Hart said that if the BZA was involved in the processing of the draft language before the Board of Supervisors votes on the authorization to advertise, that that was more effective.

Mr. Zook said that he thought the processing could be done in phases, perhaps no more than two, with those applications of most concern to citizens in the first phase, as measured by the kinds of applications filed.

Mr. Pammel voiced his appreciation for the opportunity to have a direct dialogue with staff in developing modifications to the current Ordinance to alleviate the problems that were out in the community. He noted that there were several recent instances, such as damage from Hurricane Isabel, where he believed it was critical to address and remedy as soon as possible.

Dovetailing on Mr. Pammel's comments, Mr. Hart said that a category that he thought was hugely problematic was those pre-1976 structures where the setbacks came after the house was built.

Mr. Zook submitted that in terms of how variances are handled now, there may be some things that may be allowed administratively.

Chairman DiGiulian asked Mr. Hart and Mr. Pammel to be the liaisons with Mr. Zook and his staff throughout the process.

//

Mr. Pammel said he had a concern regarding the special permit amendment approved for Olam Tikvah in that the synagogue had not adhered to its original conditions. He said that very specific instructions were given when the special permit was granted. Mr. Pammel then moved that at some future time a representative from the temple appear before the BZA to apprise it of the reasons why the temple had not complied with the conditions of the special permit.

Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation which the BZA is or is not to be represented pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:13 a.m. and reconvened at 12:33 p.m.

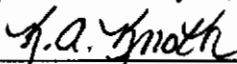
Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

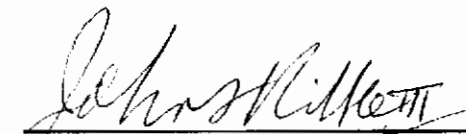
//

As there was no other business to come before the Board, the meeting was adjourned at 12:39 p.m.

Minutes by: Paula A. McFarland

Approved on: May 24, 2005


Kathleen A. Knoth, Clerk
Board of Zoning Appeals


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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 26, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John Ribble; James Hart; James Pammel; and Paul Hammack. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m.

Mr. Pammel moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation or probable litigation pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote, and Ms. Gibb was absent from the meeting.

The meeting recessed at 9:04 a.m. and reconvened at 10:43 a.m.

Mr. Pammel then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

There were no additional Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH, SP 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit site modifications and trailers to remain. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (in association with SE 2004-MV-001) (Admin. moved from 6/1/04 and 6/29/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-MV-025 had been deferred indefinitely.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. JAMES NAPIER, SP 2004-LE-051

9:00 A.M. JAMES NAPIER, VC 2004-LE-114

Chairman DiGiulian noted that SP 204-LE-051 and VC 2004-LE-114 had been administratively moved to April 5, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. GORDON D. FOOTE, TRUSTEE AND JACQUELINE T. FOOTE, TRUSTEE, VC 2004-DR-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 119.56 ft. Located at 1427 Trap Rd. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 8A.

Mr. Hart indicated that he would recuse himself from the public hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frederick R. Taylor, Law Offices of Bean, Kinney, and Korman, 2000 North 14th Street, Suite 100, Arlington, Virginia, the applicants' agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a lot width of 119.56 feet for the applicants' existing lot. A lot width of 159 feet is required. He reported that the noncompliance resulted from a decision of the Fairfax County Circuit Court that granted ownership of a disputed portion of land to the owners of the neighboring property to the south. Mr. Sherman stated that no new construction or additional lots were proposed in the application.

Mr. Taylor presented the variance request as outlined in the statement of justification submitted with the application. He stated that there had been an adjudication by the Fairfax County Circuit Court the prior year on an adverse possession issue, which resulted in a determination that a triangle of land that radiated out from a rear corner belonged to the adjacent property owner Barnes. He noted that George O'Quinn, who had done the surveys back to the three major parcels out of which the properties came and had testified as an expert witness at the trial, was present to address any engineering questions. Mr. Taylor said he was convinced that the people who created the subdivision out of which the applicants' property came used the correct calls, but one of the calls was incorrectly treated by the engineer that created the Barnes subdivision in 1963, which created an overlap. He explained that the Circuit Court decision resulted in a narrowing of the applicants' lot to 119 feet. He reported that he had written a letter to the Zoning Administrator which outlined the situation and drew an analogy with other involuntary takings and received a response which indicated the Zoning Administrator disagreed with the analogy and suggested a variance was the proper route to follow.

Regarding the applicability of the Supreme Court Cochran decision, Mr. Taylor said there was a house on the subject property located in the R-1 District, of which the minimum lot width was violated due to the involuntary taking, thus creating an undue hardship on the applicants for which they were seeking relief. He stated that there were no plans to do anything more than let the house remain, which had been legal prior to the adverse possession decision. He noted that the three cases referenced in the Cochran decision involved either demolition and reconstruction or the addition of structures.

Mr. Hammack asked what the consequence would be if the BZA did not grant the variance. Mr. Taylor replied that the next step would probably be an attempt by the applicants to have the property rezoned to R-2 and proffered down to an R-1 with everything other than a minimum width requirement. He added that because Cochran spoke about the effect of the Ordinance regarding the R-1 District and the strict application resulting in the prohibition of any beneficial use being made of the property, he did not think the applicants should have to go to the next step. He said that if the variance was granted, nothing would change, but the applicants would have the peace of mind to know that they could live on the property and could sell it in the future without someone raising the issue.

Mr. Hammack asked what staff would do if the BZA did not grant the variance and whether the County would bring an action to demolish the property. Mr. Sherman replied that the determination of the Zoning Administrator was that the lot was noncompliant. He said he did not think the County would initiate any sort of enforcement proceedings against the applicants, and an action to demolish the property seemed an unlikely scenario, but the applicants could not legally construct anything pursuant to a building permit due to the noncompliant lot status.

Mr. Pammel asked if there would be a cloud on the title of the property for a subsequent sale by the applicants which would raise serious questions. Mr. Sherman replied that he believed there would be some serious questions, but he would defer the question to Mr. Taylor. Mr. Taylor responded that it was a legitimate concern. He stated that because it was a residential property, normally the same sort of due diligence that would be associated with buying a commercial property might not be done, but within every contract he had seen there were representations that the use was lawful and comported with Zoning Ordinances. He said if a seller withheld the information from a buyer, it would open up legal problems for the seller, and there would be an affirmative burden for the seller to disclose to the buyer. Mr. Taylor said the buyer, lender, and title insurer would have a problem, and although there was currently no problem for the applicants, a day would come when they would want to sell the property and would have an enormous problem.

Chairman DiGiulian called for speakers.

Henry Barnes, 1433 Trap Road, Vienna, Virginia, came forward to speak. He said he owned the adjacent property and had been dealing with problems since Topaz Corporation had built the applicants' house in 1987, at which time he had advised the County that the house was being built illegally and was told to come back when the concrete was being poured, which he said he did. He stated that he had been sued by the Topaz Corporation, and the case was thrown out of court. Mr. Barnes said the applicants then sued him, and the jury found on his behalf. He stated that he had no problem with the applicants living in the house,

but did not want to have any future problems with his property where he would have to go back to court. He said his father-in-law had owned the property for 91 years.

Chairman DiGiulian closed the public hearing.

In response to Mr. Barnes' comments, Mr. Taylor stated that after the court order was entered, a deed which confirmed the description of Mr. Barnes' property was prepared pursuant to the court order and recorded in the land records, so there could be no future problems.

Mr. Hammack moved to defer decision on VC 2004-DR-110 to November 30, 2004, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing, and Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 13.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 19 feet with eave 17 feet and a stoop 13 feet from the front lot line. A minimum front yard of 50 feet is required; however, eaves are permitted to extend 3.0 feet and stoops are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 31 feet, 30 feet, and 32 feet, respectively, were requested.

Ms. Kelsey stated that the details of the application were complicated and requested that the entire hearing be deferred so it would be fresh in the Board members' minds at the time of the decision if it was the Board's intent to defer the decision until after November 15, 2004.

There were no speakers to address the issue of the deferral request.

Mr. Pammel moved to defer VC 2004-MV-112 to December 7, 2004, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Hart explained that staff would be working on a Zoning Ordinance amendment to address certain circumstances as special permits that previously were handled as variances, and the first step would be dealing with yard requirements. He said he did not know if that would solve the issue of the current application, but he understood that if authorized by the Board of Supervisors, the Planning Commission public hearing would probably be January 12, 2005.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 6.4 ft. with eave 6.9 ft. from side lot line. Located at 2913 Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A. (Decision deferred from 5/11/04, 6/15/04, and 9/21/04)

Chairman DiGiulian noted that the Board has previously approved an intent to defer decision on VC 2004-PR-027 to January 11, 2005.

Mr. Pammel moved to defer decision on VC 2004-PR-027 to January 11, 2006, at 9:00 a.m., at the applicants' request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was

absent from the meeting.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 76-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis courts to permit additional tennis courts. Located at 4627 Holborn Ave. on approx. 6.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16. (Admin. moved from 5/4/04, 6/8/04, 8/10/04, and 9/14/04 at appl. req.)

Chairman DiGiulian noted that SPA 76-A-022-02 had been administratively moved to November 30, 2004, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit an existing church to add a child care center and nursery school. Located at 7100 Columbia Pi. on approx. 2.03 ac. of land zoned R-4, CRD, HC and SC. Mason District. Tax Map 71-1 ((4)) 145 and 146. (Admin. moved from 9/21/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-MA-042 had been administratively moved to November 9, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04, 7/27/04, and 10/19/04)

Due to confusion which arose regarding whether the hearing would proceed, Lori Greenlief, Jane Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, requested a one-week deferral on behalf of the applicant and Cynthia Shang (phonetic), who would be presenting on behalf of the Pleasant Valley Neighborhood, to allow citizens the opportunity to attend.

Chairman DiGiulian called for speakers to address the issue of the decision deferral request.

Ms. Shang, (no address given), came forward and stated that a deferral of the decision would be in the best interest of the community and the applicant.

Mr. Hart moved to defer decision on SP 2003-SU-045 to November 2, 2004, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 8-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C.

(Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, and 5/11/04 at appl. req)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, and 5/11/04 at appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, and 5/11/04 at appl. req)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to March 1, 2005, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:30 A.M. BRISTOW SHOPPING CENTER LIMITED PARTNERSHIP, LLC, TWOCHÉZ AND COMPANY, INC., T/A HERITAGE MALL SERVICE CENTER, A 2004-BR-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has allowed a truck rental establishment to be established and is continuing to allow occupancy of the property for the leasing of U-Haul moving trucks in violation of Zoning Ordinance provisions. Located at 7824 Rectory La. on approx. 10.71 of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1 and 2C.

Chairman DiGiulian informed the Board members that the notices for this case were not in order and a deferral had been requested.

John Forest, Allred, Bacon, Halfhill and Young, P.C., 11350 Random Hills Road, Suite 700, Fairfax, Virginia, the appellants' agent, stated that he had been contacted by Mary Ann Tsai, Zoning Administration Division, regarding the status of the notices. He explained that the deadline requirement had been misread by his offices, and he requested a deferral of the appeal to allow the appellant to comply with the notice requirements.

Given the circumstances, Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff would support a deferral.

Mr. Hart questioned the tenant's and owner's involvement and asked whether everyone who was supposed to be involved was involved. Ms. Stehman clarified that the 1995 appeal was an appeal by the tenant on the property, and the current appeal was of a violation that was issued to the owner of the property. She explained that the Heritage Citgo was also a party to the appeal. She noted that there had been a change in the general partnership of the shopping center, which was the reason for the re-notice of the violation, and confirmed everyone who would be involved was involved.

Mr. Hart moved to defer A 2004-BR-020 to November 30, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 26, 2004, Scheduled case of:

9:30 A.M. RICHARD PLEASANTS, A 2004-MA-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has established a second dwelling on the property in violation of Zoning Ordinance provisions. Located at 3133 Valley La. on approx. 12,790 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 221.

Chairman DiGiulian informed the Board members that the notices for this case were not in order.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff had spoken with the appellant, who had indicated he would be submitting a request for a deferral; however, staff had not received a request. In answer to Chairman DiGiulian's question, she confirmed that this was the first scheduled hearing.

Mr. Hammack moved to defer A 2004-MA-022 to January 18, 2005, at 9:30 a.m. Mr. Beard seconded the motion.

Chairman DiGiulian directed staff to notify the appellant that the appeal would be dismissed if the notice requirements were not met prior to the January 18, 2005 hearing.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 26, 2004, After Agenda Item:

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

Mr. Pammel moved to approve 12 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was September 13, 2005.

//

~ ~ ~ October 26, 2004, After Agenda Item:

Approval of July 22, 2003;
September 9, 2003; and September 30, 2003 Minutes

Mr. Hammack moved to defer the approval of July 22, 2003; September 9, 2003; and September 30, 2003 Minutes to November 30, 2004. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ October 26, 2004, After Agenda Item:

Approval of October 19, 2004 Resolutions

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

//

The meeting recessed at 11:21 a.m. and reconvened at 11:36 a.m.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters affecting the Board of Zoning

Appeals pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 11:37 a.m. and reconvened at 12:14 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote, and Ms. Gibb was absent from the meeting.

//


As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: Kathleen A. Knoth

Approved on: December 21, 2004



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 2, 2004. The following Board Members were present: Vice Chairman John Ribble; V. Max Beard; Nancy Gibb; James Hart; and James Pammel. Chairman John DiGiulian and Paul Hammack were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:06 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals.

//

Mr. Hart reported that he and Mr. Pammel met had with Jim Zook, Susan Langdon, and other staff members the prior Friday regarding the proposed Zoning Ordinance Amendment to create some new categories of special permits. Mr. Hart said he envisioned two phases; the first phase would be the most typical kind of variances, and the second phase would be things that were not addressed initially. The Planning Commission public hearing would likely take place on January 12, 2005, which meant that there was a very short turnaround. The Board of Supervisors would need to authorize advertising. The Board of Zoning Appeals would be receiving a draft for comments and would have to turn it around in less than a week.

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that she had received a copy of the proposed amendment the prior afternoon and would distribute copies to the Board members at the meeting.

//

Mr. Pammel moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters that would affect the Board of Zoning Appeals pursuant Virginia Code Ann. Sect. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

The meeting recessed at 9:11 a.m. and reconvened at 9:38 a.m.

Mr. Pammel then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Hart seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

There were no additional Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE BETHLEHEM BAPTIST CHURCH (A/K/A FAIR OAKS BAPTIST CHURCH), SPA 80-S-067-02 Appl. under Sect(s) 3-103 of the Zoning Ordinanca to amend SP 80-S-067 previously approved for a churoh and school of general education to permit a reduction in land area and change in permittee. Located at 4601 West Ox Rd. on approx. 29.08 ac. of land zoned R-1 and WS. Springfield District. Tax Map 56-1 ((1)) 11H and 11 I pt.; (Formerly known as 56-1 ((1)) 10, 11C, 11E, 11F pt. and 11G.) (Admin. moved from 10/12/04 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Lawrence, Reed, Smith Law Offices, the applicant's agent, replied that it was.

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

Kristen Crookshanks, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to an existing special permit for a church and school of general education to permit a reduction in land area and a change in permittee. The reduction in land would delete 7.41 acres from the church site to be incorporated into a rezoning proposal that was concurrent with the application. The change in permittee was being requested because the church had undergone a name change from Bethlehem Baptist Church to Fair Oaks Baptist Church. There was no physical change to the structures or site on the church property except for the relocation of a volleyball court that was impacted by the rezoning. There would be no new construction or increase in students with the proposal. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and, therefore, recommended the approval of SPA 80-S-067-02, subject to the proposed development conditions dated November 2, 2004.

Ms. Crookshanks reported that the rezoning was requested from R-1 to R-8 to develop 73 townhouse units, including nine affordable dwelling units. The request was presented to the Planning Commission on October 20, 2004, and the Planning Commission recommended that the Board of Supervisors approve the request. It was scheduled to be heard by the Board of Supervisors on November 15, 2004.

Mr. Lawrence presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained that the portion of the church's property to be deleted was a surplus property that was never used for church facilities. He said the total area of the site was 29 acres, and the deletion of the seven-acre parcel had no adverse effect on the church and school facilities. The church would be left with a parcel of 21.6 acres with an FAR of .08, which was about half of what was permitted under the Zoning Ordinance, so it was not an intensive use of the site. Mr. Lawrence confirmed staff's comment that there would be no new construction or increase in students with the proposal. The sanctuary and all of the facilities would remain the same size.

Mr. Lawrence referred to a letter from Reverend David Stokes, the pastor of Fair Oaks Baptist Church, which stated that the purpose of the application was to reduce the special permit area from 29 acres to 21.6 acres and convey a 7.4-acre portion of the property to Stanley Martin Companies. Mr. Stokes said the church had never needed or used that portion of the property, the proceeds of the sale would be utilized to upgrade facilities within the church and school, and no changes were proposed to the existing church and school operations.

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

Mr. Pammel moved to defer decision on SPA 80-S-067-02 to November 16, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

~ ~ ~ November 2, 2004, Scheduled case of:

- 9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04)
- 9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lot line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Carter, the applicant's agent, replied that it was.

Mr. Carter said that the last time he was before the BZA it was discussed that a lawsuit should be filed with Fairfax Circuit Court to take care of the alleged easement that ran through a property and also the issue with the shed having encroached beyond the boundary lines of the Hatcher property. Mr. Carter said he filed an action in Fairfax Circuit Court that morning to obtain title through adverse possession of the area where the shed had encroached beyond the property lines. He said there was difficulty in locating witnesses that could testify regarding things from 50 to 55 years ago, but they found an elderly gentleman to support his clients' position. He distributed copies of the action and asked for a deferral of the matter until there was a resolution in the Circuit Court of the pending litigation.

Mr. Hart asked if what Mr. Hatcher had applied for was within the Zoning Ordinance amendment. Susan Langdon, Chief, Special Permit and Variance Branch, answered that regarding the variance application, the fence under the proposed Zoning Ordinance amendment would become a special permit request, and the storage structure exceeding 200 square feet in gross floor area was not proposed to change and would remain a variance.

Mr. Hart stated that the proposed Zoning Ordinance amendment, if adopted, would occur after the first of the year. He asked whether Mr. Carter wanted to defer until after the title for the easement or the land adverse possession issue was figured out. Mr. Carter answered that the middle of the following year was what he had in mind.

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

Mr. Hart moved to defer decision on VC 2003-PR-194 and SP 2003-PR-064 to July 12, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 of land zoned R-2. Dranesville District. Tax Map 40-1 ((1))12.

Vice Chairman Ribble noted that VC 2004-DR-111 had been administratively moved to March 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., VC 2004-MA-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling 6.7 ft. with eave 6.3 ft. from the side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74.

Mr. Pammel moved to defer VC 2004-MA-113 to April 12, 2005, at 9:00 a.m., at the applicant's request. Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:00 A.M. CHUNG AE AUH, SU HAK AUH, VC 2004-MA-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from the front lot line and front yard coverage greater than 25 percent. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Concurrent with SP 2004-MA-024). (Admin. moved from 8/3/04 at appl. req.)

9:00 A.M. CHUNG AE AUH, SU HAK AUH, SP 2004-MA-024 Appl. under Sect(s). 6-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.6 ft. and roofed deck 25.6 ft. and stairs 20.9 ft. from front lot line and addition to remain 9.2 ft. from side lot line. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Concurrent with VC 2004-MA-078). (Admin. moved from 8/3/04 at appl. req.)

Vice Chairman Ribble noted that VC 2004-MA-078 and SP 2004-MA-024 had been administratively moved to December 21, 2004, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04, 7/27/04, 10/19/04, and 10/26/04)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, the applicant's agent, replied that it was.

Vice Chairman Ribble noted that SP 2003-SU-045 had been deferred for decision only with one speaker from each side to appear.

Mavis Stanfield, Senior Staff Coordinator, recommended that the Board approve the request in accordance with the development conditions dated October 26, 2004.

Lori Greenlief, the applicant's agent, came forward to speak. She referred to the packet given to the Board dated October 18, 2004. She summarized the follow-up requested at the April 27, 2004 hearing, in which she was given directives by the Board to add additional water quality measures to the site, answer questions about Pleasant Valley Road, and meet with the Pleasant Valley neighborhood representatives. She pointed out on the plat that last April it had showed 50 percent undisturbed open space, and according to PFM standards, that met the 50 percent phosphorus removal rate required in the Occoquan Watershed. Ms. Greenlief said additional water quality measures were provided per the Board's request. There were two bioretention areas in the northern portion of the site. She explained that the bioretention system was an option listed in DPWES's list of innovative biotechniques, which consisted of layers of filtration materials with a rain garden effect on the top which provided some measure of storm water detention. Ms. Greenlief concluded that with the bioretention system and the 50 percent undisturbed open space, the water quality standards could be exceeded for the site.

Ms. Greenlief reported that in June of 2004 the engineer provided the current revised plat which showed the entrance shifted from its original location. She said there was adequate site distance and information provided to VDOT that showed that a left-turn lane was not warranted. If it was determined by VDOT that one was needed, it would be required. Ms. Greenlief said the church had twice met with the neighborhood and West Fairfax County Citizen's Association, and the following site changes resulted from those meetings: the size of building was reduced twice to a final result of 12,152 square feet, a reduction of 22 percent from the original plan; sanctuary seating, which was 376 in the original filing, was reduced from 350 to 300; the floor area ratio (FAR) went from 0.09 to 0.07; the northernmost parking was pulled away from the residences to a location 90 feet from the rear lot line; the rear portion of the building was reduced to be located between 69 and 95 feet from the rear lot line; and the equivalent of an area in excess of Transitional Screening 3 between the building and the rear lot line has been provided. Ms. Greenlief said the neighbors still had an issue with the size and scale of the project with some expressing that no non-residential use would be appropriate, but she stated that the use was appropriate for the site. She reported that neighbors indicated the reductions were not significant enough, and they saw the church size as too large and out of character with the area. Ms. Greenlief said the proposal was consistent with what the Board had seen before and in line with church development in Fairfax County. She said there was no adverse impact on surrounding property values.

Ms. Greenlief submitted a petition signed by abutting neighbors to the site where the Sant Nirankari Mission

was currently meeting and had met for the prior nine years that stated they had no cause for concern regarding traffic or parking.

Mr. Hart asked what the current FAR was, to which Ms. Greenlief replied 0.07.

Mr. Hart asked whether it would be higher than 0.1 if it were R-3 rather than R-C. Susan Langdon, Chief, Special Permit and Variance Branch, answered that it would be 0.25 for R-3.

Mr. Hart asked what the total open space was, to which Ms. Greenlief replied 68 percent.

Mr. Hart asked for the height of the existing trees, particularly on the eastern and southern lot lines. Ms. Greenlief responded that it was estimated at 40 to 50 feet.

Mr. Hart asked for an explanation of the difference between Transitional Screening 3 and what would ordinarily be wanted. Ms. Langdon replied that Transitional Screening 1 was required, which would be a 25-foot wide screening area with two rows of trees, and Transitional Screening 3 would be 50 feet wide with three rows of trees.

Mr. Hart asked whether VDOT had requested the left-turn lane in writing. Paul Kraucunas, VDOT's Northern Virginia District Land Development Section, stated that VDOT preferred turn lanes for high volume traffic, but with the current volume of traffic and the type of use, it would not meet VDOT's normal warrants for a left-turn lane. He said he thought it had been initially asked for because it was a preferred design element, but because it did not meet VDOT's warrant, they would not be able to enforce it.

Mr. Beard asked when the last traffic count was done in that area. Mr. Kraucunas replied that they had looked at counts from 2003, which were weekday counts, which showed a high volume for the peak commuting periods, but they had not met left the turn-lane requirement.

Cynthia Shang, 15121 Elk Run Road, Chantilly, Virginia, came forward to speak. Ms. Shang stated that the one issue remaining was the size of the facility not being harmonious with the surrounding properties. She cited Article 8, Sect. 6, Paragraph 3 of the general standards for special permits and stated that the proposed use should be harmonious. She had a visual model of the church that showed that the proposed facility was six times the size of the average adjacent homes and twice as tall as the other buildings. She requested of the applicant, Mr. Nagrani, ten days prior to the hearing that the facility be ten feet shorter and only three to four times larger than the homes, which would make it more in character. She visited other churches for comparison, and it further demonstrated how out of character it was.

Mr. Beard asked if she had received a response. Ms. Shang replied that the response was that it would not work for the applicant.

Mr. Hart asked about the height of the trees. Mr. Hart said he thought the trees were 40 to 50 feet in height. Ms. Shang responded that she did not agree. She said she estimated that the trees ranged from 30 to 45 feet.

Mr. Hart asked whether Ms. Shang had any issues with the wording in the October 26, 2004 development conditions. Ms. Shang answered that she did not and added they were pleased that the nightly worship would not go later than 9:00 p.m.

Mr. Hart stated that the development condition for the existing facilities required all parking to be on-site, and if a problem occurred, the Zoning Enforcement Branch should be called on to rectify it. Ms. Shang stated that she had been in contact with the Zoning Enforcement Branch regarding the Hindu Temple, and no one had come out because they said they were not sure it was in the development conditions. She said that Scott Mason, Zoning Enforcement Branch, said he would pull the special permit to review it and determine whether it was part of the conditions.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel asked VDOT if improvements could be made in the horizontal alignment of Pleasant Valley Road as it came to the curve in the road. Mr. Kraucunas asked whether Mr. Pammel's concern was over the pavement width or the speed traveled. Mr. Pammel answered that it was both, but basically his concern was over the alignment. He explained that at the bottom of the hill it was narrow with a speed of 40 to 45 miles per hour, and if a vehicle entered the curve simultaneously from the other direction, there was no clearance.

Mr. Pammel said he thought the curve should be flattened out. Mr. Kaucunas said he would forward Mr. Pammel's comments to the traffic engineer in the maintenance section.

Mr. Pammel said the Board needed more time regarding the highway issue he raised and for the applicant to look at the height issue. Mr. Pammel moved to defer decision on SP 2003-SU-045 to December 7, 2004, at 9:00 a.m. Ms. Oibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:30 A.M. RON JOHNSON, A 2004-MA-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is conducting a use on property in the R-3 District which is not in substantial conformance with the conditions of Special Exception on Amendment SEA 81-M-034 in violation of Zoning Ordinance provisions. Located at 6071 Arlington Blvd. on approx. 10,800 sq. ft. of land zoned R-3, SC and CRD. Masen District. Tax Map 51-4 ((2)) (A) 8. (Deferred from 7/27/04)

Vice Chairman Ribble stated that the notices for this case were not in order.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appeal had been deferred from July 27, 2004, due to notices not being in order.

Roy Spence, the appellant's agent, came forward to speak. He said he was retained the previous night by the appellant, and he requested a deferral. He apologized on Mr. Johnson's behalf for the notices. He said it would not happen again, and the notices would go out in a timely manner.

Mr. Hart asked why the notices did not go out. Mr. Spence answered that he was not sure what the reason was.

Ms. Stehman said that staff had talked with Mr. Johnson, and he indicated he would bring the notices in. She did not know why it had not happened and had had no contact with him since then. Ms. Stehman said staff would not support any additional deferrals because it seemed that Mr. Johnson did not take it seriously by twice not having the notices in order. She stated that there was strong neighborhood opposition.

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

Bill Bird, no address given, past president of the neighborhood association, came forward to speak. He requested that the deferral not be granted and the appeal be dismissed. He said the resident of the subject property had violated the terms of the special exception in the Zoning Ordinance and was in violation of the sign Ordinances. He had violated the hours of operation as permitted from 9:00 to 6:00, Monday through Saturday. Mr. Bird said the resident had signed a non-residential use permit, which by definition meant you could not live in the property, and he had lived in the property since the beginning. Mr. Bird said it should be noted that Mr. Johnson hired counsel after being in violation.

Carlos Lotharius, no address given, came forward to speak. He requested that the Board deny extensions to the appeal. He referred to his letter of October 21, 2004, to the Board regarding the violations.

Lars Issa, 3101 Olin Drive, Falls Church, Virginia, current president of the neighborhood association, came forward to speak. He requested that the deferral request be denied and that the Board perform enforcement actions on the subject property.

In response to Mr. Hart's inquiry, Ms. Collins stated that she had spoken to Mr. Johnson on the phone on the day the notices were due. She said Mr. Johnson told her that he was getting them ready that day and would bring them in before the close of business, and he did not do that. She said that the first time he did not do the notices, he was out of town.

Mr. Beard said he was sympathetic, but was not clear on the sequence of events, and since counsel was retained, he would support a deferral.

Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to defer A 2004-MA-013 to December 21, 2004, at 9:30 a.m. There was no second.

Mr. Pammel moved to defer action to address the deferral request on A 2004-MA-013 to November 16, 2004, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:30 A.M. THGMAS A. HUHN, A 2004-MA-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an addition (a deck and pergola), which does not comply with the minimum bulk regulations for the PDH-8 District and was constructed without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 4522 Shoal Creek Ct. on approx. 2,100 sq. ft. of land zoned PDH-8 and HC. Mason District. Tax Map 71-2 ((34)) (9) 47. (Deferred from 8/10/04 for notices)

Vice Chairman Ribble noted that A 2004-MA-017 had been withdrawn.

//

~ ~ ~ November 2, 2004, Scheduled case of:

9:30 A.M. HUNTERS VALLEY ASSOCIATION & HUNTERS VALLEY RIDING CLUB, A 2004-SU-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the use of a portion of property in the R-E District as an equestrian riding ring constitutes a second principal use of the property and that such use was established without approval of a Special Permit, a Special Exception, a Resource Protection Area Exception, a site plan and a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10856 Flowerstone St. on approx. 7.21 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((23)) 5. (Admin. moved from 10/19/04)

Mr. Hart and Ms. Gibb gave disclosures, but indicated they did not believe their ability to participate in the case would be affected.

Grayson Hanes, Reed Smith LLC, stated that he, along with Jane Kelsey, represented the appellants.

Leslie Diamond, Staff Coordinator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated October 25, 2004.

Ms. Gibb asked why a special use permit was necessary. Ms. Diamond answered that the intensity of the use of the riding ring was the special use and the reason the special use permit was needed. Ms. Stehman added that the distinguishing characteristic of the riding ring was that it was operated under the control of a private club, the Hunters Valley Association, whereas many other rings were privately owned rings. There was a non-profit organization involvement with Hunters Valley.

Ms. Gibb asked about the special surface. Diane Johnson-Quinn responded that riders had told her that they had a different kind of stone dust surface, which was softer for the horse's hooves. She said she was advised that with rings a different surface was used.

Mr. Hart asked when the flood plain was adopted for the Ordinance. Ms. Stehman answered that she would need to check, but thought that for the RPAs it was the mid-1990s, and the other flood plains provisions went back to the 1978 Ordinance with possibly a minor amendment.

There was discussion regarding community use versus private use.

Mr. Hart asked if the structure by itself was a violation. Ms. Johnson-Quinn answered that if it was part of a private use that was accessory to someone's residence, then it would be an accessory component of their property. She said staff had determined that the use was a separate use for a community organization, and the structure was part of the overall use. The whole use was in violation.

Mr. Hart asked where in the Ordinance it addressed private use in someone's yard versus many people using it and, therefore, required approvals. Ms. Stehman responded that it was addressed in Article 8, Part 4, of community uses. It went through recreational facilities that were operated for the neighborhood community, such as the common ones, swimming pools and tennis courts. In that same provision, it identified any other similar recreation use, and that was where the riding ring was identified because the riding ring was being operated by and for the use of the Hunters Valley Association and the Hunters Valley Riding Club. Ms. Stehman noted that this was in the staff report on page 5 in Sect. 8-400 of Attachment 2.

Mr. Beard asked about boarding. Susan Langdon, Chief, Special Permit and Variance Branch, answered that they were not boarding, but it was at times part of a riding stable. She explained that it was an additional use in which you could have boarding and no riding ring or vice versa. Ms. Langdon said there were special permits in which there were riding facilities that had no boarding.

Mr. Pammel asked what distinguished the appeal from a community association who provided recreational activities to the broader community, non-profit, but, for example, soccer provided recreation, and a special permit was not required. Ms. Stehman answered that it was most similar to a community as described under Part 4 of Article 8. Generally, the soccer fields are often in parks or may be quasi-public athletic facilities that also require special exception approval for the field itself, so the use was regulated, but not regulating the people who use the facility because the County had control of the property or there were conditions relative to the property.

Mr. Pammel said there were many community associations in the County that allowed their common land, paid by fee of each property owner, to be used for recreational uses. The question he posed was how could that be done, but Hunters Valley using a small area of land for an equestrian ring must have a special permit. Ms. Stehman answered that she believed that those operated by a community association or clubs do have special permits for those uses within the community. She said they go beyond the homeowners association area because they are a club/non-profit organization, and they can charge fees. She clarified that the fee was not the issue, but rather it was a non-profit organization, and there is an organization that was operating the facilities or has some interest in the facilities, which lead to the conclusion that such type of activity would be within the special use permit provisions.

Mr. Pammel asked how the violation was discovered. Diane Johnson-Quinn answered that the property owner where the easement was located brought to the attention of the County that it was an obstacle to the sale of the property given the fact that they purchased the property knowing that the easement was there initially.

Mr. Hanes presented the arguments forming the basis for the appeal. He said there was non-conforming use and had been testimony to the use of the property. The Wicken family was very involved with horses. The first violation suggested that there were two principal uses on the property. The land was not being subdivided, and his clients had a perpetual easement of 1.65 acres. The Ordinance required 75,000 square feet to divide it in the R-E district, but it could not be divided and met. Even with a special permit, it could not operate because it would have two principal uses due to the easement. A special permit could not be applied for because of not meeting the 75,000 square feet. Under the easement, it was less than 75,000 square feet.

Mr. Hanes said another violation was regarding the flood plain, and a special exception would be required to continue the use, and a site plan would need to be submitted, which was very expensive. The next violation was that they did not have a residential use permit to use the equestrian trail. The Zoning Ordinance went back to 1941 and was amended in 1955, which may have required a special use permit, but prior to the amendment it did not. The property was used as an equestrian trail prior to the amendment. Mr. Hanes distributed some aerial photographs, the zoning history, the Zoning Ordinance, and an affidavit from Mack S. Crippen, Jr., 11395 Seneca View Way, Great Falls, Virginia, 77 years old, which stated that the property was used for horse riding and training since before 1955. Mr. Hanes said many in the community did not want the use to stop.

Vice Chairman Ribble called for speakers.

Paul Pearson, 2407 Oak Vale Court, Vienna, Virginia, came forward to speak. He stated that he was the current president of the Hunters Valley Riding Club. He said the ring's surface was sand and stone dust and not a specially treated surface. The viewing stand was portable and not a fixed structure. The trails dated back to the Wicken family of the 1930s. They sold part of property to Thornton Burnet in 1952. The Wickens used property as a cattle farm in 1936 through World War II. After the war, they sold off some property so

that homes could be built. As the land was developed, Mr. Wicken kept a portion of the land for horseback riding and horse training. The Burnets granted the easement later when they were older and were not able to maintain it. The Jenkins purchased it from the Burnets. Mr. Pearson said this had been the use since the 1930s and should not be subject to the Zoning Ordinance.

Albert Farwell, 2831 Oakton Manor Court, Oakton, Virginia, came forward to speak. He said he had resided for 30 years at Hunters Valley since 1952. The Hunters Valley Association was established so that the children had recreation through the riding club. Walter Thompson taught riding lessons to the children provided that the neighbors paid for a pony, which they did. Mr. Burnet wanted to make sure that the use continued through the easement. The riding lessons went from 1953 and forward.

Danny Symansky, 10419 Wickens Road, Vienna, Virginia, came forward to speak. He was 15 years old and had lived there since he was born. The riding ring had meant a strong community for him. He had learned to care for the horses and the surrounding land.

Jerry M. Jenkins, 1811 Blair Boulevard, Nashville, Tennessee, came forward to speak. He purchased the property in 1998. He was aware that there was an easement with the previous landowner, Mr. Burnet, and the Hunters Valley Association from 1996. He said the easement agreement established and governed the use of the easement area by the Hunters Valley Riding Club (HVRC), which was the subordinate organization under the Hunters Valley Association (HVA). As the owner, Mr. Jenkins and his wife became the successor grantors to the easement agreement in which he must bear the cost associated with the upkeep and maintenance, which was \$5,000 monthly. From the time he purchased the property through 2004, the property taxes amounted to \$71,456, and HVA contributed 9.15 percent associated with the land value assessment only according to the easement. The property had been listed for sale since 2003, but had not sold due to liability and legality concerns of prospective buyers over the HVRC and its activities. County officials were brought in to review HVRC activities by the Jenkins, and a preliminary determination was made that the activities were in violation of a number of applicable Zoning Ordinances. They were concerned over the civil fines, penalties, and insurance liabilities they were exposed to by allowing the activities to continue on their property. They sent letters to the HVRC and HVA requesting activities be halted until the matter was resolved since the County had stated the violation would be cleared if the activities stopped. The letters were subsequently rejected by the HVRC and HVA, and the Jenkins considered them to be in default of the easement since they had not complied with the County to halt activities. Mr. Jenkins said he wanted to clear the violations.

Mr. Hart asked whether it would change staff's assessment if the BZA accepted Mr. Farwell's testimony and Mr. Crippen's affidavit that the use had been going on since before 1955. Ms. Stehman answered that staff's position was that since there was an association that was a non-profit organization, it was deemed a community use that required a special permit.

Beverly Dickerson, 11003 Oakton Woods Way, Oakton, Virginia, came forward to speak. She said she was the vice president of Fairfax for Horses. Ms. Dickerson presented a petition with 125 signatures in support of the application. At her request, approximately half of the people in the auditorium stood in support of application.

Ms. Gibb asked if the establishment of a non-profit organization made it illegal. Ms. Stehman answered that it was not illegal, but that it required a special permit to be in compliance with the Zoning Ordinance. The use changed when it became a community use with the formalization of the non-profit Hunters Valley Association and, therefore, required a special permit for a community use, cited in the 1978 Ordinance, 8-401, subsection 4.

Mr. Hart asked about the use prior to 1978. Ms. Johnson-Quinn responded that the arrangement became formal in 1995 or 1996 when the easement was granted to the association and the riding club. She said that prior to that some riding activity had occurred on the site, but it was not a formal arrangement for liability, maintenance, and use until the easement. She said it was the granting of the easement and not the change in activity and the control of the use by the organization that made a special permit necessary.

Mr. Hart asked why a special permit was needed because the owner had later given formal written permission to do what they were doing already. Ms. Johnson-Quinn answered that was staff's position.

Mr. Beard asked whether there would be a problem if that had not happened. Ms. Stehman answered that if that had not happened, there would have been no easement, and neighbors would be riding on each other's property.

Diane Belowski (phonetic), Associate Broker, Long & Foster Realtors, came forward to speak. She had sold the property to the Jenkins and was told they could get insurance and would be covered on liability, but times had changed since they had bought. She had prospective buyers from the riding club go to their attorney, and the attorneys had told them the liability would be too great. The club did not meet the requirements set forth by the County Code.

Mr. Hart asked why they could not divide off the lot somehow since the riding club being there was making it difficult to sell. Ms. Belowski answered that they did not meet the requirements for that.

Penny Henon, 116 Norwood Place, Sterling, Virginia, came forward to speak. She said she was the previous president of the HVRC and been associated with the club since 1994. She stated that those from the riding club that chose not to purchase the property did not purchase because they did not feel the house was worth the price, not due to any liability issues as stated by the realtor, Ms. Belowski. She further stated that the HVRC carried liability insurance in the amount of \$4 million. The HVRC had thoroughly researched the liability and insurance issues since she had been there and had always been covered with insurance and in complete compliance with the liability issues. Ms. Henon remarked that even if they did not get their appeal granted and could no longer use the area, the easement would still remain and be a bridle path. The HVRC would no longer be able to have lessons, but they would still be able to ride on the land in accordance with the easement, and even though there would no longer be a riding ring, the easement would not go away.

Ms. Gibb asked when the HVA was created. Ms. Henon answered in the 1960s.

Sally D. Giovanni (phonetic), Associate Broker, Long & Foster Realtors, came forward to speak. She told her purchasers that an equestrian right would be highly wanted. They had a contract on it, but went to legal council and found the easement to be problematic. There were loopholes in the easement that would not give them relief from full liability that could jeopardize their retirement and assets if an accident took place on the property. She said society was very litigious, especially in this area. She stated she thought the value of the property was \$1.5 million because of it being an equestrian property. It was her view that the portion of the property should be removed, provided the boundaries were proper, and then everyone could have what they wanted, the ring, the County, and the Jenkins could live someplace else.

Marilyn Jenkins, 10856 Flowerstone Street, Oakton, Virginia, came forward to speak. She said she wanted to sell her house, but purchasers had expressed concerns over the easement agreement that governed the use of the ring. She and members of the riding club had gone to the County to pursue subdividing the arena from Lot 5, hoping that it would be the solution to meet everyone's needs. She subsequently learned that the operation of the ring was in violation of County Zoning Ordinances. She had lived there with her two daughters since 2001 when Mr. Jenkins moved to Alabama, and it had been very difficult due to her health problems. She asked that the Board appreciate her need to sell the property at its fair value and the determination be made quickly.

Mr. Hanes said it was his contention that it was a non-conforming use. The law was clear in Virginia that non-conforming uses did not change due to the ownership or type of ownership of properties. At the time that it was used, it was legal and had continued on uninterrupted to the current time with the non-conforming use status. He said the testimony, affidavits, and aerials supported that. The Jenkins had been told by the agents that the violations would cancel the easement, but Mr. Hanes did not read it that way. The Jenkins had the problem when they purchased the property in 1998 because the easement was in existence then. They purchased the property in 1998 for \$762,509 and had it listed for \$1,399,009. The Jenkins had said that riding was done as far back as 1962, which supported his contention of a non-conforming use.

Mr. Pammel asked if the total area under easement for HVA could be ascertained, which would include not only the 1.6 acres, but also the riding trails. Mr. Hanes responded that he would get the information.

Mr. Hart asked staff about Sect. 8-401.4, the term "operated." He interpreted operated to mean the activity and not the ownership or rights being exercised whether by permission or license or some kind of prescriptive easement and how that related to a non-profit organization. Mr. Hart asked why the recordation of an easement document changed the operation. Ms. Stehman answered that it was staff's position that it was operated by a non-profit organization, although she did not know when it came into existence or when it ceased being a group of neighbors. Staff believed it was operated because events were scheduled and liability was maintained by them, so it seemed it was operated by a non-profit organization.

Mr. Hart said the only testimony regarding when the HVA was established was in the 1960s and after the activities of the 1950s, but prior to the 1978 Ordinance. Mr. Hart asked whether the recordation of the easement changed or affected the word "operated" if the group had been doing this since the '60s. Ms. Stehman answered that she was not convinced that it had been doing the same thing since the '60s. The only start date she knew was the 1995 easement and current activities taken place there.

Mr. Hart asked if there was any other provision prior to 1978 that staff relied on that supported the argument that it was the recordation of the easement in the '90s that was the reason for the violations. Ms. Stehman responded that staff did not go beyond the 1978 Ordinance. She said any Ordinances prior to that would have to be researched to determine if they were applicable. Ms. Stehman said she could provide the information in a few weeks.

Mr. Hanes stated that the HVA was created in 1955.

Mr. Pammel asked that documents and the organizational dates as well as when it was made a non-profit organization be provided. Mr. Hanes said he would get the information.

Vice Chairman Ribble closed the public hearing.

Vice Chairman Ribble reopened the public hearing.

Ms. Giovanni said she needed to correct some information. She said that when she showed the property, she did not know there was a riding ring, a riding club, or that there were any violations. She only knew it was a horse property.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to defer decision on A 2004-SU-021 to November 16, 2004, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

Mr. Hart said he wanted to understand exactly how the Ordinance dealt with this type use from 1953 to the current date.

//

~ ~ ~ November 2, 2004, After Agenda Item:

Approval of August 5, 2003; September 23, 2003; and October 5, 2004 Minutes

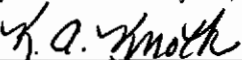
Mr. Pammel moved to approve the Minutes. Mr. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were absent from the meeting.

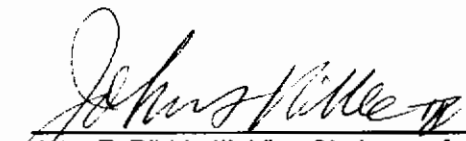
//

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

Minutes by: Vanessa A. Bergh

Approved on: May 24, 2005


 Kathleen A. Knoth, Clerk
 Board of Zoning Appeals


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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 9, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members, consultants, and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant Virginia Cede Ann. Sec. 2.2-3711 (A) (7) (LNMB SUPP. 2002). Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

The meeting recessed at 9:02 a.m. and reconvened at 9:18 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board of Zoning Appeals during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 9, 2004, Scheduled case of:

CRAIG AND KIRSTEN PRINDLE, SP 2004-SU-050 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. and deck to remain 3.9 ft. from side lot lines. Located at 12203 Westwood Hills Dr. on approx. 21,667 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A. (Admin. moved from 10/19/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Prindle, 12203 Westwood Hills Drive, Oak Hill, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, consisting of children's play equipment, with a height of 13 feet, to remain 2.9 feet from the eastern side lot line and to permit a deck to remain 3.9 feet from the western side lot line. She noted that a variance approved in 1999 permitted the deck to be constructed 4.0 feet from the side lot line, but the survey conducted for the purpose of submitting the special permit revealed that the deck was actually slightly closer than 4.0 feet to the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, modifications of 9.1 feet for the play set and 8.1 feet for the deck were requested. Ms. Stanfield indicated that Ed Tobin, Senior Zoning Inspector, Zoning Enforcement Branch, was present to answer questions regarding the case.

Responding to Mr. Hart's question on whether there may be administrative relief regarding the deck, Susan Langdon, Chief, Special Permits and Variance Branch, said that there was none for this distance as it was only to the basic side yard that administrative relief could be granted and not on something where a special permit or a variance had been granted.

Mr. Prindle presented the special permit request as outlined in the statement of justification submitted with the application. He said the play set was already there when they purchased the home, and it was one of the amenities that pleased his family, that it was of high quality, was well maintained, and was used by his young daughter only a few times a week. He said that allowing the play set to remain was not detrimental to the use or enjoyment of the surrounding properties. He pointed out that the play set was located in the side yard, was 135 feet from the street, was behind a seven-foot privacy fence and was nestled among trees and virtually unnoticeable, even in winter, and that it blocked only one neighbor's view of the side of his house

above the privacy fence. He distributed pictures that, he stated, showed how unnoticeable the play set was. He pointed out how the next-door neighbor's back yard was adjacent to his side yard, that the play set was approximately 40 to 50 feet from the neighbor's house, and that a six-foot, three-inch tall privacy fence was installed by the previous owners of the property. Mr. Prindle said that to force compliance with the minimum yard requirements would cause unreasonable hardship because the play set was located in the sole area of the yard that was level where the yard was landscaped with woodchips for safety and there was sufficient clearance for the swings and slide. He pointed out that the play set was a single integrated structure that was very heavy and to try and pare it down would destroy many of its features as well as the safety railings and circular tube slide which his daughter greatly enjoyed. He noted that to relocate the structure to his back yard was not feasible because of the topography. The fact that it sloped severely downhill, would require removing several mature trees, and would be expensive to landscape. Mr. Prindle said that the majority of his neighbors supported the special permit request and that he had several letters evidencing their support for the record. He pointed out a letter from a former president of the Folkstone Homeowners Association, Robert Ray, who supported the special permit request and who noted that the Noonans, the neighbors opposed to the play set, had received a special exception several years ago from the community association to install an aboveground pool very close to the Prindles' property and that for years the Noonans had a variety of children's play equipment that was clearly visible to the neighbors and the street. Mr. Prindle stated that to allow the play set to remain in its current location would not be detrimental to the reasonable use and enjoyment of the neighboring property.

Chairman DiGiulian called for speakers.

Mike Halager, Long & Foster, no address given, said he wanted to comment on two letters, one from Liberty Mutual Insurance and the other from Samson Realty, that were sent on behalf of Mr. Noonan. Mr. Halager questioned whether there was evidence of Mr. Noonan's insurance premium increasing because of the potential liability of someone accessing the Noonan's property from the play structure. He said that it was practically impossible to leap the distance from the play set over the fence onto the Noonan's property. He pointed out that an aboveground or an in-ground pool raised one's insurance premium because of the liability, and from a real estate perspective, pools were considered a negative due to the maintenance and because they were considered a hazard. Mr. Halager pointed out that Mr. Prindle's property, purchased in 2002, was \$62,700 more than any other property that was sold that year, so the play set did not bring down the value of the neighboring properties, but, rather, added to the value.

Henry Noonan, 3040 Castlevine Court, Oak Hill, Virginia, came forward to speak in opposition to the application. He stated that he believed the Prindles had not met Standards D, E, and F, and the play set was detrimental to the use and enjoyment of his property. He cited that the play set allowed anyone to look over the fence in to his back yard. He said that the aboveground pool was for the use of his special needs son, who was autistic. He noted amenities he added to his home, including the deck, the pool, a hot tub, and a screened porch, and said that the improvements were severely negated because of the lack of privacy. Mr. Noonan referenced a letter from a Liberty Mutual agent who had determined that the play set's close proximity to his property allowed an unsafe situation because of potential access onto his property. Mr. Noonan said that it was possible to move the play set to another part of the yard by detaching the swing set and moving the fort portion to the area farthest away from his property adjacent to the common area. In response to Mr. Hammack's inquiry regarding whether Mr. Noonan had seen a letter from the Jinnahs, the previous owners of the Prindle home, Mr. Noonan replied that he had not, but acknowledged that there had been difficulties between them while they were neighbors. Mr. Noonan refuted that the Jinnahs installed the privacy fence to satisfy his concerns. He said the Jinnahs had agreed to move the play set before selling their home. He submitted that he tried to establish a mutually considerate relationship with the Prindles, had offered his assistance in helping to pay to move it or help physically to move the play set, but the Prindles were not reasonable about relocating it.

Carmen Noonan, 3040 Castlevine Court, Oak Hill, Virginia, came forward to speak in opposition to the application. She said that although the Prindles had collected letters of support from many of the neighbors, they were not the ones directly affected. She explained that the pool was for her family's use and enjoyment and that they had many restrictions due to their child's disability.

Mr. Beard pointed out a picture of children clearly visible above the privacy fence while jumping on the Noonans' trampoline. He asked what effect Mrs. Noonan supposed that their recreational activities had on the Prindles' privacy. Mrs. Noonan explained that the recreational amenities were for the use of her child with special needs and that the children jumping on the trampoline were just having fun and were not looking in at the Prindles' property.

In his rebuttal, Mr. Prindle said the Noonans exaggerated their privacy concerns and were hypercritically unfair about it. He said they enjoyed a six-foot fence that ran along his entire back yard. He pointed out that the Noonans had both an aboveground pool and a large trampoline up against his property line, with the pool located only 25 feet from his foundation walls, while his play set was set back 40 feet from the rear of their house. Mr. Prindle said that the Noonans had an elevated deck and second-story windows which viewed his property. He pointed out the fact that the pool would not have been approved if the previous owners of his property had not written a letter to their homeowners association conditionally accepting the pool after the HOA had twice denied it. Mr. Prindle said his four-year-old daughter played on her play set three times a week and only glanced over to the Noonans' yard to say a friendly 'hi' to them and to their son, her friend, Patrick. Mr. Prindle pointed out that the Noonans had a similar play set in their front yard which was not in compliance for over ten years. Mr. Prindle said that when they moved into their house, the Noonans' deck was already there. He said that if the play set could be relocated, he had a contractor's estimate to landscape a portion of the yard, and it would entail a great deal of excavating with the cost being astronomical.

Mr. Hammack asked for clarification regarding the location of the Noonans' pool. Mr. Prindle responded that the pool sat 33 feet from his home's foundation walls because it was five feet from his property line and his home sat back 23 feet.

In response to Mr. Hammack's question concerning the Jinnah letter, Mr. Tobin said he researched a complaint in 2002 regarding the swing set, and the inspector at that time recorded that after speaking with both parties, a mutual agreement was obtained between the violator and the complainant to withdraw the complaint, and the case was closed. He said the current complaint that the Board was addressing was filed by an individual who lived outside the neighborhood. Mr. Tobin said that unlike the previous situation, the matter could not be resolved between neighbors, and the violation must be cleared. He said the complainant apparently was driving through the Prindles' neighborhood looking at real estate and noticed the swing set. He said it was not unusual for people to file complaints regarding things that are not in their immediate environment. He stated that although no complaint had been filed about the Noonans' pool and trampoline, the fact that he was now aware of them would compel him to further research the matter to determine whether they were conforming.

Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that this case was unusual because although he could understand neighbors having an issue over a play set, this matter had been set into motion by a third party. He said he wanted to view the site before making his decision.

Mr. Hammack moved to defer decision on SP 2004-SU-050 to November 30, 2004, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

Chairman DiGiulian announced that the next application listed on the agenda, UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042, would be taken up by the Board at a later point in the meeting.

//

~ ~ ~ November 9, 2004, Scheduled case of:

9:00 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, and 9/28/04)

Chairman DiGiulian noted that A 2004-SP-004 had been deferred for decision only.

Mr. Pammel said he appreciated the Crabtrees' inconvenience, but the decision had been deferred because all the Board members wanted to participate in the decision, and, unfortunately, two Board members had not yet viewed the tape of the public hearing.

Mr. Pammel moved to defer decision on A 2004-SP-004 to December 14, 2004, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The Crabtrees' agent, Jerry M. Phillips, requested permission for Mr. Vannoy to speak at the decision date because the subdivision was named after Mr. Vannoy and he had pertinent information concerning the case. Chairman DiGiulian agreed to Mr. Phillips' request.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and briefings by staff members and consultants regarding the Hickerson decision pursuant to Virginia Code Ann. Sect. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:23 a.m. and reconvened at 12:01 p.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 9, 2004, Scheduled case of:

9:00 A.M. UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit an existing church to add a child care center and nursery school. Located at 7100 Columbia Pi. on approx. 2.03 ac. of land zoned R-4, CRD, HC and SC. Mason District. Tax Map 71-1 ((4)) 145 and 146. (Admin. moved from 9/21/04 and 10/26/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Blevins, 7010 Maple Tree Lane, Springfield, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the addition of a nursery school and child care center to an existing church, with a combined maximum enrollment of 99 children. The child care program and nursery school would operate with a maximum of 15 employees, from 6:30 a.m. to 6:30 p.m., Monday through Friday. No new construction had been proposed with the application; however, the parking lot would be re-stripod end screening provided to improve safety and enhance the visual impact of the site. Staff recommended approval subject to the proposed development conditions in Appendix 1 of the staff report. Ms. Stanfield noted that an approved affidavit had been distributed to the Board members.

Linda Blevins presented the special permit request as outlined in the statement of justification submitted with the application. She said the goal of her center was to provide parents in the Annandale area with quality childcare with a focus on providing a learning environment where the children could develop the self-esteem and skills to begin and excel in public school. She said that all the nearby facilities had waiting lists, and there was a real need for her facility. Ms. Blevins said they were in total agreement with staff's proposed conditions, and if a decision could not be made that day, she would appreciate only a one-week deferral.

At Mr. Pammel's request, Ms. Blevins gave a brief history of her many years in the business of child care. She said she enjoyed continued good relationships, many long term, with parents and former students of her previous center. She assured that all required permits had been obtained with her centers and that they followed the letter of the law throughout the process. She explained the qualities and education she required and considered for her employees. Ms. Blevins said she took a great deal of pride in her centers and never had any serious violations cited. She concurred with Mr. Ribble that she had been in the child care business for over 29 years.

Ms. Stanfield responded to Mr. Hart's questions concerning a barrier fence requirement and several development conditions. She said the addition of shrubs along the fence line would soften the view. Discussion followed between Ms. Stanfield and Mr. Hart concerning crafting language for Development Condition 13 to be more specific. Utilizing the overhead viewer, Ms. Stanfield pointed out the site's ingress and egress and the area of the yard that the asphalt would be overlaid with a rubberized material for safety.

At Mr. Hammack's request, Ms. Blevins explained the school's procedure for dropping off and picking up students, and the employees' scheduled hours. She assured that there never had been a problem associated with her facility, and she did not anticipate any.

Mr. Hammack asked if there was a representative from the church who could explain what uses, outreach programs or activities, the church intended to offer during the week.

Thomas Gehr, Chairman of the Board of Directors of the United Baptist Church, no address given, came forward to address Mr. Hammack's request. He explained the church's parking. He said a parent would utilize the parking space for the time it took to walk with their child and sign him or her in or out, and that was usually approximately 10 minutes. In response to Mr. Hammack's question, he said he understood the church was in compliance with the Ordinance standards for the required number of parking spaces.

Susan Langdon, Chief, Special Permits and Variance Branch, explained that the site's two uses, the church and the child care center, each required a specific number of spaces and the lot's re-striping afforded the minimum requirement for the facility. She added that this scenario was pretty common and that was why the Ordinance allowed a parking reduction for uses on a property that met at different times.

Reverend Wayne Yawn, 7706 Annandale Mains Court, Annandale, Virginia, came forward to speak in support of the application. He said during his 14-year tenure with the church, the day care center was a long-term goal, and because Ms. Blevins was a professional in the field with excellent credentials, they hired her to manage their center. He said the church provided many services to the community with activities that continued throughout the day, and the parking lot was never fully occupied.

Chairman DiGiulian closed the public hearing.

Mr. Hart said he wanted to craft a development condition and visit the site. Mr. Hart moved to defer decision on SP 2004-MA-042 to November 16, 2004, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 9, 2004, Scheduled case of:

9:80 A.M. GERALD E. AND SUSAN J. SIKORSKI, A 2003-SP-055 Appl. under Sect(s). 13-301 of the Zoning Ordinance. Appeal of determination that the appellants have erected a free-standing accessory structure which exceeds seven feet in height located in the minimum required side yard in violation of Zoning Ordinance provisions. Located at 8255 Crestridge Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-4 ((8)) (2) 2A. (Admin. moved from 3/16/04, 4/27/04, 5/11/04, and 6/22/04 at appl req.) (Deferred from 10/5/04 for notices)

Chairman DiGiulian noted that A 2003-SP-055 had been withdrawn by the appellants.

//

~ ~ ~ November 9, 2004, Scheduled case of:

9:30 A.M. DIDIER VANTHEMSCHE, A 2004-DR-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory structure, which does not comply with the minimum yard requirements for the R-E District, without a valid Building Permit and has installed two entrance gates, which exceed the allowable height regulations, in violation of the Zoning Ordinance provisions. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22 C. (Deferred from 8/10/04 for notices)

Chairman DiGiulian noted that A 2004-DR-016 had been administratively moved to February 8, 2005, at 9:30 a.m.

//

~ ~ ~ November 9, 2004, Scheduled case of:

9:00 A.M. BROOKS H. LOWERY, A 2004-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 60-2 ((15)) 148 is in violation of Zoning Ordinance provisions. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 148.

Jayne Collins, Zoning Administrative Division, presented staff's position as set forth in the staff report. She said it was staff's position that the appellant's fence exceeded the four feet height permitted for a fence in a front yard under both the current Zoning Ordinance regulations as well as those in effect at the time the fence had been allegedly established. She stated that to bring the property into compliance, the appellant had two options, to reduce the fence height such that the fence located in the front yard on Cofer Road did not exceed four feet and the fence located in the side and rear yard did not exceed seven feet in height or the appellant could remove the fence from the front yard.

In response to Mr. Hart's question regarding whether the Zoning Ordinance amendment currently being considered would be applicable to the issue on appeal, Ms. Langdon said that if the conceptual Zoning Ordinance amendment was approved, Mr. Lowery could apply for a special permit for his fence to remain because the fence was not over six feet high in his front yard. Ms. Collins concurred that the fence was less than six feet in height.

The appellant, Brooks Lowery, 3212 Cofer Road, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He said the fence was there when he bought the property in 1999, and he understood the fence was erected in 1974, but was not recorded. He said he had made significant improvements to his home and property. He stated that his two young children and dog played safely in their fenced yard, and to remove the fence or pare it down to four feet in height would create an unsafe and unsecured environment for his children, stating that the street was well traveled. Mr. Lowery asked the Board to consider the financial hardship he would incur if required to remove, move back, or lower the height of the fence. He said his neighbors supported the fence and many had sent written statements to that fact.

Mr. Hart asked whether the appellant would be willing to apply for a special permit remedy if the Ordinance amendment was adopted, Mr. Lowery replied that if allowed the opportunity, he would.

In response to Mr. Beard's question regarding what had initiated the issuance of the violation, Mozart Chesson, Zoning Enforcement Branch, replied that a complaint from someone in the neighborhood had brought the fence issue to the attention of the County.

In closing comments, Ms. Collins said that the fence was never legally established, could not be considered nonconforming, and the Ordinance allowed only a four-foot fence in a front yard.

In his rebuttal, Mr. Lowery said that he enjoyed his neighbors' support for the fence to remain that was there when he purchased the house and initially he was unaware that the fence was not in conformance.

Chairman DiGiulian closed the public hearing.

Mr. Ribble commented that there might be a light at the end of the tunnel for the appellant if the Zoning amendment was adopted.

Mr. Ribble moved to defer decision on A 2004-MA-023, to February 8, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 9, 2004, After Agenda Item:

Approval of October 14, 2003; October 28, 2003; and June 1, 2004 Minutes

Mr. Pammel moved to approve the October 14, 2003 and June 1, 2004 Minutes. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Hart moved to defer approval of the October 28, 2003 Minutes, for 30 days. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Pammel abstained from the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:47 p.m.

Minutes by: Paula A. McFarland

Approved on: February 15, 2005

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 16, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:09 a.m.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding representation of the Board of Zoning Appeals in legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

The meeting recessed at 9:10 a.m. and reconvened at 10:10 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

There were no additional Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 16, 2004, Scheduled case of:

9:00 A.M. TRUSTEES FOR THE BETHLEHEM BAPTIST CHURCH (A/K/A FAIR OAKS BAPTIST CHURCH), SPA 80-S-067-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-S-067 previously approved for a church and school of general education to permit a reduction in land area and change in permittee. Located at 4601 West Ox Rd. on approx. 29.08 ac. of land zoned R-1 and WS. Springfield District. Tax Map 56-1 ((1)) 11H and 11 I pt.; (Formerly known as 56-1 ((1)) 10, 11C, 11E, 11F pt. and 11G.) (Admin. moved from 10/12/04 at appl. req.) (Decision deferred from 11/2/04)

Chairman DiGiulian advised the Board that SPA 80-S-067-02 had been deferred for decision from November 2, 2004.

Ms. Gibb gave a disclosure and indicated that she would recuse herself from the public hearing.

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

Chairman DiGiulian called the applicant to the podium.

Robert Lawrence, Reed Smith LLP, the applicant's agent, came forward to speak and advised the Board that the decision had been deferred so that the disposition of the associated rezoning case could be determined. He reported that the Board of Supervisors had recently approved the rezoning case that deleted approximately seven acres from the property. He said the rezoning was currently in place, and all the evidence in the record was before the Board.

Mr. Pammel moved to approve SPA 80-S-057-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR THE BETHLEHEM BAPTIST CHURCH (A/K/A FAIR OAKS BAPTIST CHURCH), SPA 80-S-067-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-S-067 previously approved for a church and school of general education to permit a reduction in land area and change in permittee. Located at 4601 West Ox Rd. on approx. 29.08 ac. of land zoned R-1 and WS. Springfield District. Tax Map 56-1 ((1)) 11H and 11 I pt.; (Formerly known as 56-1 ((1)) 10, 11C, 11E, 11F pt. and 11G.) (Admin. moved

from 10/12/04 at appl. req.) (Decision deferred from 11/2/04) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 2004; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only (Fair Oaks Baptist Church) and is not transferable without further action of this Board, and is for the location indicated on the application, 4601 West Ox Road (21.66 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Paciulli Simmons & Associates, dated August 4, 2004, as revised through October 26, 2004, and approved with this application.
3. A copy of this Special Permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of seats in the sanctuary shall be limited to 800.
5. The maximum number of staff personnel on the site at any one time shall not exceed 177.
6. Landscaping and screening shall be in conformance with Article 13 of the Zoning Ordinance. Transitional screening along the east property line shall be modified to allow the use of existing vegetation as shown on the plat. The barrier requirements along the east and north property lines shall be modified to allow the use of existing vegetation and fencing as shown on the plat.
7. All new outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. At such time as the lighting fixtures in those areas depicted on the Special Permit Amendment plat are replaced, the new fixtures shall be in full compliance with the Performance Standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
8. Prior to subdividing ± 7.41 acres from the subject site, a new Non-RUP for the church and school of general education shall be obtained to implement the change in permittee.
9. All parking shall be on-site, as depicted on the special permit plat. The applicant shall obtain approval of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to issuance of a new Non-RUP for the church and school of general education to permit the shared use of the church parking lot for both the church use and school uses. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the school of general education shall be reduced to meet the parking requirements as determined by DPWES.
10. The maximum total daily enrollment of the school of general education shall be limited to 2,000 students.

11. The hours of operation for the school of general education shall not exceed 8:00 a.m. to 10:00 p.m.
12. All buses and/or vehicles used for transporting students shall comply with state and Fairfax County School Board standards in lights and color requirements.
13. The recreational area for the school shall be in conformance with County and State Codes.

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

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote, and Ms. Gibb recused herself from the hearing.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:00 A.M. DARSHAN S. PADDA AND KULWANT K. PADDA, VC 2003-DR-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 3-A2 having a lot width of 20.09 ft. and proposed lot 3-A1 having a lot width of 148.6 ft. Located at 715 Walker Rd. on approx. 3.48 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((2)) 3A1. (Deferred from 2/10/04, 4/20/04, and 5/11/04 at appl. req.)

Chairman DiGiulian noted that VC 2003-DR-178 had been withdrawn by the applicants.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:00 A.M. THOMAS L. KOGER, VC 2004-PR-115

Chairman DiGiulian noted that VC 2004-PR-115 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:00 A.M. RIDGEMONT MONTESSORI SCHOOL, INC. AND IGLESIA PALABRA VIVA, SPA 85-D-070-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-D-070 previously approved for a church with nursery school and private school of general education to permit change in permittee, increase in enrollment and change in development conditions. Located at 6519 Georgetown Pi. on approx. 1.43 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 4B. (Admin. moved from 9/28/04 at appl. req.) (Deferred from 10/12/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Broyhill, Reed Smith LLP, the applicant's agent, replied that it was.

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

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 85-D-070, previously approved for a church, a nursery school, and a school of general education, to permit a change in permittee from the Korean Orthodox Presbyterian Church and Ridgemont Montessori, Inc., to the Iglesia Palabra Viva and Ridgemont Montessori, Inc. The application also requested an increase in the enrollment for the two schools combined from 53 to 72 students, approval to operate without a term limitation, a change in the hours of operation to allow the schools to open at 8:45 a.m. rather than 9:00 a.m., and a change in the development condition that limited the uses to 150 vehicle trips per day to permit 180 vehicle trips per day. She noted that staff did not support the increase in the vehicle trips per day based on a statement by the applicant that the number of vehicle trips would not be expected to exceed 120 trips per day. No other changes were proposed with the application. Ms. Stanfield stated that staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval subject to the revised proposed development conditions. She noted that the applicant and staff had met with an adjacent property owner on the western lot line and discussed the construction of a fence leading from the existing fence to Georgetown Pike and how the construction would affect the existing vegetation on the site, and as a result of the meeting, changes were made to the development conditions to address the fence and the transitional screening in the area. She stated that the applicant requested clarification in a number of the conditions, and staff had no objection to the proposed changes.

Mr. Hammack noted that the proposed changes to the development conditions from what were reflected in the staff report were extensive, and he asked Ms. Stanfield to explain why there were so many changes, particularly with respect to the screening. Ms. Stanfield explained that during an onsite visit with the urban forester, dead and dying vegetation was noted in some areas that needed additional screening, particularly with respect to the proposal to build a fence, and that from staff's perspective, the revised transitional screening language addressed the planting of shrubs and trees and the removal of invasive vines. She said the additional language was proposed by the applicant, and she would defer to the applicant to explain why those changes were requested.

Mr. Hart asked for clarification regarding the editorial notations in the development conditions and whether the changes proposed by the applicant were included. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant's proposed changes were included, and all of the bolded language reflected changes from what was in the staff report. She explained that the bolded language which was not underlined reflected changes she had made the prior day, most of which was requested by the applicant pursuant to their visit to the site, and the bold underlined language indicated changes previously made by Ms. Stanfield.

Mr. Hart noted the misspelling of the church's name in Development Condition 1 and said the word "exiting" should be changed to "existing" in the second bullet point under Development Condition 5.

Mr. Hammack asked why the word "maintaining" had been deleted and asked whether the applicant was required to maintain the screening. Ms. Langdon said the change in wording was requested by the applicant because the replacement of dead, dying, and diseased vegetation with like material was addressed in the last paragraph of Development Condition 5. She said that staff agreed that the language in Development Condition 5 addressed the issue of maintaining anything existing on the site.

Ms. Broyhill presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained that the purpose of the application was to change the permittee for the church from the Korean Orthodox Presbyterian Church to Iglesia Palabra Viva, which was currently conducting operations on the premises as a contract purchaser of the church, and to renew the current special permit for the nursery school and school of general education. She stated that the property had been used for a church since 1969, and the school had been operating since August of 1985. Ms. Broyhill said the only changes in the use proposed by the application were related to the school and were to increase the enrollment by nine students and to change the hours of operation to begin 15 minutes earlier at 8:45 a.m., with the closing hours remaining the same at 3:00 p.m. She explained that the applicant proposed to continue the existing vegetation and fencing along the boundaries as shown on the special permit plat and as set forth in the proposed development conditions in satisfaction of the transitional screening and barrier requirements. She reported that the applicant had met with the owners of the property on the western boundary line, and in consultation with the Urban Forest Management Branch, had agreed to the extension

of the existing fence and enhancement of the vegetation along the boundary as set forth in Development Conditions 5 and 6. Ms. Broyhill stated that the condition of the current special permit that the school not operate at the same time that the church held its worship services had been maintained since the issuance of the permit, and she said that in conjunction with the new County policy, the applicant had submitted a request for a reduction, pursuant to Zoning Ordinance Sect. 11-1063, of the minimum required off-street parking spaces for a nursery and kindergarten school operating on the premises of a place of worship based upon the respective hourly parking accumulation characteristics of the two uses. She explained that although the applicant had asked for an increase to 160, Angela Rodeheaver, Department of Transportation (DOT), had requested that carpooling be maintained at 150, and Ms. Broyhill stated that the school would continue to require the carpool and vanpool of 150 as provided in Development Condition 7.

Mr. Beard asked for confirmation of his assumption that the applicant had been operating as a contract purchaser contingent upon the approval of the special permit amendment and for how long they had been there. Ms. Broyhill confirmed that his assumption was correct, and after conferring with her client, stated that they had been there since the beginning of the year.

Mr. Hart asked for clarification regarding the timing of the requirement in Development Condition 15. Ms. Langdon replied that it would be within the 30 months of the use being established. Ms. Broyhill added that it would be before the Non-RUP was issued and that looking at the drain field would be a condition. She explained that although Ms. Stanfield had been the first person who noticed it, the playground had been located on the drain field for 15 years, and the applicant agreed to the condition.

Mr. Hart noted that the word "inched" should be changed to "inches" in the fourth bullet point under Development Condition 5.

Chairman DiGiulian called for speakers.

James Marum, 1009 Jarvis Court, McLean, Virginia, came forward to speak in opposition to the application. He stated that he had concerns regarding the traffic pattern and the increase in enrollment. He said there was currently a traffic problem at the school, and it would worsen with increased enrollment. Mr. Marum explained that the eastbound vehicles often piled up on the shoulder waiting to enter the parking lot, and the westbound vehicles often did half U-turns into Jarvis Court so they could drive straight across Georgetown Pike into the school driveway. Based on the already unusual and unsafe traffic patterns from the school traffic, he requested the increase in enrollment be denied.

Mr. Beard asked Mr. Marum when he had purchased his house. Mr. Marum replied that he was the original owner, and the house was built in 1997.

Mr. Beard asked Mr. Marum to confirm that the school was in existence at the time he purchased his house. Mr. Marum said he presumed it was.

Mr. Beard noted that it was an increase in nine students. Mr. Marum indicated that he understood that, but felt the traffic situation was currently unsafe.

Mr. Beard asked Mr. Marum to confirm that his objection was not to the school, but to the increased enrollment, which Mr. Marum confirmed.

Mr. Hammack asked how often the stacking up of eastbound vehicles on the shoulder occurred and how many vehicles were involved. Mr. Marum replied that five or six vehicles would stack up, and he was not sure whether it happened daily, but he had seen it many times.

Mr. Hammack asked whether there was a significant number or just one or two vehicles that made the turning movements into Jarvis Court. Mr. Marum responded that it was approximately five or six vehicles that turned into Jarvis Court because they were fearful of being rear-ended by traffic coming over the hill at fast speeds while trying to make a left turn into the school from Georgetown Pike.

Mr. Hart asked why the eastbound vehicles that stacked up on the shoulder could not turn right and drive into the parking lot. Mr. Marum said there was not enough room to make their turn, and they had to wait to drive up the ramp into the school, but he did not know what the situation was at the top.

Ms. Broyhill, in her rebuttal, stated that the increase of nine students was de minimis, and the long-standing condition of 150 trips per day was not being changed. She said the operating hours of the school were off-

hours, and rush-hour was over by 8:45 a.m. She explained that depending on the ages of the students, classes ended and the students left the school at different times between noon and 3:00 p.m. Ms. Broyhill stated that the situation would be monitored to the extent there was any stacking occurring on Georgetown Pike, and they would do anything they could to work with the neighbor, but it was the first they had heard of the problem. She said parents were discouraged from making left turns into the property to avoid backing up traffic on Georgetown Pike, and there was a provision in that regard in their handbook.

Ms. Gibb asked what the parents coming from the east were to do if they did not make left-hand turns. Ms. Broyhill said they would take the back roads around behind the school, come back from the other direction, and head east. She said Mary Beth Humen, the director of the school, might be better able to answer the question.

Ms. Humen came forward to speak. She confirmed that parents were asked to avoid making left turns to keep traffic moving. She said there were other ways for the parents to get to the school, such as down Waverly Way or Churchill Road to Balls Hill Road, and added that although there were some families from Arlington, who were asked to come into the school from the east, most of the families were from McLean, Great Falls, and Vienna.

Mr. Beard asked what the actual number of trips per day currently was and whether it was comfortably below 150. Ms. Broyhill said it was estimated at 120 and added that many of the children were from the same family and came together. She said they had asked for an increase in the trips, but when DOT was opposed, they conceded.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 85-D-070-02 for the reasons stated in the Resolution, with the earlier referenced typographical corrections to the development conditions.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RIDGEMONT MONTESSORI SCHOOL, INC. AND IGLESIA PALABRA VIVA, SPA 85-D-070-02 Appl. under Sect(s) 3-103 of the Zoning Ordinance to amend SP 85-D-070 previously approved for a church with nursery school and private school of general education to permit change in permittee, increase in enrollment and change in development conditions. Located at 6519 Georgetown Pi. on approx. 1.43 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 4B. (Admin. moved from 9/28/04 at appl. req.) (Deferred from 10/12/04 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 2004; and

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

1. The applicants are the owners of the land.

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

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

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

1. This approval is granted to the applicants only, Ridgemont Montessori School, Inc. (the "School")

and Iglesia Palabra Viva (the "Church"), and is not transferable without further action of this Board, and is for the location indicated on the application, 6519 Georgetown Pike, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Christopher Consultants, dated July 25, 2003, revised through June 21, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of each use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Transitional Screening 1 shall be modified as follows:
 - Transitional Screening 1 shall be modified along the eastern property line to include a reduction in the width due to the existing parking lot and to allow existing vegetation as shown on the plat to satisfy the required screening.
 - Transitional Screening 1 shall be modified along the southern property line to include a reduction in the width due to the existing parking lot and to allow existing vegetation as shown on the plat to satisfy the required screening.
 - Transitional Screening 1 shall be modified along the northern property line to include a reduction in the width due to existing paving and to allow existing vegetation as shown on the plat to satisfy the required screening.
 - Transitional Screening 1 shall be modified along the western property line as follows:
 Transitional Screening 1 shall be modified to allow existing vegetation as shown on the plat to remain.

 Prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the School, (a) the existing vegetation shall be supplemented by eight (8) to ten (10) evergreen trees as determined by the Urban Forest Management Branch (UFMB) with a minimum height of six (6) feet at the time of planting, to be planted west of the wood fence to be installed pursuant to Condition 6; (b) twenty (20) shrubs, approximately 24 to 30 inches in height at time of planting, shall be planted along the western side of the fence to soften its appearance; and, (c) all invasive vines shall be removed from the transitional screening yard. The species and location of the trees and shrubs shall be determined in consultation with the UFMB.
- All dead, dying or diseased vegetation in the transitional screening areas shall be replaced with like material, as deemed appropriate by the Urban Forestry Management Branch. Prior to issuance of a Non-RUP for the School, all invasive vines shall be removed from the western transitional screening yard.
8. The existing six foot high wooden fence along the southern lot line and approximately 120 feet of the eastern lot line shall be maintained in good condition and shall satisfy the barrier requirement. A six-foot high wood fence shall be constructed along the western lot line from the existing fence on the southwest side of the parking area to a point north of the existing play area. The barrier requirement along all other lot lines shall be waived, provided the fence around the play area remains and the hedge along the front line of the play area is maintained.
7. The School shall continue to require carpool and/or vanpool arrangements sufficient to ensure that trips to and from the site will not exceed 150 trips per day.
8. All parking shall be on-site, as depicted on the special permit plat. The School shall obtain approval

of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to issuance of a Non-RUP for the School to permit the shared use of the Church parking lot for both the Church use and the School use. If approval of a parking reduction is not obtained, the number of children in the School shall be reduced to meet the parking requirements as determined by DPWES.

9. Seating in the church sanctuary shall be limited to a maximum of 225 seats.
10. Upon issuance of a new Non-RUP the combined maximum daily enrollment for the School shall not exceed 72 students.
11. Upon issuance of a new Non-RUP the hours of operation for the School shall be limited to 8:45 a.m. to 3:00 p.m., Monday through Friday.
12. Upon issuance of a new Non-RUP, the maximum number of School personnel on the site at any one time shall not exceed ten (10).
13. Any signs on the property shall be provided in accordance with the provisions of Article 12 of the Zoning Ordinance.
14. All new outdoor lighting fixtures shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
15. The School shall have the trenches of the existing septic system field located to determine their exact location. The School shall relocate fence posts and/or anchors/footers for the play equipment or fence if such structures are found to be located within septic field trenches.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:00 A.M. UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit an existing church to add a child care center and nursery school. Located at 7100 Columbia Pl. on approx. 2.03 ac. of land zoned R-4, CRD, HC and SC. Mason District. Tax Map 71-1 ((4)) 145 and 146. (Admin. moved from 9/21/04 and 10/26/04 at appl. req.) (Decision deferred from 11/9/04)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda R. Blevins, 7010 Maple Tree Lane, Springfield, Virginia, the applicants' agent, replied that it was.

Chairman DiGiulian advised the Board that SP 2004-MA-042 had been deferred for decision only and asked staff, Mavis Stanfield, Senior Staff Coordinator, if there was any additional information for the Board.

Ms. Stanfield reported that there had been two changes made to the development conditions, with which the

applicants concurred. She said the first change was in Development Condition 13, to clarify that there would be plantings along the northern lot line, and the second change was in Development Condition 17, to clarify that the dumpster would not be moved from its location in the northwest corner as there was no alternate location for the dumpster.

Chairman DiGiulian asked Ms. Blevins if she had any additional comments and whether she agreed with the changes to the development conditions. Ms. Blevins replied that she had no further comments, and she was in agreement with the changes.

Mr. Hart moved to approve SP 2004-MA-042 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

UNITED BAPTIST CHURCH OF ANNANDALE & AMERIKIDS, LLC, SP 2004-MA-042 Appl. under Sect. 3-403 of the Zoning Ordinance to permit an existing church to add a child care center and nursery school. Located at 7100 Columbia Pi. on approx. 2.03 ac. of land zoned R-4, CRD, HC and SC. Mason District. Tax Map 71-1 ((4)) 145 and 146. (Admin. moved from 9/21/04 and 10/26/04 at appl. req.) (Decision deferred from 11/9/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 2004; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony showing compliance with the required standards for a special permit.
3. With the changes to the development conditions adding the screening to the north and the clarification regarding the dumpster, the issues relative to the school will be resolved.
4. The Board was provided with additional information regarding the rubberized surface for the play area.
5. With the restriping of the parking lot, some of the problems with the existing circulation will be resolved, which is not perfect, but seems to be working.
6. With the hours of the school operation, there will not be a significant conflict or overlap with the number of parking spaces provided.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, United Baptist Church of Annandale and Amerikids, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, 7100 Columbia Pike, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bowman Consulting Group, dated August 17, 1998, as revised through September 3, 1998 and the parking lot location plat prepared by Adtek Engineers, Inc., dated September 29, 2004.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a

conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 358. The church balcony shall be closed off for any seating purposes.
6. Parking shall be provided as depicted on the parking lot location plat and shall be a minimum of 90 spaces. All parking shall be on site. The re-striping plan included as Attachment 1, shall be implemented prior to issuance of a Non-RUP for the child care center/nursery school.
7. Prior to the issuance of a Non-RUP for the child care center/nursery school, the southern entrance on Chatelaine Road shall be closed to access by the installation of a chain gate. The closed entrance area shall be designated for bus parking only.
8. Prior to the issuance of a Non-RUP for the child care center/nursery school, the four parking spaces located on the west side of the church, immediately north of the Columbia Pike entrance, shall be designated for employee parking only.
9. The applicant shall obtain approval of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to issuance of a Non-Residential Use Permit (Non-RUP) for the nursery school and child care center to permit the shared use of the church parking lot for both the church use and school uses. If approval of a parking reduction is not obtained, the number of seats in the sanctuary and/or the number of children in the child care center/nursery school shall be reduced to meet the parking requirements as determined by DPWES.
10. Upon issuance of a Non-Residential Use Permit (Non-RUP) the combined maximum daily enrollment for the nursery school and child care center shall not exceed 99 children.
11. Upon issuance of a Non-RUP the hours of operation for the nursery school and child care center shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.
12. Upon issuance of a Non-RUP, the number of employees associated with the nursery school and child care center shall be limited to a maximum of fifteen (15) at any one time.
13. Additional plantings of trees or shrubs along the northern lot line shall be provided. The size, number, location and species to be determined in consultation with the Urban Forestry Management Branch, to satisfy the requirements and shall take into consideration the size of the planting area and the need to soften the view of the fence and screening area from the road.

Nine ornamental trees shall be planted along the site's Columbia Pike frontage in groupings of three (3) to meet the intent of the Comprehensive Plan streetscape recommendations. The species, number, size and location of all plant material shall be determined in consultation with the UFMB.
14. The existing foundation plantings and shade trees shall be maintained around the church building and within the terrace/play area. Dead, dying or hazardous plant material shall be replaced with plant materials of similar size and species.
15. The barrier requirement shall be waived.
16. The cement in the terrace/play area shall be covered with rubberized matting or removed and replaced with mulch, prior to issuance of a Non-RUP for the nursery school and child care center.
17. The dumpster shall remain in its present location in the northwest corner of the property. The two parallel parking spaces which will be located in front of the dumpster when the site is re-striped will be clearly marked with signs indicating that the spaces may only be used on Sunday.
18. Any new lighting shall be provided in accordance with the Performance Standards contained in Part

9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.

19. Any new signs on the subject property shall be provided in accordance with the provisions of Article 12 of the Zoning Ordinance. The four parallel parking spaces located on the west side of the church building shall be clearly marked for church employees only.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:30 A.M. LANCASTER LANDSCAPES, INC./WALTER G. FITZGERALD, A 2004-PR-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing outdoor storage on the property which exceeds allowable total area and has expanded the use on the property without a valid site plan in violation of Zoning Ordinance provisions. Located at 8515 (Posted as 8505) Lee Hwy. on approx. 4.07 ac. of land zoned I-5, R-1 and HC. Providence District. Tax Map 49-3 ((1)) 50A.

Chairman DiGiulian indicated that he would recuse himself from the public hearing.

Vice Chairman Ribble assumed the chair.

The appellant, Walter G. Fitzgerald, 8505 Lee Highway/2922 Mainstone Court, Fairfax, Virginia, came forward to speak. He asked that the hearing be deferred to allow him time to file a site plan.

Vice Chairman Ribble asked staff to address the question of a deferral.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that if staff was to speak to the deferral issue, she would like some idea of what the appellant was suggesting. She noted that the violation had been issued months prior, and the appellant had indicated in the appeal application that a minor site plan would be filed, which had not been done to date.

Mr. Fitzgerald explained that the firm that was going to do the site plan did not show up and kept delaying, and he was in the process of getting someone else. He said he was not aware of the time it would take the County to approve a site plan, but based on 30 days to draw the site plan up and 30 days to approve it, he asked for a 60-day deferral and said he would come back and ask for another deferral if 60 days was not enough time.

Ms. Gibb commented that would not be enough time, and she asked who the appellant had contacted. Mr. Fitzgerald said the next firm would be Mr. DiGiulian's company, and he explained that his brother's wife was a relative of Chairman DiGiulian. He added that he was appearing without an attorney because his attorney was the same attorney who represented the Board, who indicated he could not represent him, but advised him to file a site plan, and if that failed, he would recommend another attorney to him.

Ms. Gibb asked whether the issues on appeal would be resolved if a site plan was filed and approved. Ms. Stehman replied affirmatively. Mr. Fitzgerald said the documentation had been sent to Mr. DiGiulian, and

whatever Mr. DiGiulian's firm said needed to be done to comply would be done.

Ms. Stehman suggested a short deferral to approximately the middle of January be granted to allow time for the site plan to be submitted, and said that if additional processing time was necessary, staff would entertain a further deferral.

There were no speakers to address the question of a deferral.

Mr. Hart asked whether all the issues would be resolved if the engineer did a drawing depicting everything that was there and submitted it as a minor site plan. Ms. Stehman replied that it would as long as it went through the site plan process and what was required of that process by the Department of Public Works and Environmental Services.

Ms. Gibb moved to defer A 2004-PR-024 to February 1, 2005, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian recused himself from the hearing.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 7.

The appellant, Jim Lane, 12419 Popes Head Road, Clifton, Virginia, came forward.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that Mary Ann Tsai, Zoning Administration Division, would be presenting the staff report, and Roger Simms, Zoning Enforcement Branch, Zoning Administration Division, was also present.

Ms. Tsai presented staff's position as set forth in the staff report. She stated that the subject property was a typical, regularly-shaped corner lot zoned R-C located at the intersection of Popes Head Road and Colchester Road. She explained that the appeal was of a notice of violation that a fence in excess of four feet in height was located in the front yards of the property. Ms. Tsai stated that a fence approximately six feet in height was installed in both front yards of the property along the property line between the dwelling and Colchester Road and along the rear property line and extending into the front yard to enclose a portion of the property on the Popes Head Road frontage. This exceeded the maximum allowable height of four feet for a fence located in the front yards of a residential lot. She reported that the appellant was informed of the violation by the supervising field inspector during the installation of the fence, after which the fence contractor visited the zoning office and claimed that he was told the six-foot fence would be in compliance. Ms. Tsai stated that the zoning staff disputed that claim and recalled that the location of the yards was discussed, but not the fence height. She said the fence was subsequently installed, the notice was issued, and the appellant was in violation of Par. 3B of Sect. 10-104, which provided that the maximum fence height in the front yard in the residential district was four feet.

Ms. Gibb asked whether the fence would be allowed under the proposed change to the Zoning Ordinance to allow special permits for some fences, to which Ms. Tsai replied affirmatively.

Mr. Hart stated that he had visited the site and asked whether it was just the part on the driveway side or whether it was also the other one on the Colchester Road side. Ms. Tsai responded that it was both.

Mr. Pammel explained that the County was currently considering an amendment to the Zoning Ordinance that would allow the Board to hear applications under a special permit provision for fences exceeding the four-foot height in the front yard and asked whether the appellant would be willing to defer the appeal application until sometime in mid-February, and if the amendment was adopted, pursue a special permit in lieu of the appeal process. Mr. Lane replied that he would.

Ms. Gibb stated that there was no guarantee that the appellant would not have to pay a filing fee for a special permit. Mr. Lane stated that he understood that, and if he had to remove the fence, it would likely be far more expensive.

There were no speakers to address the question of a deferral.

Mr. Pammel moved to continue A 2004-SP-025 to March 1, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

Mr. Pammel advised the appellant that staff would contact him to let him know whether the amendment was approved, and he could adjust the applications accordingly at that point. He said the Board would like to schedule the special permit at the time the appeal would come forward and handle both applications at the same time.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:30 A.M. RON JOHNSON, A 2004-MA-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is conducting a use on property in the R-3 District which is not in substantial conformance with the conditions of Special Exception Amendment SEA 81-M-034 in violation of Zoning Ordinance provisions. Located at 6071 Arlington Blvd. on approx. 10,300 sq. ff. of land zoned R-3, SC and CRD. Mason District. Tax Map 51-4 ((2)) (A) 8. (Deferred from 7/27/04) (Notices not in order on 11/2/04; action on deferral request deferred from 11/2/04)

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that their decision regarding the appellant's deferral request had been deferred so the Board could determine whether or not to defer it to December 21, 2004. She said the issues were a special exception for an office that was currently being occupied as a residence as well as an office and sign violations. She reminded the Board that Rcy Spence had attended the hearing on November 2, 2004, as a representative of the appellant.

Chairman DiGiulian asked whether anyone was present to represent the appellant, to which there was no response.

Ms. Gibb moved to dismiss A 2004-MA-013. Mr. Hart seconded the motion and stated that the Board had deferred the appeal to determine the reason why the notices were not sent the second time, and if there was going to be an explanation, this was the time for it. He asked staff whether they had found out anything, to which Ms. Stehman answered no.

Chairman DiGiulian called for the vote, and the motion carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ November 16, 2004, Scheduled case of:

9:30 A.M. HUNTERS VALLEY ASSOCIATION & HUNTERS VALLEY RIDING CLUB, A 2004-SU-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the use of a portion of property in the R-E District as an equestrian riding ring constitutes a second principal use of the property and that such use was established without approval of a Special Permit, a Special Exception, a Resource Protection Area Exception, a site plan and a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10856 Flowerstone St. on approx. 7.21 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((23)) 5. (Admin. moved from 10/19/04) (Decision deferred from 11/2/04)

Chairman DiGiulian noted that a deferral request had been submitted by the appellants.

The appellants' agent, Grayson Hanes, Reed Smith, LLP, came forward to speak. He stated that the case was before the Board for decision only and noted that the appellants and staff had supplied requested information to the Board, of which he had received the information from staff the prior day. To be certain going forward that the record was 100 percent complete and everyone knew the requirements as to whether or not the property could be subdivided and another lot created to equal 75,000 square feet, he requested a deferral to the first meeting in December or sooner to allow time to speak with an engineer to be certain that

could not be done. He said if there was any way to do so, the appellants wanted to explore whether or not the minimum width and public street requirements could be met. In response to a Board member's inquiry at the previous hearing regarding the date of incorporation of the Hunters Valley Association, he presented a document from the State Corporation Commission, which indicated it was incorporated in 1955.

Mr. Pammel expressed his appreciation to Mr. Hanes and Jane Kelsey for the research they did, the information they provided, and the effort they made to search the transactions, deeds, and records, which he said was of great help.

Chairman DiGiulian called for speakers to address the question of a deferral.

Marilyn Jenkins, 10856 Flowerstone Street, Oakton, Virginia, came forward to speak. She stated that she and her ex-husband owned the subject property and could not support another delay. She said they were eager to sell the property, and time was of the essence because the real estate market nearly ceased during the holidays and winter. Ms. Jenkins explained that the June 16th notice of violation created a cloud of uncertainty over the property, and potential buyers were unwilling to write a contract offer until the violation question was resolved. She stated that the delays to date had totaled 153 days. She said that whether the permits were required or not would not have any bearing whatsoever on the subdivision, and a decision was needed now on whether the permits were required or not. Ms. Jenkins said they needed to move forward with the marketing of their property.

Ms. Gibb said she thought it would be helpful to know whether the property could be subdivided, which would be helpful to Ms. Jenkins as well, and if that could be answered at someone else's cost than Ms. Jenkins, that would be helpful. Ms. Jenkins said she agreed that the subdivision issue could be looked at, but whether the permits were required had no bearing on the subdivision. She asked whether the permits were needed if the land was subdivided. She said that provided it could be subdivided, it could be subdivided with permits, but the issue of the permits was what was currently important because people who were looking at the property wanted to know.

Mr. Hart asked Ms. Jenkins whether she had considered that if the Board voted to overturn the Zoning Administrator without understanding the subdivision possibilities, there might be no need to subdivide, and she would be right back where she had been for the last year or so. Ms. Jenkins replied that she had considered it, and if that was the case, they would market the property with that decision. She asked how needing or not needing the permits was linked to subdivision, and said, in her mind, they were separate issues. Mr. Hart replied that he was not necessarily linking them, but was trying to understand whether she was opposing the deferral because she wanted the Board to vote on the appeal issues. Ms. Jenkins said she wanted to know whether the permits were needed or not.

Mr. Hanes said the purpose of the deferral was to make the record complete. He stated that if the Zoning Administrator's determination was overturned, then there was no violation, and he thought Ms. Jenkins would support the appeal because her problem would be gone, but if the Zoning Administrator was correct, the appellants would apply for a special permit and the other special exceptions to make it legal. He said he thought it was ironic that Ms. Jenkins and her ex-husband were opposed to the appellants' position because it would solve their problem.

Ms. Gibb asked whether it was clear that the appellants could obtain a special permit. Mr. Hanes replied that if the requirements of the Subdivision Ordinance could be met, they thought they could make that application.

Ms. Gibb said she thought an issue had been raised by staff regarding whether a special permit could be granted. Diane Johnson-Quinn, Zoning Administration Division, stated that there was a question as to whether or not a special permit or special exception could be applied for given that there was a residence on the property because Sect. 2-501 precluded a separate use being on the same property unless the residence was of the proprietor of the special permit or special exception use or caretaker.

Ms. Gibb asked how a special permit could be obtained with the Hunter Valley nonprofit running it. Ms. Johnson-Quinn stated that if Hunter Valley was not going to have access to the entire property and have a caretaker at the residence, it would require a subdivision. She said that staff's research had indicated that subdivision would be difficult, if possible at all, and very unlikely, but it was the appellants' desire to pursue that further.

Mr. Hanes said there had been conversations over the years regarding adding property to make it meet the

minimum requirement, at which time it would be a separate lot without the problem raised of the two uses on the same lot.

Ms. Gibb asked whether the appellants thought there was a way to get around the road frontage issue. Mr. Hanes replied that the purpose of the deferral request was to have an engineer determine whether there was some methodology to do that, but in his previous presentation, it was his understanding that it was not possible. He said he wanted a complete record because the appellants were asked by a Board member to explore every possibility.

Mr. Hart asked, hypothetically, if an engineer could configure a lot containing the riding ring that had public street frontage of 200 feet at the setback line, without the house and remain on a legal lot; whether there would be any procedural impediment to filing an application. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, indicated that there would not be.

In response to questioning by Mr. Hart regarding the time requested for the deferral, Mr. Hanes stated that in two weeks he could find an engineer that could tell him whether the configuration was possible or not, meet with the County staff regarding subdivisions, and let the Board know the outcome.

Ms. Gibb asked if, theoretically, the property could be subdivided and the appellants file a special permit because the Board upheld the determination, whether the property would still be in violation unless horses were not ridden there and it would remain a violation that the Jenkins would have to live with. Ms. Stehman stated that it would still be a violation, but while the special permit was being processed, proceeding with legal action would be unlikely.

Ms. Gibb commented that to subdivide a property and obtain a special permit would take years and asked for confirmation that it would be in technical violation until that happened, which Ms. Stehman confirmed.

Diane Beloski, (phonetic), no address given, came forward to speak. She stated that she was the real estate agent from Long & Foster that had the listing on the property. She said there were people currently showing the property and people who had shown the property in the past who were sitting and waiting that she had to call two weeks prior to tell them there was no decision. Ms. Beloski said there were people waiting who were interested in the property once they knew the disposition, but time was of the essence for the Jenkins', and she did not know what she was supposed to tell prospective purchasers to help the Jenkins' sell their property. She explained that in June there were multiple contracts and the price was strong, but currently everything about the property was being questioned.

Paul Pearson, 2407 Oak Vale Court, Vienna, Virginia, came forward to speak. He stated that he was the current president of the Hunters Valley Riding Club. He related that Mr. Jenkins had indicated to him the prior week that he was willing to work with the riding club to try to provide the additional property necessary to meet the 75,000-square-foot minimum. Mr. Pearson stated that a substantial amount of expense had already been incurred, and Mr. Hanes had been authorized to incur additional expenses to retain an engineer to see if the issue could be resolved in a way that was favorable to the Jenkins'. He said he understood that if the Board ruled in the club's favor on the appeal, the club would not have to comply with the restrictions, but it was willing to go through the subdivision process and incur additional expense in order to resolve the issue once and for all and make it clear for the Jenkins' and their prospective purchasers, and that was the reason for the deferral.

Ms. Gibb asked if Mr. Jenkins understood that the property could not be sold while it was being resubdivided. Mr. Pearson replied that he could not answer that, but that it did not come up in his discussions with Mr. Jenkins.

Mr. Pammel asked whether the creation of an outlot in the subdivision process and how that would affect this had been looked at because it would not have to meet the requirements. Mr. Hanes indicated that it had been looked at and was something he wanted to explore, but whether the lot could be used was the issue.

Mr. Pammel read from the application for the special permit granted to Hunters Valley Association, Inc., on October 11, 1955, "to maintain bridle paths and hiking trails and to provide swimming, tennis, and other recreational facilities," which he said was broad. He asked whether there was anything in the record that indicated the breath of that application or any description as to the specific areas identified by the broad description. Ms. Stehman replied that she was unaware of any such description in the 1955 application. She indicated that Ms. Kelsey had done the research and might be able to answer the question.

Mr. Pammel asked whether there were maps that designated where the areas were. Ms. Kelsey stated that the research was taken from the actual minute books of the Board of Zoning Appeals, not from the files, and the files, if they could be found at all, were in archives.

A brief discussion ensued regarding the extent of the documentation that may have been provided for the request in 1955 and the general nature of applications at that time as opposed to the current detailed applications. Mr. Pammel said that if the Board decided to defer the decision at the appellants' request, he would like to know what was in the special permit record, and he requested Ms. Kelsey provide additional information if it could be found. Ms. Kelsey said she would work with staff and try to find the file in archives.

Mr. Hart asked staff to confirm that as of the mid-'50s, under the operative section of the 1941 Ordinance, on page 6, roman numeral IV, the rural residence district uses would have been allowed in the subject area, which Ms. Stehman replied was correct, and he asked why the riding ring would not be allowed under Par. 10 or 11 of the rural residence district uses as a recreational area with structures accessory thereto or riding stables and related uses. Ms. Stehman replied that staff had reviewed paragraphs 10 and 11. She explained that staff was tracking what they thought were regulations applicable to a community use or private club, which would be the equivalent of the current community uses, Group 4 special permit uses. Staff thought that the public and private parks or riding stables as set forth in Par. 10 and 11 would not be something that would be operated by a nonprofit. Rather, a community use nonprofit organization equivalent to the current Group 4 special permits was more akin to paragraph 15C, private clubs and grounds for games and sports, provided any such use was not primarily for gain. She said staff's break was on whether there might have been a nonprofit organization involved, but the 1941 Ordinance was not a black and white document, and there was room for interpretation.

Mr. Ribble moved to defer decision on A 2004-SU-021 to November 30, 2004, at 9:30 a.m. Ms. Stehman noted that the Thanksgiving holiday would fall within the time frame being considered. Mr. Pammel seconded the motion.

Ms. Gibb commented that the issue was whether there was a violation in June.

Mr. Ribble indicated that the archives were located on Edsall Road.

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

//

~ ~ ~ November 16, 2004, After Agenda Item:

Approval of May 25, 2004 Minutes for
Donald J. and Jaki S. McCarthy, A 2004-MA-007
for inclusion into the Return of Record

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

//

~ ~ ~ November 16, 2004, After Agenda Item:

Request for Additional Time
Floris United Methodist Church, SP 01-H-011

Chairman DiGiulian noted that staff recommended six months.

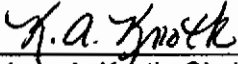
Mr. Beard moved to approve six months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was April 2, 2005.

//

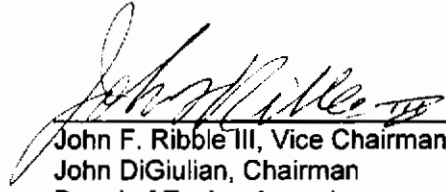
As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Kathleen A. Kroth

Approved on: April 5, 2005



Kathleen A. Kroth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 30, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; Paul W. Hammack Jr.; James R. Hart; James D. Pammel; and John F. Ribble III.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Zoning Appeals legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Pammel were not present for the vote.

The meeting recessed at 9:01a.m. and reconvened at 9:52 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. GUNSTON CENTER, LLC, VC 2004-MV-089 (In association with RZ 2004-MV-020)

Chairman DiGiulian announced that this case was withdrawn.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 76-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis courts to permit additional tennis courts. Located at 4627 Holborn Ave. on approx. 6.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16. (Admin. moved from 5/4/04, 6/8/04, 8/10/04, 9/14/04, and 10/26/04 at appl. req.)

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Hookey, 4607 Duncan Drive, Annandale, Virginia, agent for the applicant, replied that it was.

Kristen Crookshank, Staff Coordinator, made staff's presentation as contained in the staff report. She pointed out that the subject application was located in the Braddock District, not the Mason District, as erroneously noted on the staff report cover. The applicant requested approval of an amendment to an existing special permit for a swim club and tennis courts to permit construction of two additional lighted tennis courts. The existing courts and seven parking spaces would be demolished and replaced with four new lighted courts in order to allow the club to accommodate concurrent youth and adult tennis sessions and to hold occasional tournaments. Included with the construction was a Best Management Practice (BMP) retention facility. The applicant had recently undergone a process to re-delineate the Resource Protection Area (RPA) line, and the line now ran parallel to the south end of the development with a minor area of encroachment into the RPA, which the applicant would have to address through an exception process. She noted that revised development conditions were distributed, which included a change to the condition requiring the exception, and clarification specifying that only the new tennis courts and the BMP facility would be subject to the exception. Staff recommended approval, subject to the approval of the revised proposed development conditions dated November 30, 2004.

Mr. Hookey presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that Wakefield Chapel Recreation Association, Inc., (WCRA)

always had a large and competitive youth swimming program accommodated by the club's beautiful and unusually large pool, but the Association planned a remodeling of its tennis courts as the current two courts were inadequate for the tennis program expansion with both youth and adult competitive leagues. The tennis court renovation project would enable WCRA to hold at-home league matches while not restricting scheduled classes and casual play activities, and because membership was at capacity, there would be no additional traffic concerns. He stated that the club was fortunate to have the area in which to expand; that their existing special permit allowed two tennis courts and they were requesting only four; that the new more efficient lighting would be less polluting than the current lights; and, the new courts would enhance the club's appearance while accommodating its members' needs.

Chairman DiGiulian called for speakers.

David C. Malm, 8301 Fox Harrow Lane, Annandale, Virginia, came forward and stated that he neither supported nor objected to increasing the club's tennis capacity but he did want to register his concern about the plan's lack of details and about the \$250.00 assessment, imposed in May 2004, on each of the 500 club members. He said he thought the project lacked adequate technical and cost definition, and that it had not attained the associated jurisdictional approval. He stated that any of the club's improvements had to be an asset not a liability, and many other club members had shared their concerns with him. As a retired engineer, he considered whether the project's impact on the environment could be adequately evaluated to warrant it eligible for a special permit; whether the facility's safety might be compromised by court windscreens impairing vehicle and pedestrian sight-distance and access/egress danger if the entranceway was shortened; and, the possibility of the loss of parking capacity.

Mr. Hookey submitted that some of Mr. Malm's concerns appeared to be the how and where to build and how the project would be financed, which he believed were not matters for the BZA's consideration. He assured that all of Mr. Malm's concerns would be addressed during the time the construction permit was issued.

Responding to Mr. Hart's questions, Ms. Crookshank clarified that, if the application were approved as submitted, Development Condition 11 required that the applicant attain an RPA Exception whether only a portion of either of the tennis courts or any of the BMP facility encroached into the RPA area and, if the RPA Exception was denied, the entire application would be denied. In response to Mr. Hart's suggestion that the tennis courts be moved slightly up the hill, she said that was considered and it was staff's hope that the BMP facility would be relocated below the courts and then everything would be removed from the RPA area. It was the applicant, she said, who preferred to go forward with the condition requiring either the RPA Exception or the removal of the courts, and staff supported the applicant's request. She concurred with Mr. Hart's summation that staff recommended approval of the application as submitted as long as the RPA Exception was obtained.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 76-A-022-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 76-A-022-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 previously approved for community swim club and tennis courts to permit additional tennis courts. Located at 4627 Holborn Ave. on approx. 6.05 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16. (Admin. moved from 5/4/04, 6/8/04, 8/10/04, 9/14/04, and 10/26/04 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 2004; and

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

1. The applicants are the owners of the land.

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

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

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

1. This approval is granted to the Wakefield Chapel Recreation Association, Inc., only and is not transferable without further action of this Board, and is for the location indicated on the application, 4627 Holborn Avenue (6.05 acres), and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce, & Associates, Ltd., dated December 9, 2003, revised November 4, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of family memberships shall be 500.
6. The maximum hours of operation for the tennis courts shall be from 8:00 a.m. to 10:00 p.m. and the swimming pool from 9 a.m. to 9 p.m.
7. Any after hours parties shall be limited to six (6) per year with prior written permission from the Zoning Administrator.
8. Parking shall be provided as shown on the Special Permit Plat. All parking shall be on site.
9. The existing vegetation shall be maintained to meet transitional screening requirements along all lot lines. Any existing vegetation that is disturbed, but is outside the tennis courts once constructed, shall be replaced. The species, size and number of plant material shall be subject to the approval of Urban Forest Management Branch (UFMB).
10. All new outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. At such time as the lighting fixtures in those areas depicted on the Special Permit Amendment plat are replaced, the new fixtures shall be in full compliance with the Performance Standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance.
11. Prior to site plan approval, an exception to allow uses in a Resource Protection Area (RPA) as defined by Chapter 118 of the Fairfax County Code, the Chesapeake Bay Preservation Ordinance, shall be approved to permit the proposed tennis courts, and if applicable, the Best Management Practices (BMP) facility, to be located within the RPA. If the exception is not granted, the proposed tennis courts shall not be constructed.
12. Prior to site plan approval, right-of-way shall be dedicated from the existing centerline of Holborn Avenue to match the existing right-of-way to the north and south sides of the property. The proposed bio-retention facility shall be outside the area required for dedication. To achieve this, the facility may be reconfigured or relocated north of the existing asphalt entrance from Holborn Avenue as long as no parking spaces are eliminated for its relocation.

13. Swim meets and tennis tournaments shall not be scheduled concurrently.
14. Prior to approval of a new Non-RUP, the portion of the existing asphalt trail along the north side of the site removed for the proposed construction shall be replacaded to provide a continuous trail segment from Holborn Avenue to the internal path system.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 8, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. SIR VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 Braddock Rd. on approx. 6.01 of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24. (Admin. moved from 11/30/04)

Chairman DiGiulian announced that the application was administratively moved to January 11, 2005, at the applicant's request.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. CRAIG AND KIRSTEN PRINDLE, SP 2004-SU-050 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. and deck to remain 3.9 ft. from side lot lines. Located at 12203 Westwood Hills Dr. on approx. 21,667 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A. (Admin. moved from 10/19/04 at appl. req.) (Decision deferred from 11/9/04)

Chairman DiGiulian announced that the case was deferred for decision from November 9, 2004.

Mr. Pammel commented that he reviewed all the facts, letters, and photographs and he appreciated the fact that the play apparatus was there when the Prindles purchased the property, a fact the Prindles cited as a justification. However, eighteen inches was too close to the property line, and after reviewing photographs, he believed there was an area immediately behind the house to relocate the play set.

Mr. Pammel then moved to deny SP 2004-SU-050 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Hammack commented that he drove out to look at the property, and he had sympathy for the Prindles, but he too believed the play set was too close to the property line and, therefore, supported that part of the motion. He said the application also dealt with the deck, on which the Board had approved a variance in 1999, and he did believe the deck should remain.

Mr. Pammel amended his motion and moved to approve-in-part SP 2004-SU-050 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG AND KIRSTEN PRINDLE, SP 2004-SU-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.9 ft. and deck to remain 3.9 ft. from side lot lines. **(THE BZA APPROVED THE DECK ONLY.)** Located at 12203 Westwood Hills Dr. on approx. 21,867 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A. (Admin. moved from 10/19/04 at appl. req.) (Decision deferred from 11/9/04) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 2004; and

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

1. The applicants are the owners of the land.
2. It is understood that the play equipment was on the property when the applicants purchased the property, but that is not enough justification for it to remain 18 inches from the property line.
3. Although the applicants indicate that there is no other area on which to move the play set, the photographs show a level area behind the house that can accommodate it.

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

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

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

1. This Special Permit is approved for the location of a deck, as shown on the plat prepared by George M. O'Quinn, dated April 12, 2004, as revised through September 28, 2004, submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion, which carried by a vote of 8-0. 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 December 8, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1885 and 1889 Virginia Ave. on approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44. (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04, 7/27/04, and 9/28/04 at appl. req.)

Chairman DiGiulian announced that the case was administratively moved to February 15, 2005, at the

applicant's request.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1665 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-081). (Admin. moved from 6/3/04, 7/27/04, and 9/26/04 appl. req.)

Chairman DiGiulian announced that the case was administratively moved to February 15, 2005, at the applicant's request.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit building addition, site modifications and increase in land area. Located at 9105 and 9111 Backlick Rd. on approx. 1.06 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B and 27. (Admin. moved from 5/18/04, 7/6/04, and 9/14/04 at appl. req.) (Deferred indefinitely from 5/25/04)

Chairman DiGiulian announced that the case was deferred indefinitely.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. GORDON D. FOOTE, TRUSTEE AND JACQUELINE T. FOOTE, TRUSTEE, VC 2004-DR-110 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit a lot width of 119.56 ft. Located at 1427 Trap Rd. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 8A. (Decision deferred from 10/26/04)

Chairman DiGiulian announced that the case was deferred for decision from October 26, 2004.

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Mr. Pammel said that the property, when purchased by the Footes, was in total compliance and met the minimum lot width requirements. He noted that subsequent to their purchase, a legal issue was brought to their attention. The issue was that the adjoining property owner claimed there was an error in the boundary and that the Footes' property encroached upon his land. The ruling was upheld by the Circuit Court in an Adverse Possession ruling which conveyed a portion of the Foote's property back to the adjacent property owner. Mr. Pammel stated that he believed irreparable harm would be caused if the BZA denied the variance, because the property could not be sold because it would not comply with the Zoning Ordinance. Mr. Pammel stated that the property met all the standards at the time the Footes purchased it, and it was a court case that changed the property line; it was not an error of the Footes' making.

Mr. Hammack said he thought the application met each of the variance standard requirements. He noted how the subject property was acquired in good faith; that the subject property had an extraordinary situation, or condition in that even the County was unaware of the problem with the lot lines as the subdivision was approved by the Department of Public Works and Environmental Services before the house was constructed; that strict application to the Ordinance would produce undue hardship because of the prohibition of selling the property; the undue hardship was not shared by other property owners in the district; that the granting of the variance would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant; that authorization of the variance would not be of substantial detriment to the adjacent properties; that the character of the zoning district would not be changed by the granting of the variance and; that the variance would be in harmony with the intended spirit

and purpose of the Ordinance and was not contrary to public interest.

Mr. Gibb stated that under the Cochran definition of what was needed for a variance, she found it practically impossible to make a case when there was a house on the property, but in this case she thought there was a very good argument that the applicant would be denied all reasonable beneficial use of his property because now he had an illegal lot. She pointed out that it was a contested law suit, that the Footes had not stood by and allowed their property to be taken; it was a court order that changed the boundary line, and under those limited circumstances, she believed a variance was appropriate.

Mr. Beard said he believed that such situations, albeit detrimental, were the result of the Cochran decision and a legislative resolution was called for. He said he was sympathetic to the situation, and his colleagues put forth a learned explanation of the circumstances, and it was a deplorable situation but, he could not support the motion to approve.

Mr. Pammel moved to approve VC 2004-DR-110 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GORDON D. FOOTE, TRUSTEE AND JACQUELINE T. FOOTE, TRUSTEE, VC 2004-DR-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 119.56 ft. Located at 1427 Trap Rd. on approx. 1.17 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 8A. (Decision deferred from 10/26/04) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 2004; and

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

1. The applicants are the owners of the land.
2. When the applicants purchased the property, it was in total compliance with all of the requirements of the Zoning Ordinance and the Subdivision Code and met the minimum lot width requirements.
3. Subsequent to the applicants' purchase, a legal issue developed, which had been ongoing before their purchase, of which they had been unaware, whereby the adjoining property owner maintained that the applicants' lot encroached upon his property and there was an error in the boundary, which was subsequently upheld by the Circuit Court, and an adverse possession ruling gave the property that had been conveyed to the applicants back to the original property owner of the adjacent property.
4. Based on the record before the Board and the fact that irreparable harm will be caused if the Board denied the variance based on the Cochran decision, although it could be argued that there is beneficial use of the property, the property could never be sold with the situation in existence because it would not comply with the requirements of the Ordinance, would have to be disclosed under normal rules of sale, and there would be no subsequent purchasers available for the property, which herein lies the hardship issue.
5. The fact that a court case changed the lot line for a property that otherwise met all of the standards at the time the applicants purchased the property was not an error of their making.

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

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

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

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

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

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

1. This variance is approved for a lot width of 119.56 feet for Lot 8A, as shown on the plat prepared Bryant L. Robinson, dated November 5, 2003, revised August 2, 2004, submitted with this application and is not transferable to other land.
2. The construction of additions and accessory structures shall be permitted without a Variance Amendment provided that the construction complies with all applicable Zoning Ordinance provisions.

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

Mr. Hammack seconded the motion, which carried by a vote of 4-1. Mr. Beard voted against the motion. Mr. Hart recused himself. 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 December 8, 2004. This date shall be deemed to be the final approval date of this variance.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s) 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1. (Admin. moved from 10/5/04 at appl. req.)

Chairman DiGiulian announced that this case was administratively moved to March 15, 2005.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:00 A.M. FLORIS UNITED METHODIST CHURCH, SPA 01-H-011 Appl. under Sect(s). 5-503 and 3-103 of the Zoning Ordinance to amend SP 01-H-011 previously approved for a church with a child care center and nursery school to permit modification to development conditions and site modifications. Located at 13600 Frying Pan Rd. and 2554 Centreville Rd. on approx. 11.6 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A.

Mr. Pammel gave a disclosure and indicated that he would recuse himself from the public hearing.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin Leigh, Esquire, Mims, Atwill & Leigh, 101 North King Street, Leesburg, Virginia, agent for the applicant, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of an amendment to an existing special permit for a church with a child care center and nursery school. The applicant requested modification to limits of clearing and grading in response to over-clearing that occurred on-site along the northern boundary. In order to mitigate the over-clearing, the applicant had proposed an extensive landscaping plan in the impacted area. The applicant also requested approval of an interim play area that was not depicted on the approved plat. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval. Mr. Sherman noted that the applicant had submitted revisions dated November 30, 2004, to staff's proposed development conditions. He stated that staff preferred staff's wording for Condition 9 and objected to the proposed changes to Condition 10.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff did not object to the applicant's suggested word change to Condition 9; however, it was practically the same as staff's language and staff saw no reason for the change. Concerning Condition 10, from the discussions with Supervisor Hudgins' office, and the on-going discussions regarding the over-clearing, staff understood that the language in the second paragraph was added to indicate a time-frame for installation of plant material which, as the condition noted, was to be as soon as possible. The plantings time would be determined by the Urban Forester, and staff based its determination on the approved landscape schedule attached to the plat. Ms. Langdon said staff objected to changing Condition 10, as staff was unsure what the applicant meant by 'construction activities of the applicant' and preferred a more definitive time be designated.

Mr. Leigh thanked staff for its expedited review of the amendment, and for the continued discussions with the representative for the McNair Station Homeowners Association, Brendan Bunn, Esquire, with whom they were working towards resolving the Association's issues and concerns. He said the church's background was significant: it was an important part of Fairfax County since the 1880s; the original special permit indicated the church's vision; the parcel cost several million; and, the site plan was approved June 2004, and construction had commenced. He explained that lines drawn on both the special permit and the site plan were confusing and the problem was compounded when a subcontractor over-cleared a portion of the site. Mr. Leigh said the church wanted to be a good neighbor and had met on numerous occasions with the homeowners association (HOA) and several Supervisors' offices concerning the number, types and locations of plantings, and these meetings resulted in a private resolution between the church and the HOA. He noted that the church would fulfill its obligation far beyond normal requirements to include affirmative maintenance activities and fertilization techniques. Referencing Condition 9, Mr. Leigh stated that the applicant sought to make extra clear its obligation to the HOA as well as the County, and he requested that the condition, as modified, be adopted. The reason the applicant sought to modify Condition 10 was because the applicant affirmed to the HOA its intention to get the landscape elements in place by November 2005, or as soon as was practicable. He stated that the best times to plant were spring and fall, but with the applicant's construction schedule, if the plantings were done before the curb and gutter were put in, damage could occur to the new plantings.

Chairman DiGiulian called for speakers.

Clark Massie, 2653 Black Fir Court, Reston, Virginia, came forward to speak in support of the application. He said he had lived in the Herndon/Reston area since 1968, and raised his family there. He noted that the cost of living necessitated that both husband and wife work, and childcare costs were very expensive but necessary. He urged the Board to allow the church's expansion so that the excellent church sponsored child care would continue to be available.

Karen Heier, 12983 Thistlethorn Drive, Oak Hill, Herndon, Virginia, came forward to speak in support of the application. She said as a chair member of the pre-school board, as well as a parent of a preschooler, the school provided a much needed service to the community. She noted that the school provided scholarships to children who otherwise could not afford to attend and to non-English speaking children; that each year the school received more applications than they could accept and they always had a waiting list.

Brendan Bunn, Esquire, representative for the McNair Station Homeowners Association, came forward to speak in support of the application and to show the Association's support. He said that there had been a dispute when the over-clearing occurred, but the HOA had been impressed with the applicant's diligence and good faith while addressing their concerns. Mr. Bunn concurred that the applicant had entered into a separate agreement with McNair Stations HOA concerning the landscaping.

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected. He asked Mr. Bunn if the HOA had any objection to the construction activity reference as noted in Development Condition 10.

Mr. Bunn said he only recently was apprised of the language change and had not yet discussed it with his client; therefore, he would reserve offering an opinion at that time.

David Dantzer, 10445 Hunter View Road, Vienna, Virginia, said he was not present that day to address this particular application, but he wanted to take the opportunity to congratulate the applicant for choosing so many native trees and shrubs species for the plantings.

Jamal Rand (phonetic), Architect, said he was the applicant's construction representative and would address his remarks to Condition 10. He verified that there was no intention to delay anything but there was a construction sequence. He explained that there were construction phases that relied upon specific activities before commencing such as the building of a drainage area, which must occur before a parking lot could be built. He pointed out that because of the time of year, it was unlikely the concrete could be poured soon and, therefore, the Best Management Practices (BMPs) structure would take a little while before the temporary drainage area could be removed and then the site graded and one of the parking lots built.

Weaver Blondin, 1409 Northpoint Glen Court, Herndon, Virginia, came forward to speak in support of the application. He asked for the Board's approval of the church's application and stated that the church provided a great service to the community through its excellent child care facility.

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

Mr. Hart moved to approve SPA 01-H-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FLORIS UNITED METHODIST CHURCH, SPA 01-H-011 Appl. under Sect(s). 5-503 and 3-103 of the Zoning Ordinance to amend SP 01-H-011 previously approved for a church with a child care center and nursery school to permit modification to development conditions and site modifications. Located at 13600 Frying Pan Rd. and 2554 Centreville Rd. on approx. 11.6 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 2004; and

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

1. The applicants are the owners of the land.

2. The applicant presented testimony showing compliance with the general standards for special permit uses as set forth in Section 8-006 and the additional standards for this use as contained in the Zoning Ordinance.
3. This was an unfortunate situation to the extent that the site plan was approved with some conflicts as to what was going to be done, and then there was over-clearing over and above that.
4. The proposed resolution is appropriate and goes above and beyond in terms of the quantity and substance of the plantings.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 13600 Frying Pan Lane and 2554 Centreville Road (11.61 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, Incorporated, dated August 25, 2004, revised through November 16, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The total combined maximum daily enrollment for the nursery school and child care center shall be 250. The hours of operation for the nursery school and child care center shall be a maximum of 8:30 a.m. to 3:30 p.m., Monday through Friday.
6. The maximum number of seats in the church and chapel shall not exceed 1,065 at the completion of all phases.
7. A sign permit shall be obtained and all signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
8. A minimum of three-hundred fifty-three (353) parking spaces shall be provided in phases as shown on the Special Permit Plat. All parking shall be provided on site as shown on the Special Permit Plat.
9. The limits of clearing and grading shall conform to the limits shown on the Special Permit Plat. There shall be no clearing or grading of any vegetation outside the limits of clearing and grading except for dead, dying, diseased or hazardous vegetation.
10. Transitional screening requirements in the northwest corner of the site and along the northern boundary shall be modified as depicted on the Special Permit Plat. The type, number, species and size of plantings shall comply with the landscape schedule included on Sheet 5 of the Special Permit Plat, subject to review and approval by the Urban Forest Management Branch (UFMB).

Landscaping shall be provided along the western lot line, as depicted on Site Plan 7870-SPV-03-D-1 (Attachment A).

All plant material mentioned in this condition above shall be installed at the earliest possible time as

determined by UFMB given weather conditions, planting requirements, and construction activities of the applicant, but in no event later than the issuance of a Non-Residential Use Permit for the site. The applicant shall thereafter maintain the aforementioned plantings.

11. The barrier requirement shall be waived.
12. Prior to the issuance of a Non-Residential Use Permit for the Phase 3 construction, the interim play area shall be moved to the outdoor play area location, as depicted on the Special Permit Plat.
13. The applicant shall dedicate right-of-way for an ultimate width of one-hundred thirty-six (136) feet of right-of-way from the existing southern right-of-way limit of Frying Pan Road in fee simple to the Board of Supervisors at the time of site plan review or upon demand, whichever occurs first.
14. The maximum number of employees for the child care center shall not exceed twenty (20) at any one time.
15. Stormwater management (SWM) and/or Best Management Practices (BMPs) shall be provided as required, unless waived by the Department of Public Works and Environmental Services (DPWES). If structural SWM/BMPs are required, then the type, location and size shall be determined by DPWES. The SWM/BMP facilities shall be located outside of the play area and transitional screening areas.
16. Any proposed lighting of the parking lot shall be in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet and shall be full cut-off lights.
 - The lights shall be of a design which focuses the light directly onto the subject property.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - The lights shall be controlled with an automatic shut-off device and shall be turned off when the site is not in use.
 - There shall be no up-lighting of the proposed buildings.

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

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

Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Pammel recused himself. 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 December 8, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:30 A.M. MR. AND MS. A. REBEIRO, A 2004-HM-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a storage yard and junk yard on property in the R-E District, and have erected an accessory storage structure and a fence without an existing principal use, all in violation of Zoning Ordinance provisions.

Located at 2027 Hunter Mill Rd. on approx. 2.0 ac. of land zoned R-E. Hunter Mill District.
Tax Map 27-4 ((1)) 2.

James Herrman, 9831 Lake Point Drive, Burke, Virginia, identified himself as the agent representing the appellants.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as stated in the staff report dated November 22, 2004. She stated that the Rebeiros obtained a building permit in 1999 to construct a single family dwelling to replace one that burned down several years previously. The subject 2-acre parcel now had a partial foundation on it, and it was noted that the building permit was extended several times, but there had been little progress on the property. After responding to a complaint that the appellants had established a junk yard/storage yard on the property, a Notice of Violation was issued in July of 2004. It was staff's determination that the existing structure, along with numerous other items, material and equipment, constituted a junk yard/storage yard, and because there was no principal use on the property, an accessory structure and a fence also were not allowed under the Ordinance. Ms. Stehman requested that the Board uphold the Zoning Administrator's determination that the appellants were in violation of the Zoning Ordinance.

In response to Ms. Gibb's question concerning building permits, Ms. Stehman explained that a permit is generally issued for a year and, if an inspection is conducted, can be extended for six months. If one submits a written request that justifies additional time, the permit can be further extended for one year. She noted that the appellants had continued to request an inspection but, for whatever reason, cancelled the inspection but did not request cancellation of the extension. She clarified that the Rebeiros had submitted two written requests for an extension but had not scheduled any inspections. Ms. Stehman said the building permit was still valid but it was issued by the Department of Public Works and Environmental Services not the Department of Planning and Zoning. Because of the lack of progress on the construction and the fact that the materials on the property were not associated with construction, it was staff's position that the appellants had established a junk yard/storage yard.

Ms. Stehman responded to Mr. Hart's question concerning the fence and what was allowed under the Ordinance. She said staff's previous interpretation, which allowed fencing an open lot, was revised after consultation with the County Attorney who determined that open space was not considered a principal use. She concurred with Mr. Hart's assessment that the accessory structure, a shed, was approximately 900 square feet in size and that it would have required a building permit. She said the building permit that was issued was for the proposed new two-story dwelling with either a three or four-car garage.

Mr. Herrman stated that the appellants would not contest the County's issues and sought only to work with the County to resolve the matter. He explained that the Rebeiros suffered severe financial hardship after their home burned down in 1997, and they each had health complications due to their advanced years. He said he was hired to assist with the public relations that formerly were handled by the elderly owners, and that he oversaw the laying of the new home's foundation. A full-time civil engineer, Mr. Ventura, was also hired, and they had been working together daily for two months. Mr. Herrman said he and Mr. Ventura convinced the Rebeiro family to restart construction this coming January, and to obtain a single bank loan to finance the project. The management of Portugal Construction, the Rebeiro's construction company, was assumed by their son whose efforts to rebuild the home were set back due to the inclement weather of 2002 and 2003. The site had since been cleared of 100 tons of debris, much of it from illegal dumping, and the police arrested and convicted one of the most notorious dumpers. He acknowledged that trucks were parked on the site and occasionally materials left there, but only for brief periods of time. He said the Rebeiros erected the fence five years prior in order to secure the site and prevent the illegal dumping; they respectfully were requesting that it remain. He asked that the outbuilding be allowed to remain, stating that it was there before the original house burned down and that its use for storing materials would facilitate the house's construction. Mr. Herrman assured the Board that if it was required, the fence and the outbuilding would be taken down by that weekend.

In response to Ms. Gibb's question, Mr. Herrman acknowledged seeing the neighbors' letters in which they expressed their concern over the dumping. He stated that Portugal Construction paid to have the flotsam removed, but pointed out that it was another cement/construction company who dumped it.

In response to Ms. Gibb's question concerning the outbuildings, Ms. Stehman explained that because both the fence and the outbuilding were considered accessory structures, they were not allowed without a principal structure on the lot. She stated that it may be possible for the appellants to apply for a special permit for a construction trailer, and then some agreement may be made on those issues.

Mr. Herrman explained that the tires and flotsam Mr. Pammel pointed out in a photograph were already removed from the site and only materials useful to construction remained. He again requested that the outbuilding and fence remain but assured they would be removed by the weekend if the Board so directed.

Chairman DiGiulian called for speakers.

David Dantzer, 10445 Hunter View Road, Vienna, Virginia, came to the podium and stated he was speaking for himself as well as on behalf of seven of his neighbors and they all, for nine years, had been concerned over the situation. Before the public hearing that morning, he stopped by the site to observe that the debris and material shown in the photographs were still there. He stated that the tires were moved to a far corner of the yard and did not consider them construction material. Mr. Dantzer affirmed that he and his neighbors supported staff's recommendation to uphold the Zoning Administrator's determination but found the timeframe for resolution somewhat inconclusive and requested that the entire site be cleaned up immediately. He referenced his own letter and asked that the Rebeiros diligently pursue construction of their house, but until such time that construction could proceed, everything on the site could be cleaned up with no harm to construction. Mr. Dantzer said the fence should be removed and suggested that a set of pilings with a gate that was on the site could be utilized to close-off the entrance and thereby discourage future dumping.

David Saunders, 2016 Hunter Mill Road, Vienna, Virginia, came forward to speak. He stated that he lived across the street from the subject parcel and over the past several years had observed what appeared to be employees of Portugal Construction Company delivering or removing construction materials. He stated that the material stored on the property was not related to construction of the house and that there had been no progress on the construction of the new home other than the pouring of the foundation several years prior. Mr. Saunders said he represented several of his neighbors, all of whom were requesting that the appeal be denied.

In rebuttal, Mr. Herrman said they moved the tires to the rear of the property for safety and that, to his knowledge, everything that did not pertain to construction had been removed from the site. He responded to Mr. Beard's questions concerning the house's foundation, the fact that the new home's square footage would be 14,000 square feet, and that the house was proposed to be the showcase of the Hunter Mill area. He offered his apologies to the neighbors for the site's condition and any nuisance issues.

Ms. Stehman stated that there was a building permit issued but that it was issued approximately five years prior. She stated that over the years little had occurred with the building of the house, but there had been a lot of activity utilizing the property for a construction dump and storage site. Ms. Stehman said the issue before the Board was the utilization of the site, not the proposed construction of the house, and it was staff's position that the Zoning Administrator's determination be upheld.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she based her decision on the photographs, the staff report, the fact that there were 13 previous violations, the numerous letters of complaint from the neighbors, which were not disputed by the appellants' agent. She added that she also did not believe tires had anything to do with construction and, therefore, she found the site with its fence and outbuilding in violation of the Zoning Ordinance.

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

//

The Board briefly discussed their previous dismissal of an appeal. Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that a letter explaining why Ron Johnson's notices were not in order was received the day of his public hearing, subsequent to when the case was dismissed. She said she would provide Chairman DiGiulian with a copy of the letter before the meeting was adjourned.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:30 A.M. MICHAEL AND JOYCE FIELD, A 2004-DR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have conducted land-disturbing activities and have established a quasi-public athletic field on the subject property without an approved special exception, all in violation of Zoning Ordinance provisions. Located at 9030 Leesburg Pi. on approx. 3.49 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 25.

Chairman DiGiulian noted that the notices were not in order for this case.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said this was an appeal that the appellants had conducted land disturbing activities and established a quasi-public athletic field on the subject property without an approved special exception in violation of Zoning Ordinance provisions. Michael Field, the appellant, failed to pick up his notice packet. He informed Ms. Stehman he had been out of town and not realized there was a packet to be picked up. Mr. Field indicated to her that he would like to defer his public hearing but, to date, she had received nothing in writing except an e-mail asking how the process worked. Ms. Stehman said staff would support a short deferral to allow him to do the notices.

Chairman DiGiulian requested staff to inform Mr. Field that if the notices were not done this time his application would be dismissed. Ms. Stehman stated that she would advise him accordingly.

Mr. Hammack then moved to defer the public hearing on Appeal 2004-DR-027, Michael and Joyce Field, to March 15, 2005, at 9:30 a.m., with the provision that Mr. Field be advised that his case would be dismissed if the notices were not in order. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:30 A.M. BRISTOW SHOPPING CENTER LIMITED PARTNERSHIP, LLC, TWOCHEZ AND COMPANY, INC., T/A HERITAGE MALL SERVICE CENTER, A 2004-BR-020 Appl. under Sect(s). 18-801 of the Zoning Ordinance. Appeal of a determination that the appellant has allowed a truck rental establishment to be established and is continuing to allow occupancy of the property for the leasing of U-Haul moving trucks in violation of Zoning Ordinance provisions. Located at 7824 Rectory La. on approx. 10.71 of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1 and 2C. (Deferred from 10/26/04 for notices)

Chairman DiGiulian noted that the appellants were requesting an indefinite deferral.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff did not support a deferral. She stated that in May of 1999 the appellants first applied for a special exception (SE) to conduct a truck rental, U-Haul operation, which if approved, would have remedied the issues of their pending appeal. The Board of Supervisors (BOS) denied the SE in March 2001. In April of 2001 the BZA upheld the Zoning Administrator's position regarding the appeal. In response to a change in the partnership, the appellants were issued a Notice of Violation on June 8, 2004, for continuing to operate the truck rental establishment without special exception approval. Ms. Stehman stated that the appellants failed to take any action until served the June of 2004 Notice of Violation. She stated that staff did not support a further deferral.

In response to Mr. Beard's questions, Ms. Stehman explained, since the first Notice of Violation in 1995, there was a change in some of the members of the Bristow Shopping Center Limited Partnership, which was one of the things prompting this current Notice of Violation but, Heritage Citgo remained the same operator of the service station. She noted that over the past 10 years there was no change in the continued operation of the service station, that staff continued to deal with the same service station operator, that the appellants continued to operate the truck rental business, that the current Notice was issued to the shopping center owners, Bristow Shopping Center L.P., that the appellants were Twochez and Company as well as Bristow Shopping Center L.P., and that Twochez and Company were the same appellants that were cited in the Heritage Citgo appeal ten years previously.

Mr. Hammack asked staff why the service station had been allowed to operate for the past ten years after all the efforts expended to establish the initial violation and, why the County had not taken legal action to enjoin them based on the BOS's earlier decision to deny the special exception. Based on the earlier rulings, why couldn't the County take action instead of again having to follow procedure.

Ms. Stehman replied that because of a turnover in staff, this was one of those cases that erroneously were not followed up on; however, it was assigned to Senior Zoning Inspector, Bruce Miller, who had been diligent in its processing.

Bruce Miller, Senior Zoning Inspector, Zoning Enforcement Division, said he was assigned the case approximately one year prior and was advised by the County Attorney's Office that in order to assure proper service of the Notice of Violation, a new Notice must be issued to the shopping center owner as a result of the change in the partnership.

Chairman DiGiulian asked the Board for a motion.

Mr. Beard moved to dismiss A 2004-BR-020, which was seconded by Mr. Hart.

Mr. Hammack stated that John P. Forest, II, the agent for the appellants, had requested either an indefinite deferral or to defer consideration of the deferral request until the next scheduled Board meeting. He said, in his opinion, Mr. Forest should be present at the next meeting to explain their intention to reapply for a special exception.

Chairman DiGiulian called for a vote on Mr. Beard's motion to dismiss. The motion carried by a vote of 5-1, with Mr. Hammack opposed and Mr. Ribble not present for the vote.

//

~ ~ ~ November 30, 2004, Scheduled case of:

9:30 A.M. HUNTERS VALLEY ASSOCIATION & HUNTERS VALLEY RIDING CLUB, A 2004-SU-021 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the use of a portion of property in the R-E District as an equestrian riding ring constitutes a second principal use of the property and that such use was established without approval of a Special Permit, a Special Exception, a Resource Protection Area Exception, a site plan and a Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 10856 Flowerstone St. on approx. 7.21 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((23)) 5. (Admin. moved from 10/19/04) (Decision deferred from 11/2/04 and 11/16/04)

Mr. Hammack gave a disclosure and indicated that he would recuse himself from the public hearing.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Grayson P. Hanes, Esquire, agent for the riding club, stated he had no further testimony to present.

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff researched the records and determined that no further information was available concerning the special permit granted in 1955 for a community swim pool.

Chairman DiGiulian called for a motion.

Mr. Pammel commented that with its history tracking back 46 years, he found the case interesting. He noted that in response to the Board's questions from the November 2, 2004, public hearing, Mr. Hanes' November 24, 2004, letter provided information concerning subdivision prospects and staff's determinations on that use. Mr. Pammel pointed out that the special permit approved in 1958 had not specifically identified the subject property, but had used the language, "... maintain bridle paths and hiking trails, and to provide swimming, tennis and other recreational facilities . . ." Mr. Pammel said he found that latter wording inclusive in its relation to this appeal. Concerning the Jenkins' claim that the property could not be sold because of the encumbrance of personal liability, in Mr. Hanes' letter there was a reference to a multi-million dollar liability policy issued to the riding club that covered the property's use, the property owners and any easements, and although a realtor agent believed there was a problem, Mr. Pammel said he believed there was not. Mr.

Pammel said although he understood staff's position that the use should have a special exception, he could not agree because, in his determination, the use was there for 50 years and fell under the Recreational Facilities Standard of the original special permit.

Mr. Hart said that the use was a non-conforming use established in the '50s and under the 1941 Ordinance, he would conclude that the activity in question would have been a by-right use under Paragraph 10.

Mr. Pammel then moved to reverse the determination of the Zoning Administrator for the reasons he previously noted including the fact that the use was approved by the BZA in 1958 and, therefore, did not require a special use approval. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack recused himself from the vote. Mr. Ribble was not present for the vote.

//

~ ~ ~ November 30, 2004, After Agenda Item:

Approval of July 22, 2003; September 9, 2003; and September 30, 2003 Minutes.

Mr. Pammel moved to approve the above referenced Minutes. The motion was seconded by Mr. Beard, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

//

~ ~ ~ November 30, 2004, After Agenda Item:

Approval of October 28, 2003 Minutes.

Mr. Pammel moved to approve the October 26, 2003, Minutes. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

//

~ ~ ~ November 30, 2004, After Agenda Item:

Approval of August 10, 2004 Minutes.

Mr. Pammel moved to approve the August 20, 2004, Minutes. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

//

~ ~ ~ November 30, 2004, After Agenda Item:

Approval of November 16, 2004 Resolutions.

Mr. Beard moved to approve the November 16, 2004, Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

//

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, called the Board's attention to a letter and documentation that she distributed concerning the Ron V. Johnson appeal, A 2004-MA-013, that Chairman DiGiulian had requested earlier in the meeting. She noted that Mr. Johnson's letter explaining the reason his notices were not in order was date-stamped November 16, 2004. The Board considered a deferral but, because the Board had no knowledge of Mr. Johnson's explanation letter, instead dismissed his appeal. She clarified that the letter was received subsequent to the BZA hearing.

After the Board reviewed Ron V. Johnson's information concerning his appeal A 2004-MA-013, Chairman DiGiulian asked staff if the Board could reconsider their earlier decision to dismiss. Ms. Stehman said that it was staff's position that the Board could reconsider the Johnson appeal because it was the following meeting day after they made their motion to dismiss.

Susan Langdon, Chief, Special Permit and Variance Branch, called the Board's attention to the fact that they just moved to approve the November 16th resolutions, one of which was their dismissal of the Johnson appeal, and therefore, those decisions were finalized. She said another motion was required.

Mr. Hart moved to reconsider the approval of the November 16, 2004 Resolutions. The motion was seconded by Mr. Pammel, which carried by a vote of 4-2. Mr. Beard and Ms. Gibb voted against the motion. Mr. Ribble was not present for the vote.

Ms. Gibb stated the sequence of events concerning the Johnson appeal. She noted that Mr. Johnson twice failed to do his notices; that the attorney/agent for Mr. Johnson, Mr. Spence, requested a deferral at the November 2nd hearing but stated he did not know why the notices, for the second time, were not in order; that the Board granted a one-week deferral to find out about the notices; that the Board did not hear from Mr. Spence again; and, a letter explaining why Mr. Johnson's notices were not sent was received November 16th, but after the Board made its decision to dismiss the appeal.

Discussion followed between Mr. Hart and Ms. Stehman concerning Mr. Johnson's letter in which he referenced a phone conversation with staff. Ms. Stehman explained that the staff coordinator, Jayne Collins, Zoning Administration Division, spoke with Mr. Johnson and explained the notice procedure. Mr. Johnson indicated he would hand-deliver the green Post Office receipts, but they were never dropped off, and after that Mr. Spence became Mr. Johnson's representative.

For Mr. Hammack's clarification, Ms. Langdon explained that, unlike variances and special permits, an appeal had no resolution and that after the Board made a determination, a letter is sent to the appellant advising of the action taken. She noted that an appeal was like special permits and variances in that it was subject to the 8-day wait period before the decision was final, and because the Board had not waived the 8-day wait period at the November 16th hearing, none of the decisions, including their motion to dismiss the Johnson appeal, became final until that day, the 30th.

Chairman DiGiulian called for a motion on whether to reconsider the Johnson appeal.

Mr. Hart moved to reconsider the dismissal of Appeal 2004-MA-013 and scheduled its public hearing for January 18, 2005 at 9:30 a.m. Mr. Pammel seconded the motion.

Mr. Hart commented that if the Board knew of Mr. Johnson's letter, they probably would have granted the requested deferral at the November 16th meeting. He said that he believed the Board was taking the right action by hearing Mr. Johnson's appeal, but affirmed that this was the final opportunity for the appeal to go forward and Mr. Johnson would have to have his notices in order.

Ms. Gibb said that the Johnson letter was mailed, not faxed or e-mailed, nor had anyone phoned to apprise staff of the situation. She said she thought the appellant must have been aware, after two hearing dates that could not go forward because of the notices. Ms. Gibb said that she thought the letter requesting a deferral was half-heartedly sent.

Mr. Beard said he thought the neighbors were inconvenienced at least twice by coming to two public hearings where the case was scheduled but not heard, and he believed the Board made the right decision to dismiss the case, and the Board should stand by its decision.

Chairman DiGiulian called for a vote. The motion carried by a vote of 4-2, with Mr. Beard and Ms. Gibb voting against the motion. Mr. Ribble was not present for the vote.

//

~ ~ ~ November 30, 2004, After Agenda Item:

Approval of November 16, 2004 Resolutions


Mr. Pammel moved to approve the November 16, 2004, Resolutions, with the exception of A 2004-MA-013, Ron Johnson. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

//

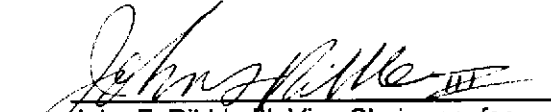
As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: Paula A. McFarland

Approved on: April 8, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 7, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m.

Mr. Pammel moved that the Board recess and enter into Closed Session for consultation with legal counsel regarding legal issues pending before the Board pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Ribble was absent from the meeting.

The meeting recessed at 9:04 a.m. and reconvened at 10:04 a.m.

Mr. Pammel then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 8-0. Mr. Ribble was absent from the meeting.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no additional Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. TRUSTEES OF LIGHTHOUSE BAPTIST CHURCH, SP 2004-LE-053 Appl. under Sect(s) 8-914 and 3-203 of the Zoning Ordinance for existing place of worship to permit site modifications, building addition and reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain in minimum required front yard. Located at 5901 Wilton Rd. on approx. 2.00 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip Bishop, Senior Pastor, Lighthouse Baptist Church, 5901 Wilton Road, Alexandria, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for an existing place of worship to permit the construction of a new classroom building consisting of 1,200 square feet. The applicant also requested a reduction to the minimum yard requirements based on error in building location to permit two accessory storage structures to remain in the minimum required front yard. The applicant also requested a modification of the transitional screening requirement along portions of the northern, eastern, and southern property boundaries; a waiver of the barrier requirement along portions of the northern property boundary; and a modification of the barrier requirement along the southern and eastern property boundaries. Although a modification of the barrier requirement was requested by the applicant, staff included a development condition, which the applicant had agreed to, that precluded the installation of any additional fencing on site. Mr. Shriber said staff believed the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the adoption of the proposed development conditions.

Mr. Hammack asked to be shown the location of the proposed 170-foot fence to which the residents had objected. Mr. Shriber indicated that it was the fence along Wilton Road, which was addressed in Development Condition 12.

Mr. Hammack asked whether staff felt the fence should be constructed. Mr. Shriber replied that staff did not feel it was necessary due to the amount of existing vegetation which buffered the parking from Wilton Road and the adjacent residential properties.

Mr. Hammack asked what the rationale was behind the fence. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff did not support the fence and had a development condition that the fence would not be constructed.

Mr. Hammack asked why letters in opposition to the 170-foot fence were received. Mr. Shriber replied that there had been a misunderstanding during the review of the case. He said that initially, as shown on the plat, there was to be fencing installed in that location, and as it was shown on the plat, it appeared it was existing and would be reduced in height to four feet. He explained that staff had included Condition 12, which was what he thought the neighbors were addressing in that they did not want a fence in that location, which staff supported.

Mr. Bishop presented the special permit request as outlined in the statement of justification submitted with the application. He said that with his growing congregation, the ability to bring in additional classroom space would help with the directed education of the children on a smaller teacher-to-student classroom ratio.

Mr. Hammack asked whether the church intended to construct a fence along Wilton Road. Mr. Bishop replied in the negative and said the church agreed with the neighbors that the fence would not be a good thing.

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

Mr. Hammack moved to approve SP 2004-LE-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF LIGHTHOUSE BAPTIST CHURCH, SP 2004-LE-053 Appl. under Sect(s). 8-914 and 3-203 of the Zoning Ordinance for an existing place of worship to permit site modifications, building addition and reduction to minimum yard requirements based on error in building location to permit accessory storage structures to remain in minimum required front yard. Located at 5901 Wilton Rd. on approx. 2.00 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. 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 7, 2004; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 and 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Lighthouse Baptist Church Trustees, only and is not transferable without further action of this Board, and is for the location indicated on the application, 5901 Wilton Road (2.0 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit Plat (SP Plat) prepared by AB Consultants, Inc. dated October 22, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit (non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 150 seats in the sanctuary of the church.
6. Parking shall be provided as shown on the SP Plat. All parking shall be on-site.
7. The limits of clearing and grading shall be no greater than as shown on the Special Permit Plat.
8. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as shown on the SP Plat as approved by DPWES.
9. The transitional screening requirement shall be modified as shown on the SP Plat and as outlined in Condition 10.
10. At the time of site plan approval, a landscape plan shall be submitted to DPWES. The landscape plan shall be in conformance with the SP Plat and shall be subject to review and approval by the Urban Forest Management Branch. Regardless of that shown on the SP Plat, supplemental landscaping shall be installed between the proposed classroom building and the existing vegetation along the northern property boundary, extending in an unbroken strip east towards the accessory storage structures.
11. Foundation plantings shall be installed and maintained around the existing church and proposed classroom building to soften and screen the visual impact of the buildings.
12. Regardless of that shown on the SP Plat, the barrier requirement shall be waived along the northern property boundary and along the southern property boundary adjacent to Wilton Hall Court, as well as along the southwestern property boundary adjacent to Tax Map 82-4 ((1)) 22 and along the southeastern property boundary adjacent to Tax Map 82-4 ((1)) 32.
13. The barrier requirement shall be modified as shown on the SP Plat to permit the existing fence along the southern property boundary adjacent to Tax Map 82-4 ((1)) 22 and along the eastern property boundary adjacent to Tax Map 82-4 ((1)) 32 to satisfy the barrier requirement.
14. At the time of site plan approval, or upon demand, whichever occurs first, 5 feet of right-of-way from the edge of pavement along Franconia Road, as shown on the SP Plat, shall be dedicated to the Board of Supervisors in fee simple.
15. At the time of site plan approval, or upon demand, whichever occurs first, 20 feet of ancillary easements for construction and drainage purposes, as shown on the SP Plat, shall be dedicated to the Board of Supervisors in fee simple.
16. Any new lighting, or replacement lighting installed on the subject property shall be provided in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
17. All signs on the subject property shall be provided in accordance with Article 12 of the Zoning Ordinance.
18. The exterior appearance of the classroom building shall be in substantial conformance with the illustration as depicted in an attachment to these conditions (Appendix 1A).
19. Acoustical treatment of the classroom building shall be provided in order to achieve a maximum interior noise level of approximately 45 dBA Ldn as follows:
 - a. Exterior walls shall have a laboratory sound transmission class (STC) of at least 39, and
 - b. Windows shall be double paned.

- c. Doors, windows and walls shall have a composite STC of at least 39, computed for each side of the dwelling individually.
- d. Adequate measures to seal and caulk between surfaces shall be provided.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outline above, and this Special Permit shall not be valid until this has been accomplished.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. LARRY BELL, SP 2004-SU-054 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of addition 11.7 ft. with eave 10.9 ft. from side lot line. Located at 4314 Silas Hutchinson Dr. on approx. 11,743 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry Bell, 4314 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of a two-story addition located 11.7 feet with eave 10.9 feet from the side lot line. A minimum side yard of 20 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum side yard; therefore, modifications of 8.3 feet and 6.1 feet, respectively, were requested. She reported that the addition met the minimum yard requirements of the R-2 Cluster District, which was applicable to the lot on July 25, 1982, and required a minimum side yard of 8.0 feet.

Mr. Bell presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the house was built in the late 1970s, and the floor plan was outdated, with a very small kitchen. He explained that there was an existing 12-foot-by-20-foot deck, which would be removed, and the proposed addition would take up the deck footprint, with the kitchen wall being moved out. He said the addition would consist of three levels, two levels plus a full basement underneath, which would allow access to the basement from inside the house by a stairway in the corner of the addition rather than the current situation of going through the garage to access the basement. Mr. Bell said the upstairs portion of the addition would open into the master bedroom and allow for a walk-in closet for additional storage. He stated that the addition would be of the same construction with the same siding as on the existing house.

Mr. Hart asked whether the applicant understood that the development conditions required the relocation or removal of the existing shed. Mr. Bell replied that the shed had been put in the wrong location to accommodate the removal of a maple tree near the deck that was overhanging the house, and the shed would be relocated when the foundation was dug.

Mr. Hart asked whether there was a conflict in that Development Condition 1 incorporated the plat, and note 12 on the plat said the shed would be relocated, but Development Condition 4 gave three options and said

the shed could be reduced in height, removed, or relocated. Susan Langdon, Chief, Special Permit and Variance Branch replied that the condition would override it, and the applicant was being given the option rather than just removing it.

Mr. Hart suggested it should read notwithstanding the language of note 12 also. Ms. Langdon said that could be added.

Mr. Bell requested the 8-day waiting period be waived so the concrete work could begin before the weather turned cold.

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

Mr. Pammel moved to approve SP 2004-SU-054 for the reasons stated in the Resolution, with the addition of the language "notwithstanding Note 12" in Development Condition 4.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY BELL, SP 2004-SU-054 Appl. under Sect(s) 8-913 of the Zoning Ordinance to permit modifications to the minimum yard requirements for certain R-C lots to permit construction of addition 11.7 ft. with eave 10.9 ft. from side lot line. Located at 4314 Silas Hutchinson Dr. on approx. 11,743 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 20. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 2004; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The proposed addition presented to the Board does not extend to the present side yard dimension, which is 8.8 feet; therefore, the request does not further expand the envelope of the house with respect to the side yard dimension.

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

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

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

1. This special permit is approved for the location of a two story addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated August 3, 2004, as revised through September 14, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. The addition shall be architecturally compatible with the existing dwelling.
4. Notwithstanding Note 12 and the height as depicted on the special permit plat, the shed shall be reduced in height, removed or relocated as to comply with Zoning Ordinance requirements.

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

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. 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 December 7, 2004.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. BRUCE AND BARBARA STALCUP, VC 2004-BR-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 14.3 ft. from front lot line of a corner lot. Located at 5620 Heming Ave. on approx. 13,772 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (70) 1A. (Continued from 6/29/04)

Chairman DiGiulian noted that a deferral request to April 1, 2005, regarding VC 2004-BR-064 had been received.

Mr. Hammack moved to continue VC 2004-BR-064 to April 1, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 13.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MV-112 had been administratively moved to February 1, 2005, at 9:00 a.m.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, VCA 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 99-P-101 to permit a change in development conditions. Located at 10408 Marbury Rd. and 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17H and 17I.

Ms. Gibb indicated that she would recuse herself from the public hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Felix S. Tantoco, 10408 Marbury Road, Oakton, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The

applicant requested a variance amendment to amend VC 99-P-101, previously approved for a lot width variance to permit the subdivision of one lot into two lots with proposed Lot 17B having a lot width of 11.9 feet, to delete the development condition which specified that all utilities required to serve the home on proposed lot 17B, which was now described as Lot 17I, shall be installed with a connection to Hunter Mill Road and not Marbury Road. Ms. Stanfield explained that since the approval of the variance, the applicant had ascertained that electrical facilities existed in Marbury Road to serve lot 17I and that to provide electricity from Hunter Mill Road would be cost prohibitive, and the applicant filed the variance amendment to delete Development Condition 5. She noted that handouts from the applicant had been distributed to the Board at the hearing.

Mr. Hart asked whether the application would be within the scope of the text of the advertisement recently authorized by the Board of Supervisors for the proposed Zoning Ordinance amendment. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it would, and the applicant would have to file a special permit or special exception application.

Mr. Hart asked whether there was something in the advertisement that would allow a pending special permit case to be re-categorized as a special permit or special exception without refiling or another filing fee. Ms. Langdon replied that there was, provided the proposed Zoning Ordinance amendment passed.

Mr. Tantoco presented the variance amendment request as outlined in the statement of justification submitted with the application. He said that he had planned to build his retirement home on the subject lot and had contacted Virginia Power and advised them that the connection had to be from Hunter Mill Road. He explained that a study was done regarding the location of the connection, and he received a report that said going to Hunter Mill Road would be an extraordinary expense for him because a new transformer would have to be installed, but facilities existed on Marbury Road midway on his driveway. Mr. Tantoco said the connection on Hunter Mill Road would require a 30-foot easement going to the house from 1,000 feet away, which would sacrifice and damage mature trees during the construction and installation of an underground line.

Mr. Hart explained that on April 23, 2004, the Virginia Supreme Court had decided a case which substantially restricted the Board's ability to grant variances, and he asked whether the applicant had discussed the Cochran decision with staff. Mr. Tantoco replied that he was aware of that.

Mr. Hart explained that on the day prior to the hearing the Board of Supervisors had authorized advertising a Zoning Ordinance amendment which would allow certain things to be done as a special permit or special exception which previously would have been variances. These were likely cases precluded by the effect of the Cochran decision. He asked whether the applicant would be amendable to the application being processed as another category if the relief could be granted that the BZA otherwise could not grant and the application could be deferred until after January 24, 2005. Mr. Tantoco replied that the construction of the house had been started, and he was currently staying with his daughter. He said time was a factor, and he needed a connection as soon as possible.

Christopher James, 2740 Hunter Mill Road, Oakton, Virginia, came forward to speak. He stated that he was an attorney and was a neighbor of and was speaking on behalf the applicant. He said the house was under construction, but if the application had a better chance of being approved at a later date, he would advise the applicant to take a deferment.

Ms. Langdon explained that if the application were to become a special permit or special exception, it would require advertisement as a new use and the earliest it could be heard would be the middle of March of 2005 in order to allow time for the advertisement and for the applicant to send notices, providing the Board of Supervisors adopted the Zoning Ordinance amendment on January 24, 2005.

Chairman DiGiulian asked the applicant whether he wanted the Board to make a decision or preferred the application be deferred. After briefly conferring with Mr. James, Mr. Tantoco asked the Board to make a decision as to whether the connection could be made to Marbury Road rather than Hunter Mill Road.

Mr. Beard asked staff to confirm that the variance had been granted prior to the Cochran decision and the Board was currently addressing an amendment to a pre-Cochran variance, which Ms. Langdon said was correct.

After briefly conferring with Mr. James, Mr. Tantoco indicated that the Board should do whatever was best.

Mr. Hammack asked the applicant to explain why Development Condition 5 was included in the original variance. Mr. James explained that in an attempt to minimize the impact on the neighbors, a meeting was held and it was decided that future utilities would be taken from Hunter Mill Road, but that it was learned after the fact that the impact would be much worse if it were to come along Hunter Mill Road and would almost have no impact if it were done on Marbury Road. He said the original intent of the condition that was added by the applicant's attorney was to appease any neighbor that was concerned, but that it was ironically serving the exact opposite purpose. Mr. James explained that a connection to Hunter Mill Road would involve an expense of approximately \$22,000 and the removal of possibly 30 to 60 trees, which would negatively affect five or six properties on Hunter Ridge Road, as opposed to an expense of \$500 to hook up to an existing transformer. He said there would be no impact on Marbury Road because there was an existing transformer on the pipestem and the power line would go along the new driveway up to the house at the standard cost of a residential hookup.

Mr. Hammack asked whether the installation off of Marbury Road would require an easement across anyone else's property. Mr. James replied that it would not. He said there were existing easements. He stated that there were two letters on file, one regarding the cost and the other from Dominion Power stating the preferred route to the house was on Marbury Road.

Mr. Beard asked Mr. James to confirm that Development Condition 5 was the result of the community input as opposed to staff. Mr. James replied that it was as a result of community input on the advice of their attorney, Lynne Strobel.

Mr. Beard asked whether staff concurred with Mr. James' statement. Ms. Langdon replied that the condition was offered by the agent of the applicant and was not suggested by staff.

Mr. Hammack asked Mr. James whether he was the owner of the existing two-story brick and frame house that had frontage on Hunter Mill Road. Mr. James replied affirmatively and said 17H was his property. He explained that he was the original owner of the five-acre tract with Mr. Tantoco that was subdivided.

Mr. Hammack discussed with Mr. James whether he had electricity to his unit and where it came from. It was determined that Mr. James had underground electricity that came off of Marbury Road from Lot 3 owned by Mr. Stevens, but no construction across Mr. Stevens' property would be required by the applicant's proposed use of the existing transformer on Marbury Road.

Chairman DiGiulian called for speakers.

Mr. James came forward to speak in support of the application. He stated that the applicant's house was currently under construction, and the cost of the delayed construction might exceed the cost of the electrical connection at issue. He said the applicants were 72 and 74 years of age, on a fixed income, and if not for the requirement in Development Condition 5, the fee to establish a new transformer would be unnecessary and a cost the applicants could not bear. He said he was aware of the Cochran decision, but thought this was a case of undue hardship.

Mr. Hammack asked Mr. James whether the overhead line to his house shown on the plat was a phone line, to which Mr. James answered affirmatively. He said he had an underground line coming from the Stevens property.

Eleanor Hay, 10410 Marbury Road, Oakton, Virginia, came forward to speak in opposition to the application. She stated that at the time of the original variance application, the staff report indicated that the application did not meet the standards for a variance, and many neighbors were opposed to the application. She said she had raised the concern that trenching for utility work from Marbury Road might affect her well located within 25 feet of the common driveway, but when the applicant added Development Condition 5, that was no longer an issue. She stated that after the approval of the variance, the applicant requested clarification of Development Condition 4, wanting to know whether the detached garage had to be included in the square footage of the house. She said that was something a person might want to know before they became legally bound. Ms. Hay said the applicant later asked to be excused from the requirement to build his segment of the walking trail along Hunter Mill Road. She said a representative from the applicant had come to her the prior summer and asked her to sign something that stated that removing Development Condition 5 was not a problem, and the representative said none of the four original applicants could remember why the condition was in the application. Ms. Hay said she appreciated that a connection from Hunter Mill Road was a frustration and an additional expense, but to be brought to the hearing for the discussion because of a lack of due diligence on the part of the applicant was unacceptable, particularly in light of the fact that the applicant

had both legal and land development professionals involved throughout the original application process. She said the water connection would run from Hunter Mill Road to the property.

Mr. James, in his rebuttal, stated that the existing transformer was located on the pipestem, would come across the pipestem under the driveway, and would not affect any well system. He said he understood Ms. Hay was disgruntled because a residence was being built where it was a wooded property, but there would be no impact on her. The applicant presented a drawing indicating the locations of the existing transformer, the well, and the proposed electrical line going to the house. Mr. James indicated that the electrical line would be on the east side of the driveway and would follow the driveway to the residence.

Mr. Hammack asked whether the transformer existed when the original variance was heard, to which Mr. James replied that he believed it did.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to approve VCA 99-P-101. He said that the applicant had satisfied the Board that physical conditions existed under which a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship pursuant to the revision of Development Condition 5 in the original filed application.

Mr. Pammel seconded the motion and said it would be cleaner to make no reference whatsoever to the present staff report and the conditions therein, but refer to the development conditions in Appendix 4 of the resolution dated February 29, 2000, and delete Development Condition 5. Mr. Beard accepted Mr. Pammel's amendment to the motion.

Mr. Hart stated that he had abstained from the vote on the original variance application. He said the current variance amendment was a reasonable request that might have been granted had it been raised at the time of the original variance, but he thought the Board was currently constrained by the Cochran decision and did not think the Board could make substantive changes on previous approvals without following the current guidance of the Court. He stated that although there was clearly a demonstrable hardship in that it would be more expensive to bring the utilities in from Hunter Mill Road, the Supreme Court had told the Board it was not to consider things like hardship or cost unless the owner was deprived of all reasonable beneficial use of the property taken as a whole, and he could not conclude that. Mr. Hart said he would not support the motion. He said it could be addressed by the proposed Zoning Ordinance amendment, if it was adopted, and he would support a deferral that would allow that and waiving the time for refile, but the Board did not have the authority to approve an amendment with a substantive change if it required a finding that the property owner was deprived of all reasonable beneficial use of the property taken as a whole.

Mr. Beard commented that as a layman from a simplistic standpoint, being that the variance was pre-Cochran, notwithstanding the legal interpretations which had merit, the variance was approved before the Supreme Court made its interpretation, and the current request was a minor adjustment, which he thought fell outside the boundaries of Cochran.

Mr. Hammack said he wanted to defer the decision for a week to give it some thought. He stated that he had voted against the original variance, but it had been granted. He said he was impressed by Mr. Beard's argument regarding Cochran to some extent and wanted to give more consideration before voting. Mr. Hammack said that although it was a technical change, it was a substantive change to the development conditions that were a part of the variance at the request of the applicant, or not objected to, with his counsel and currently resulted in an economic hardship, but the Board was not supposed to consider that.

Mr. Beard made a substitute motion to defer decision on VCA 99-P-101 to December 14, 2004, at 9:00 a.m. Mr. Hammack seconded the motion.

Mr. Pammel asked Mr. James when the house on Lot 17A was built, to which Mr. James replied that it was completed the end of 1994.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0. Ms. Gibb recused herself from the hearing. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:00 A.M. SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04, 7/27/04, 10/19/04, 10/26/04, and 11/2/04)

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

Mavis Stanfield, Senior Staff Coordinator, suggested that if the Board wished to approve the application, it be done subject to the plat dated November 23, 2004, that showed the revised building height.

Mr. Hart asked whether other changes would be required to incorporate the November 23, 2004 plat if Development Condition 2 in the October 26, 2004 development conditions was changed to refer to the November 23, 2004 plat, to which Ms. Stanfield replied no.

Mr. Hart asked for confirmation that if the height was reduced to 36 feet on the plat and the plat was incorporated in the development conditions, it did not need to be restated. Ms. Stanfield said that was correct.

Mr. Hart asked whether the 36-foot height on the new plat was from the top of the roof or Ordinance height, the middle of the roof from an average of the ground. Ms. Stanfield indicated that it would be measured to the midpoint of the peak of the roof from an average of the ground.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that was normally how it was measured, but she would leave it up to the applicant to explain if that was how it was done on the plat.

Ms. Greenlief stated that building height was defined in the Ordinance as the average grade to halfway up the midpoint, so it was average building height.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2003-SU-045 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANT NIRANKARI MISSION, SP 2003-SU-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 4501 Pleasant Valley Road on approx. 4.10 ac. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((1)) 10. (Admin. moved from 2/3/04, 3/2/04, 3/9/04 and 4/6/04 at appl. req.) (Decision deferred from 4/27/04, 7/27/04, 10/19/04, 10/26/04, and 11/2/04) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 2004; and

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

1. The applicant is the owner of the land.
2. This was a lengthy and difficult case and is an example of how the land use process works. The Comprehensive Plan requires that applications for non-residential uses in the R-C District meet certain criteria and that they be rigorously reviewed. The process the application has gone through with staff and the citizens in the series of hearings held over the last few months is an example of that kind of rigorous review, during which the application was looked at carefully.

3. Although through the process it is hoped a consensus can be reached, that point is not always achieved. The Board doesn't always agree with staff or among themselves, but the debate and suggestions often result in an improved application for things that are ultimately approved and raises issues to be thought about for future cases on things that are not approved.
4. In this situation, the Board's function is to determine whether the applicable standards in the Zoning Ordinance are met, which is not an exact science, and the Board members do not always agree.
5. The subject property is located in the R-C District. The Board of Supervisors down-zoned approximately 40,000 acres in 1982 to protect the water quality, and both the Comprehensive Plan and the Zoning Ordinance have significantly more severe standards for approval than for other locations in the County.
6. The Zoning Ordinance also provides for approximately two dozen different non-residential uses for sites that are located on arterial roadways in the R-C District, as the subject site is. A church is an approvable use under the Zoning Ordinance in the R-C District if certain standards are met.
7. In the subject case, staff has performed an analysis, and since approximately April of 2004, staff has recommended approval.
8. The applicant has had a number of meetings with the community.
9. There is a letter of support from the West Fairfax County Citizens Association (WFCCA), which reviewed this case four or more times, and they have had a relationship with land use and reviewing land use cases for more than 20 years, including at least a dozen or more place of worship applications in this end of the R-C District.
10. Both the WFCCA and staff have some history or level of consistency comparing one of these applications to another.
11. There have been many revisions and improvements as a result of this process, including:
 - The orientation of the building with the short end toward the homes and moved further away from the homes was an improvement.
 - The height of the building has been reduced significantly over what was started and what otherwise would be required in this District.
 - Type III screening was added to the east, which is not a typical requirement for places of worship.
 - The applicant is providing 50 percent undisturbed open space, which in the R-C District is something hoped to be achieved to accomplish the reduction of phosphorous in the runoff.
12. There are extensive development conditions which were heavily vetted through this process.
13. Although this is not an exact science, the Board is satisfied that the size of the building as reduced in terms of size and scale is compatible with the R-C District and is certainly significantly smaller than a number of other places of worship that have been approved in the R-C District.
14. The transportation issue was one that was particularly difficult, although staff's analysis concluded that this was approvable, and there have been at least four other places of worship approved in the immediate vicinity, three across the street, one of those a couple different times, and one on the same side a little further to the south.
15. The subject application is not the cause of the curve problem. The Board has had this situation on other cases where there is an existing condition, and yet the next applicant is not required to alleviate it. When Chantilly Bible was approved across the street, there was no requirement imposed on them that they modify the curve.
16. In terms of staff's analysis, the type of use that's being requested has generally its greatest traffic volumes at off-peak times. There are certain other uses which could have been approved for this site which would have impacted rush-hour traffic a little differently, and maybe staff's analysis would have been different, but because this is a place of worship with conceivably the biggest activity on the weekends, the effect is a little different.
17. Even though everyone's concerns have not been 100 percent addressed, the participation of so many people in the process helped, and the final product is a significantly better application with significantly mitigated impacts from where the application began.
18. It is reasonable to expect that being on an arterial, it would develop with an institutional use, a relatively small use where the impacts have been mitigated.
19. The standards have been met that it is on an arterial, the use is designed to mitigate impacts on the Occoquan Reservoir, and it is of such a size and scale that would be compatible with the R-C District.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Sant Nirankari Mission, and is not transferable without further action of this Board, and is for the location indicated on the application, 4501 Pleasant Valley Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William C. Putman, dated September, 2003, as revised through November 23, 2004.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan, submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 300.
6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.
7. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented, at a minimum, as shown on the special permit plat, and shall include a planting area a minimum of 20.0 feet in width along the parking area adjacent to Pleasant Valley Road. The applicant shall provide supplemental plantings as determined in consultation with the Urban Forest Management Branch, DPWES, to meet the intent of Transitional Screening 1 along the eastern, southern and western lot lines. Size, species, number and location shall be determined in consultation with the Urban Forest Management Branch of DPWES.
8. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with the Urban Forest Management Branch of DPWES.
9. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
10. The barrier requirement shall be waived.
11. At least 50% undisturbed open space shall be provided. There shall be no clearing or grading of any vegetation except for dead or dying vegetation in the area of undisturbed open space, as determined by the Urban Forest Management Branch. No structures or fences shall be permitted in the undisturbed open space. The applicant shall provide computations to the Department of Public Works and Environmental Services (DPWES), in whatever form is determined necessary by DPWES, that verify a minimum of 50% undisturbed open space shall remain on the site following clearing for construction. If the applicant cannot provide such verification, parking spaces and a corresponding number of seats, shall be reduced such that a minimum of 50% undisturbed open space remains.
12. The limits of clearing and grading shall be the minimum amount feasible as determined by DPWES and shall be no greater than shown on the special permit plat and shall address the requirement outlined in Development Condition 11. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forest Management Branch, for review and approval. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.

13. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days.
14. The applicant shall submit a tree preservation plan in a form as determined in consultation with the Urban Forest Management Branch as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forest Management Branch.

All trees shown to be preserved on the tree preservation plan shall be protected by fencing a minimum of four feet in height to be placed at the dripline of the trees to be preserved. Tree protection fencing in the form of a four foot high 14 gauge welded wire fence attached to six foot steel posts driven 18 inches into the ground and placed no further than ten feet apart, shall be erected at the final limits of clearing and grading and shown on the erosion and sediment control sheets. Tree protection fencing shall only be required for tree save areas adjacent to clearing and grading activities. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any construction work being conducted on the Application Property. A certified arborist shall monitor the installation of the tree protection fencing and verify in writing that the tree protection fence has been properly installed. Three days prior to commencement of any clearing and grading, the Urban Forest Management Branch shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

15. The applicant shall dedicate right-of-way along Pleasant Valley Road as shown on the special permit plat 40.0 feet wide, to the Board of Supervisors in fee simple at the time of site plan review or upon demand, whichever occurs first.
16. The applicant shall schedule Sunday services to avoid vehicles entering or exiting the site for services at the same time as parishioners enter and exit the Chantilly Bible Church. Services for the application property shall be scheduled to start a minimum of one half hour before or after services for the Chantilly Bible Church.
17. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance, notwithstanding that any parking lot lighting shall, at a maximum, consist of bollard style light fixtures, with a maximum height of approximately (3) three feet.
18. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES, provided, however, there shall be no additional vegetation cleared over that which is shown on the plat and provided that these facilities shall be in substantial conformance with the special permit plat. The applicant shall use bioretention/infiltration trenches with underdrains around the perimeter of the parking area, and/or other low-impact design techniques for stormwater management and Best Management Practices as permitted and approved by DPWES.

The applicant shall enter into an agreement with DPWES, in such form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and maintenance procedures for the underground facility.

19. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
20. The church shall be constructed as generally depicted in the attached elevation (Attachment 1).
21. All weekday meetings on the subject property shall conclude by 9:00 p.m.
22. Vested volunteers shall direct traffic during worship services. Signs, indicating that parking on residential streets for worship services is prohibited, shall be posted on the property, and information regarding the prohibition on parking on residential streets shall be distributed to the congregation a minimum of once a year.

23. The applicant will construct a left turn lane into the site from Pleasant Valley Road if deemed warranted by the Virginia Department of Transportation at the time of site plan review.

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

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

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 December 15, 2004. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Hart moved that the Board request that staff forward to the Board of Supervisors for consideration in the next spot improvement program safety improvements that could be made on the curve on the other side of the street along the Chantilly Bible property immediately to the northwest. Mr. Pammel seconded the motion.

Mr. Pammel commented that the motion was an outgrowth of a memorandum that was transmitted to him from a Virginia Department of Transportation (VDOT) representative, who after inspection admitted that there was a problem, much of it due to unreasonable speed. Mr. Pammel stated that there were signs at the location indicating the curve and a reduced speed of 25 miles an hour; however, much of that was being ignored. He said it was clear in the minds of VDOT and the Board that some improvements had to be made, the right-of-way was there, dedicated by the Chantilly Bible Church, and additional right-of-way would be made available to the south along those properties that were west of the site. He stated that the critical issue was some immediate action that would be designated to the curve to flatten it out to make the flow of traffic safer, and he supported the motion.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:30 A.M. CARVILLE J. CROSS, JR., A 2004-PR-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected a structure, which does not comply with the minimum rear yard requirements for the PDH-4 District, without a valid Building Permit in violation of Zoning Ordinance provisions. Located at 9827 Fox Rest La. on approx. 6,361 sq. ft. of land zoned PDH-4. Providence District. Tax Map 48-1 ((32)) 18. (Decision deferred from 8/3/04 and 3/10/04)

Mr. Hart indicated that he would recuse himself from the public hearing.

Chairman DiGiulian noted that a 90-day deferral request regarding A 2004-PR-014 had been received.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal was of a Notice of Violation that the appellant had created a structure that encroached on the minimum required rear yard, and the appeal had been deferred in August of 2004. She noted that the status of the application was summarized in a memorandum dated November 29, 2004, and the appellant was requesting a deferral to allow additional time to pursue a resolution. She said staff supported the deferral request.

H. Kendrick Sanders, the appellant's agent, said that he had been trying to determine how to get an

application before the Board to resolve the issue and needed more time to determine what to apply for to attempt to legalize the latticework that was generally described as an attractive, but technically illegal addition to the deck.

A brief discussion ensued between Mr. Hammack, Mr. Sanders, and Ms. Stehman regarding the time needed and the Board's future agendas, and it was determined that March 8, 2005, was the first available date.

There were no speakers to address the issue of the deferral request.

Mr. Hammack moved to defer decision on A 2004-PR-014 to March 8, 2005, at 9:30 a.m., at the appellant's request. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, Scheduled case of:

0:30 A.M. VERIZON VIRGINIA, INC., A 2004-SU-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has not complied with Conditions 9, 21 and 22 associated with Special Exception Amendment SEA 81-C-051-2 in violation of Zoning Ordinance provisions. Located at 2905 Fox Mill Rd. on approx. 1.82 ac. of land zoned R-E. Sully District. Tax Map 36-1 ((1)) 21.

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

Margarat Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that Mary Ann Tsai, Zoning Administration Division, would present the staff report, and Bruce Miller, Zoning Enforcement Branch, was present to respond to questions.

Ms. Tsai presented staff's position as set forth in the staff report. She stated that the appeal was of a determination that the appellant had not complied with Development Conditions 9, 21, and 22 associated with special exception amendment SEA 81-C-051-2 and was in violation of Par. 1 of Sect. 9-004 of the Zoning Ordinance. She reported that Condition 9 stated that the appellant shall work with the individual neighbors sharing said boundaries regarding design and location considerations for the fencing. She said the appellant worked with the adjacent property owners in regard to the installation and location of a fence along the eastern property line of the subject property, but failed to discuss the location of the gate with the neighbors. She indicated it was staff's position that the appellant was not in substantial conformance with Condition 9. She said it was also staff's position that at the time the zoning inspections were conducted and when the Notice of Violation was issued on August 11, 2004, the contact information during construction and subsequently for the facility was not adequately posted at all entrances pursuant to Conditions 21 and 22. She explained that by ultimately notifying the affected parties, the appellant was currently in compliance with the notification portion of Conditions 21 and 22; however, part of Condition 22 remained outstanding because contact information had not been posted at all entrances of the facility.

Mr. Hammack gave a disclosure and indicated that he would recuse himself from the public hearing.

Ms. Gibb asked staff to confirm that currently the only item with which the appellant was not in compliance was the posting of signs in several places. Ms. Tsai replied that the appellant was in violation of Condition 9 for not having worked with the adjacent property owners regarding the location of a gate and part of Condition 22 for the posting of signs.

Ms. Gibb stated that in a letter received from the neighbor most affected by the gate, the issues of sound barriers around the air conditioning units and the number of onsite people were raised, and she asked whether staff had a position regarding those issues. Ms. Tsai replied that they were not a part of the appeal.

Mr. Hart asked what the consequences would be if the Board upheld the determination that the appellant was in violation of Development Condition 9 because the appellant did not work with the neighbors regarding the gate location. Ms. Stehman replied that there had been a number of alternatives that had been offered by the appellant to the adjacent property owner, and it was hoped that the two parties would come to a resolution following the determination on the appeal.

Mr. Hart stated that the Board's function was to determine whether the Zoning Administrator was correct rather than brokering a friendly neighbor resolution of the fence issue, to which Ms. Stehman agreed. Mr. Hart asked what would happen, regardless of whether there was a side agreement or not, if the Board upheld the violation and whether that would be a basis for the revocation of the entire special exception. Ms. Stehman replied that if the Board looked at it extremely technically, proceedings could be started that way, but she did not expect that to happen because there had been a number of alternatives offered, and it was hoped that an agreement would be reached fairly readily.

Mr. Hart commented that he was surprised to know that putting a gate in where a gate was not shown on a plat might be a violation of a development condition, and he asked if the subject case was the first time that had happened. Ms. Stehman replied that it was the first time she was aware of. She commented that she thought the reason the hearing was taking place was because the fence was contentious at the time the special exception was approved and the appeal issues were a continuation of the same concerns of the property owners in that they agreed to the fence, but did not discuss or agree to the gate. She said staff had determined that because the fence only and not the gate had been part of the discussions, the appellant was not in full compliance with Condition 9.

Mr. Hart asked if the issue of whether someone who had a fence and put in a gate needed a special permit amendment or special exception amendment was being treated consistently or whether this was the first time. Ms. Stehman replied that, to her knowledge, this was the first time the issue had been raised.

Mr. Beard asked whether the issue had been raised as part of a complaint. Ms. Stehman replied that it was part of a complaint, but the case had originated when the Zoning Enforcement staff had been doing an inspection to determine whether or not all the conditions had been complied with, and in discussions regarding the conditions with the neighboring property owner, the issue was raised.

Bruce Miller, Zoning Enforcement Branch, explained that a direction had been received from the Supervisor's office to investigate whether or not the air conditioning units onsite were in compliance with the Noise Ordinance. He said he had determined that there was no violation of the Noise Ordinance and at the same time did a review of the conditions and found that they were lacking in Conditions 21 and 22, and later when the gate was installed in July of 2004, the appellant came into violation of Condition 0. He said that Sheri Hoy, McGuireWoods, the appellant's agent, was notified that Conditions 21 and 22 were not in compliance, and Verizon failed to comply with Conditions 21 and 22 until after the notice was received.

In response to Mr. Beard's request for clarification on whether there was a complaint, Mr. Miller responded that there had been a complaint regarding noise that was referred to the Zoning Enforcement Branch from the Supervisor's office, but that routinely when out at a site, all the conditions were reviewed.

Lee Fifer, McGuireWoods, the appellant's agent, presented the arguments forming the basis for the appeal. He said that he believed that Verizon had complied with the conditions. He stated that none of the applications had originally come to the Board of Zoning Appeals (BZA), and the subject property was one of more than two dozen Verizon central offices that were actually switching stations located in Fairfax County. He explained that because there had been an increased demand resulting from an increased number of people using an increased amount of electronic equipment, Verizon had gone through the special exception process to expand the central offices that in many cases existed prior to the residential developments around them, as was the case with the subject location. He said that during the expansion process numerous meetings were held with neighbors, and the list of the conditions attached to the special exception were a result of that process.

Mr. Fifer said that Conditions 21 and 22 were both notice and contact issues. He said Condition 21 required both written and posted notice during the construction period, which included notices to be mailed to the property owners of record and to the homeowners association and posted at building entrances. He stated that was not strictly adhered to, but at the time the strict interpretation and the actual words were pointed out to Verizon, it was done and consisted of the letters from Sheri Hoy that gave both the construction contact and the permanent contact. He said that what had been previously done was that Verizon's agent, Tom Rathburn of Tishman Construction, had sent out monthly e-mail reports to the surrounding neighbors, a step better than simply sending a letter out and saying who you call. He said the intent was to keep the neighbors very current and in a position to understand what was going on. He noted that the cover letter of the e-mails included the cell phone number of Mr. Rathburn, who was available 24 hours a day to the people receiving the notices. Mr. Fifer said the e-mailed updates went beyond the requirement of the condition, but the condition had since been strictly satisfied. He said in regard to Condition 21, construction had been

completed, it was currently a non-issue, and he believed a better source of notification had been provided that went beyond the condition.

Mr. Fifer said that Condition 22 required both written and posted notice during operation after construction was completed. He noted that the Board had copies of Ms. Hoy's letters reflecting a 24-hour-a-day notice telephone number for operation. He presented a photograph of a temporary entrance sign that had been used while permanent signs were being created and a photograph of a permanent sign that was currently in place at the site that listed a contact number. He explained that as a result of concerns by staff regarding the response time when calling the telephone number listed, Verizon had posted information on their computer system at the call center that when a call was received at that number, David John, the manager of the subject location, was to get an immediate call. Mr. Fifer said he and Ms. Hoy had tested the number, and it had taken approximately ten minutes for the call center to contact Mr. John. Mr. Fifer stated that Mr. Orloff, who had submitted a letter to the Board, had Mr. John's cell phone number and had direct access to the contact person for the site during the entire process.

Mr. Fifer stated that there was a factual incorrectness in the staff report concerning the gate and Condition 9. He said Verizon did discuss the gate with Mr. Orloff. Mr. Fifer said that he believed staff was saying that if something said a solid wood fence, then it did not contemplate a gate. He reported that a meeting occurred with the neighbors, at which the height and location of the fence was established, and it was located eight to ten feet behind the property line with reference to Mr. Orloff's lot. He explained that the area was heavily wooded with large trees in the Verizon part of the wooded area that appeared to be an extension of Mr. Orloff's yard, and if any of the trees were to lean toward Mr. Orloff's parked cars or house, Verizon would need to get equipment in to take care of it from a liability point of view. Mr. Fifer said that was the practical reason that a gate was located there in a logical place at the end of the existing paved driveway, and if one looked at the gate from Mr. Orloff's side, it was a virtually invisible gate. He presented a photograph of the gate and stated that it looked like another section of the fence. He stated that the gate was locked, with the key being kept in the locked and controlled high-security facility, and there was no threat of people coming and going through the gate. He said that at one time coming down from the other side of the building for maintenance purposes was considered, but it was not a practical alternative because the fence on that side was located close to the property line and there were ravines and numerous trees in the way.

Mr. Fifer explained that Verizon had tried to solve the problem, and numerous meetings were held in the supervisor's office to address the issue. He said Verizon proposed the options of relocating the fence on the property line, which would result in there being no need for the gate because the trees Verizon would have to maintain would be located inside the fence; relocating the gate to another area on the other side, which would be in a location where it be difficult to get to the area adjacent to Mr. Orloff's property; having a removable fence section instead of the gate; or leaving everything the way it existed. He said he viewed the Zoning Administrator's interpretation as a technical interpretation with a strict interpretation of the words "solid wood fence." Mr. Fifer stated that a gate was an integral part of a fence, and there were practical reasons for the gate to be in its current location. He said the condition obligated Verizon to work with the neighbors, but did not provide a veto on practical and necessary decisions. Mr. Fifer said he thought the intent was to require Verizon to do its best to resolve issues and that Verizon had done its best by making it an invisible gate after having worked with the neighbor regarding the exact location, and he believed Verizon met the intent of the conditions.

In response to Mr. Hart's earlier question regarding the consequences of the Board upholding the decision of the Zoning Administrator, Mr. Fifer said Verizon had been told to remove the gate, and if Verizon did not remove the gate, the Zoning Administrator would proceed to court.

Mr. Hart commented that the next logical step was if Verizon had to shut down the switching facility, phones would be turned off, and no one wanted that to happen. He asked what the next step would be if the Board said Verizon was in violation even though it would not be shut down. Mr. Miller replied that if the gate was not removed and the Board upheld the determination that it was in violation of Condition 9, the next step would be to seek injunctive relief addressing the gate issue. He said he would have to determine whether the signage was in place on the site.

Mr. Fifer said he wanted to make it clear that Verizon had not suggested that it would close the facility down. Mr. Hart commented that in another instance regarding an issue with a condition concerning a golf driving range, the Court had said shut it down.

Mr. Hart asked whether the violation regarding Condition 9 was that Verizon did not extensively or sufficiently work with the individual neighbors sharing said boundaries regarding design and location considerations for

the fencing or whether it was also that the fence was not solid because it had a gate in it. Ms. Stehman indicated that it was both. She stated that it was no longer a solid wood fence, but the larger issue was the lack of consultation with the neighboring property owner.

Mr. Hart asked for clarification as to whether "solid" meant gateless as opposed to the boards touching each other, to which Ms. Stehman replied no breach.

Mr. Hart gave a disclosure that he likely had attended some of the early meetings regarding the special exception applications as the Virginia Run representative on the Sully District Council, but the meetings were not concerning the violation, and he remembered nothing about the gate. He indicated he did not believe his ability to participate in the case would be affected.

Mr. Beard asked whether there was ongoing communication between staff and Verizon and whether staff was comfortable with Verizon's response. He commented that at some point he felt communication had broken down and that he understood there was a disgruntled neighbor. Mr. Miller replied that he had not been communicating with Verizon, but he was aware that Michael Congleton, Zoning Enforcement Branch, had been communicating with Verizon by telephone and e-mail. Mr. Miller said he did not believe any of the discussion changed staff's position regarding the condition as it applied to a solid wood fence.

Ms. Gibb asked what the difference would be between a gate that was always locked, which did not look like a gate, and a removable fence panel. Mr. Miller replied that a removable section of fence would be a preferred remedy because it would not be a permanent opening.

Ms. Gibb asked whether the issue was the appearance or the fear that people would be going in and out. Mr. Miller replied that staff's position was that it did not provide the same level of security as a solid wood fence, even with a removable section.

Ms. Gibb asked whether the fence was there for security purposes. Mr. Miller replied that he was unaware of why it had been required.

Ms. Gibb commented that if the rationale for requiring a removable piece rather than a gate was because it was more secure, that was why there was a fence. Mr. Miller replied that staff's position was that a fence with a gate was not a solid wood fence.

Mr. Pammel asked whether the location of the fence as it related to the rear of the property was a consensus of the people involved. Mr. Fifer replied that he understood it was the desired location of the adjacent property owner, Mr. Orloff.

Mr. Pammel asked whether everyone was aware that the trees located on Verizon's property outside the fence would have to be maintained and expected Verizon to perform the necessary maintenance. Mr. Fifer replied that Condition 15 expressly obligated Verizon to perform the maintenance. He explained that the initial discussion fixed the height, type, and location of the fence, and Verizon later realized it would need to access the area for maintenance and had conversations with the adjacent neighbor at the time the gate was being installed. Mr. Fifer stated that the fact of the matter was that Verizon and the neighbor disagreed on the need for gate and the desirability of it.

Chairman DiGiulian called for speakers.

Alan Orloff, 11906 Paradise Lane, Herndon, Virginia, came forward to speak. He said he resented being characterized as the bad guy or as disgruntled and wished Verizon would live up to what it agreed to in the development conditions. He stated that when the location and type of fence was initially discussed, there was a consensus. He said the fence was installed, and there were no problems until they came out with a chainsaw and cut a gate into it. Mr. Orloff referred to the photograph of the gate from his side and pointed out that there were two trees located in front of the gate that stopped any vehicles from coming through the gate to take care of the trees. He said he had lived at his property for 13 years, and Verizon had not performed periodic maintenance and had been on that portion of the property three times. He reported that the first time was when he had alerted Verizon regarding a dead tree, and they had gotten permission to drive bobcats onto his lawn and had taken care of it; the second time was to plant the trees provided for in the landscaping plan by removing and replacing a portion of the fence; and the third time was when Verizon came onto his property to post no trespassing signs. He stated that the first time the gate issue was discussed with him was two weeks before the November 1st letter and after Verizon had appealed the condition violation. He said there was a perimeter that could be used to walk around to access the area, and

there was no need for a gate. Mr. Orloff said it was a safety issue because he had two children who played in the driveway, and he did not want the gate to come flying open and strangers bursting out onto his property.

Mr. Beard asked whether Mr. Orloff would be pleased if the fence was moved closer to his property and the gate was removed. Mr. Orloff replied that a lot of trees would have to be destroyed.

Mr. Beard stated that Verizon had that right, and he asked whether Mr. Orloff would be happier with that than the existing situation. Mr. Orloff replied in the negative and said he would be happier if they went back to the way they agreed. He said that most of the property on Verizon's side of the fence was to the north. He explained that there was an eight-foot strip by the driveway and then the property jogged back approximately 40 feet for the last half of the lawn where most of the trees were located. He said the location of the gate made no sense.

Mr. Hart asked Mr. Orloff to confirm that the problem with the gate was the potential of it opening and someone coming out onto his driveway and not the appearance of the gate, which Mr. Orloff confirmed and said one could hardly tell it was a gate.

In his rebuttal, Mr. Fifer said the fence was positioned 15 feet out from all the property lines, and if there was no way to get through the gate adjacent to Mr. Orloff's property, Verizon would have to come around the side with equipment, and the vegetation and terrain would make it hard to get anything other than a wheelbarrow through the area without trespassing on Mr. Orloff's property. He said Verizon could not function in the expectation that a landowner would give permission each time it needed to do basic maintenance. Mr. Fifer indicated the location of Verizon's driveway and the fence on a drawing and stated that the gate was in the practical and logical location. He said a removable section could be installed and would satisfy the strict interpretation of the condition. He said, as a good faith offer, Verizon would do its best to notify Mr. Orloff any time they would have to go in.

Ms. Gibb and Mr. Fifer discussed the location of vegetation near the gate, and Mr. Fifer said the vegetation would be relocated if the equipment could not get around it.

Ms. Gibb and Mr. Fifer discussed the location of the no trespassing signs. Mr. Fifer said the signs had been originally posted on the property line and were posted on all sides.

Barbara Jean Nissel, Verizon Real Estate, came forward to speak. She stated that there were face-to-face meetings with Mr. Congleton to attempt to resolve the issues from the numerous complaints received from Mr. Orloff involving the gate and the no trespassing signs being done on a personal level rather than a business level. She explained that as a result of issues concerning people having parties on Verizon property and the sheriff or police not being able to come onto the facilities unless they were posted, Verizon had been systematically pesting their property and gave direction that the postings were to be on the fence when the fence was on the property line, but in the subject case where there was a stretch of property before the property line, they were posted on the property line to make it obvious where the property line was located. She reported that Verizon was asked by Mr. Congleton to remove the signs, and Verizon had removed the signs in the back facing Mr. Orloff's property, leaving two on the side near the road and one in the front by the driveway. Ms. Nissel stated that Verizon had worked with the neighbors on the location of the fence, and Mr. Orloff had wanted it set back with landscaping in front of it, to which Verizon agreed. She said that when Verizon was finishing up the landscaping, the issue of how it would maintain the new landscaping arose, and she directed the building supervisor for Tishman to advise Mr. Orloff that a gate was needed. She said the building supervisor informed her that he had met with Mr. Orloff, who rejected the gate. Ms. Nissel said Verizon did not know a gate would be needed until after they had met with the neighbors and agreed upon the location for the fence. She said she directed the building supervisor to install the gate in an attractive manner because it was needed based on the final location of the fence.

Mr. Pammel asked whether it was absolutely essential for Verizon to have a gate to service the eight to ten feet of property outside the fence. Mr. Fifer replied that legally it was essential because it would be Verizon's liability if anything occurred there and a means of access was needed, citing the possibility of lightning striking a tree and it threatening Mr. Orloff's property as an example of Verizon's need for immediate access to respond. He said Verizon's preferred alternative was to locate the fence on the property line, and the gate issue would go away.

Mr. Pammel asked for clarification that it was impractical to access the area through Mr. Orloff's property in light of Mr. Orloff stating that he was willing to allow that access. Mr. Fifer replied that it might not be true for

later owners of Mr. Orloff's property, and Verizon would be in a position that the only way to get to a dangerous situation was to wait for a neighbor to give permission or violate the law by trespassing in order to address it. Mr. Fifer said that the County's policy was that if one needed to go onto neighboring property, a permanent easement was required, which would not be the case in the subject matter.

Mr. Pammel asked whether a removable panel was a viable solution. Mr. Fifer replied that it was.

Mr. Hart asked whether the condition would allow a removable panel installed in the same location as the gate with the same function as opposed to a gate with hinges and a lock. Mr. Miller replied that it would be acceptable.

Mr. Hart asked whether a removable panel would be a breach. Mr. Miller replied that it would require more work to remove a removable panel than to open a gate.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the issues concerning Conditions 21 and 22 had been addressed satisfactorily by Verizon and had become moot. On the technical matter, Mr. Pammel moved to uphold the determination of the Zoning Administrator with respect to the gate, with the understanding and the suggestion that a removable panel replace the gate, and that would solve the problem to Verizon's and Mr. Orloff's satisfaction. Ms. Gibb seconded the motion.

Ms. Gibb expressed her hope that staff relay that in development conditions if it says a solid board fence, that to her it meant a solid board fence and was silent on a gate, and if one meant no gate, it should say that because it was a misunderstanding a lot of people could have. She said everyone had a right to have no trespassing signs, but when one had an institutional use, it would be more likely to have one, and when it was a special exception in a residential neighborhood, it would be something to think about when one looked out into their back yard and saw no trespassing signs all around. She said she understood Verizon's position, but she would not want that in her back yard.

Chairman DiGiulian called for the vote, and the motion carried by a vote of 4-1. Mr. Hart voted against the motion. Mr. Hammack recused himself from the hearing. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, Scheduled case of:

9:30 A.M. SYED ARID HUSSAIN, A 2004-SU-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has graded the side and rear yards of the property in an area in excess of 2,500 sq. ff. including the addition of fill that exceeds 18 in. in depth without an approved grading plan in violation of Zoning Ordinance provisions. Located at 13591 Cobra Dr. on approx. 22,135 sq. ft. of land zoned R-3. Sully District. Tax Map 25-3 ((4)) 922.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that Jayne Collins, Zoning Administration Division, would present the staff report, and Bruce Millor, Zoning Enforcement Branch, who was the inspector, was present.

Ms. Collins presented staff's position as set forth in the staff report. She stated that the appeal was of a determination that the appellant had graded the side and rear yards of the subject property in an area in excess of 2,500 square feet, including the addition of fill that exceeded 18 inches in depth, without an approved grading plan. She reported that in response to a complaint, Zoning Enforcement Branch staff had inspected the property on August 5, 2004, and found that most of the rear yard and 40 percent of the side yard, an area of approximately 8,400 square feet, had been graded and fill added to a depth that exceeded 18 inches. She presented a graphic showing the extent of the grading and filling on the property. Ms. Collins said that with few exceptions, none of which applied to the subject property, Par. 1 of Sect. 2-601 of the Zoning Ordinance provided that sod and soil may be removed from or added to any lot to a depth of not more than 18 inches, but only in an area not exceeding 2,500 square feet. She said Par. 3 of that Section provided that the grading of land was permitted only upon approval of a grading plan by the Department of Public Works and Environmental Services (DPWES), and the appellant had not submitted or obtained the approval of a grading or conservation plan by DPWES and was in violation of Sect. 2-601 of the Zoning Ordinance. She requested that the Board uphold the determination and require the appellant to submit and

obtain the approval of a grading plan to legitimize the area that was already disturbed or submit a plan to return the property to its original condition.

Ms. Gibb asked whether the property could be returned to its original condition and if there were any legal impediments to a grading plan or whether it was located in a floodplain that would not allow grading. Ms. Collins stated that the inspectors had found the property corners and found that the property was not in the floodplain. She said the approval of a grading plan was an administrative process.

Ms. Gibb whether there was any impediment that would make it impossible to get an approved grading plan, to which Ms. Collins replied that she saw no impediments.

Mr. Hart commented that in one of the photographs there appeared to be rocks, boulders, or part of a retaining wall, and he asked what it was. Mr. Miller replied that he did not recall what it was, but knew the appellant had an intention at some point to build a retaining wall.

The appellant, Syed Arid Hussain, 13591 Cobra Drive, Herndon, Virginia, presented the arguments forming the basis for the appeal. He said he and his neighbors had no idea that such a thing as a grading plan existed. He said the bricks referenced by Mr. Hart were in an area that the previous owner did not realize was part of his property, and the area was being used by his neighbor, Mr. Carmody, who had built a shed and some retaining walls there. Mr. Hussain explained that upon having the property surveyed and the issue resolved regarding his ownership, Mr. Carmody, his three sons, and Mr. Hussain dismantled the shed, and the items noted by Mr. Hart were the residue of the shed and retaining walls.

Mr. Hussain stated that he had no intention of violating any County laws or rules and was trying to make a playground for his three children. He said he moved to the subject half-acre lot when his family had outgrown their previous townhouse, but he did not allow his children to go into the back area where there were a lot of junk trees and thorny plants. He presented photographs of his children and said they loved swings, so he purchased a swing set. He stated that he had not re-graded 8,400 square feet. He presented photographs of the property, pointed out trees that fell during Hurricane Isabel, and said there was no change between then and the property's current condition. Mr. Hussain explained that the truck that had delivered dirt had gotten stuck in mud when it backed in and had ruined the area. He said that with the shrubs and weeds, there was no area to do anything, and he had just cleaned up the area and shaved off land from one area and put it into another area in order to have a flat spot to put in a playground. He said the fill part was required to allow the children to go to the playground because it was going downhill.

Mr. Hussain said he had worked on the yard for six to eight months before the inspector came out, and he had complied with the inspector's suggestions. He said he told the second inspector that came out that he had been instructed by Mr. Miller to get a grading plan by an engineer, and the second inspector said it could be drawn by hand and he did not need an architect or civil engineer. Mr. Hussain said he had not done anything to damage the environment or his neighborhood, it was done in good faith, his yard was a beautiful place, and his children would like a playground there so they could enjoy it. He said he had tried to call civil engineers and architects to get an estimate on a grading plan, but they were too busy with big jobs to come out, and the nurseries said they would do the grading, but did not know what a grading plan was. He said one person came out and gave him an estimate of \$15,000 to \$20,000 to do the plan and advised him to file an appeal. Mr. Hussain said it was almost impossible to get someone to do a grading plan, it would be too expensive, and it would be an unnecessary hardship.

Mr. Hart asked whether the area the appellant had cleaned up was larger than 2,500 square feet, irrespective of the intent or the effect on drainage. Mr. Hussain replied that the area that he had shaved off and put from one side to the other was 40 feet wide by 95 to 100 feet long, but it was a triangle, and the area was about 2,000 square feet.

Mr. Hart asked, aside from changing the grade, whether the appellant had removed any grass, weeds, or vegetation at the surface in a larger area. Mr. Hussain replied that he had to remove tree branches, and in the process, he had to rent a bobcat to get the stuff out and had cleaned up everything from there.

Mr. Hart asked whether there was fill greater in depth than 18 inches anywhere. Mr. Hussain replied that there was in a two-foot or four-foot area that he indicated in a photograph.

Ms. Gibb commented that a grading plan would usually be obtained that showed what would be done and approved before work was started, but in the subject case, he would show what he did and get it approved. Ms. Collins said the plan would legitimize what the appellant had already done if it was approved, but there

would be no guarantee that DPWES would approve the plan.

Ms. Gibb asked for confirmation that if the plan was not approved, the appellant would have to put it back like it was. Ms. Collins stated that the appellant could make changes to the grading plan to whatever DPWES recommended would be the best on the property for the environment.

Ms. Gibb said it was true that you could not get engineers, and she asked how much time the appellant had. Ms. Collins replied that staff would be willing to work with the appellant to work out a time schedule for getting the grading plan and returning the property to its original condition or legitimizing what was existing.

Mr. Hussain said he had been trying for four months to get a plan, was only able to get the one man to come out, and Mr. Miller had told him the cost of \$15,000 to \$20,000 was not only unreasonable, but ridiculous. Chairman DiGiulian commented that it would likely be the price anywhere in Fairfax County.

Mr. Beard asked staff whether the use of Roundup to kill grass would be considered disturbance. He commented that what he saw in the photographs was a relatively small topography change and a lot of dead vegetation, and he asked whether the removal of the dead vegetation would be counted as disturbance. He said the area he was looking at included the landfill and appeared to come close to the 2,500 square feet. Mr. Miller read the definition of land disturbing activity from Article 104-1-7 of the County Code.

Mr. Hart asked whether there was an approved grading plan from when the house was built and whether it continued indefinitely. Ms. Collins replied that there was and it did.

Mr. Hart asked whether there were any proffers dealing with the subject subdivision as to limits of clearing and grading or a final development plan that showed disturbed areas or changes in contours. Ms. Collins replied that there were not.

Mr. Hart asked whether there was a copy of the approved grading plan from when the house was built at the hearing. Ms. Collins said there was not.

Mr. Hart said he would like to understand whether what the appellant did would be in conformance with the approved grading plan. Mr. Miller replied that if the appellant had limited the activity to less than 2,500 square feet and limited the area of any fill on the lot to less than 18 inches, it would not have required a grading plan.

Mr. Hart asked whether the disturbed area that staff said was approximately 8,400 square feet included both where the contours were changed and where the plants were removed. Mr. Miller replied that it included all denuded areas.

Mr. Hart asked, separate from denuding, how much of it was the cut and fill aspects of it. He said he thought Mr. Hussain's explanation was that it was half. Mr. Miller replied that Mr. Hussain's characterization was accurate.

Mr. Hammack asked what method was used to determine that the appellant exceeded 2,500 square feet and 18 inches. Mr. Miller replied that he had done a spot measurement at one location where he found vegetative matter protruding through the soil and measured there to the height of the adjacent soil that had clearly been added and got an elevation of three feet. He said there were areas that were higher than that, but he had not located any vegetation at the base. He explained that once he had established that there was more than 18 inches of fill, in his mind the question was answered. Mr. Miller said he had also located the property corners while trying to determine whether it had encroached into a floodplain easement. He said the disturbed area was basically the entire rear yard and part of the side yard on the left side of the house.

Mr. Hammack asked whether Mr. Miller had compared his findings to the approved grading plan. Mr. Miller replied that he had the approved grading plan with him. He said he did not think what the appellant had done had altered to any great extent the drainage of the land, but it did meet the excess of 2,500 square feet and 18 inches of fill material as set forth in Article 2.

Mr. Beard asked how the property had come to be inspected. Mr. Miller replied that he had received a complaint that the property owner was filling in the floodplain, and he had gone to the property, left his card because the owner was not home, got a call back, made arrangements for an inspection, and returned at the next available date.

Ms. Gibb asked what the status was on the Cinder Bed Road cases. Ms. Collins replied that the only one she was familiar with was the American Stone, Tramonte, and Silvic Diana, which would be coming back before the Board the end of January of 2005. She said her understanding from the inspector was that some cleaning up had been done on the property, but there was still a ways to go.

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

Mr. Hammack moved to uphold the determination of the Zoning Administrator. He said he had sympathy for the appellant and his predicament, and he was unsure that the appellant had exceeded 2,500 square feet by very much, but no compelling testimony or evidence was offered that he had not. Mr. Hammack said that the appellant had admitted that he had brought in fill and disturbed the area, and Mr. Miller had arranged for an inspection and did some measurements that indicated that the area was in excess of 2,500 square feet and fill exceeded 16 inches in depth in some cases, with which the appellant did not disagree. Mr. Hammack said he thought staff had made a case, although some of what the appellant did might have been permissible.

Mr. Pammel seconded the motion.

Ms. Gibb made a substitute motion to defer A 2004-SU-029 so the appellant could find out who had done the grading plan for the property and could contact that engineer to do the grading plan, if it was needed, and could gather more evidence about how much area was disturbed and how much was disturbed when he cleaned up fallen trees as distinguished from how much area was disturbed to scrape up dirt to put in another place and facts to support his position. She said she knew how much it would cost for an engineer and how difficult it was to get one out, but since the Board had deferred other cases that were far more egregious, but the people had attorneys, perhaps the Board could give a short deferral if that would help the appellant.

Mr. Beard seconded the substitute motion. He said in deference to Mr. Miller and the fine job he did for the County, he had stated that he did not see drainage damage. Mr. Beard said he thought the actual square footage numbers were ambiguous. Although he said some of the photographs looked damning, he would support a deferral to do further investigation.

Mr. Hart said he was leaning towards Mr. Hammack's motion, but could support a short deferral and was interested in seeing the approved grading plan and understanding what it required or allowed more clearly.

Mr. Hammack stated that he would be interested in seeing what the approved grading plan said.

Chairman DiGiulian called for the vote on the motion to defer decision on A 2004-SU-029 to February 6, 2005, at 9:30 a.m. The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, After Agenda Item:

Request for Additional Time
Scott S. and Martha George, VCA 96-H-117

Mr. Pammel moved to approve 30 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was August 13, 2007.

//

~ ~ ~ December 7, 2004, After Agenda Item:

Request for Additional Time
Richard H. Rice Jr., VC 00-V-049

Mr. Pammel moved to approve 90 days of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was January 6, 2005.

//

~ ~ ~ December 7, 2004, After Agenda Item:

Memorandum dated November 30, 2004, from Susan C. Langdon
Fairfax Yacht Club, Inc., SP 83-V-007

Mr. Pammel moved to accept staff's recommendation that at the present time there was no need for any other access to the site. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ December 7, 2004, After Agenda Item:

Request for Reconsideration from Craig R. Prindle
Regarding accessory structure, SP 2004 SU-050

No motion was made; therefore, the request for reconsideration was denied.

Mr. Hart asked whether the Board had waived the 12-month waiting period for refiling an application. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not believe the Board had waived the waiting period, but that it could be done at any point if the applicant wanted to come back.

//

~ ~ ~ December 7, 2004, After Agenda Item:

Approval of November 30, 2004 Resolutions

Mr. Pammel moved to approve the Resolutions with one modification to page 2 of Gordon D. Foote, Trustee, and Jacqueline T. Foote, Trustee, VC 2004-DR-110, to delete the paragraph containing the language regarding the automatic expiration. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Mr. Ribble was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:00 p.m.

Minutes by: Kathleen A. Knoth

Approved on: April 12, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 14, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:08 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ December 14, 2004, Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, VCA 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 99-P-101 to permit a change in development conditions. Located at 10408 Marbury Rd. and 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17H and 17I. (Decision deferred from 12/7/04)

Chairman DiGiulian noted that VCA 99-P-101 had been deferred for decision from December 7, 2004.

Ms. Gibb indicated that she would recuse herself from the public hearing.

Chairman DiGiulian called the applicant to the podium. Felix S. Tantoco, 10408 Marbury Road, Oakton, Virginia, came forward.

Mr. Tantoco said his request for an adjustment to Development Condition 5 on the approved variance was justified. He said he had been in agreement with all the conditions, but Virginia Power had done a study and recommended a service connection through Marbury Road where there was an adequate electrical transformer located right at the edge of his driveway. He said the line would be within 400 feet and run underground along the extended driveway to the house, and the route would not have any adverse impact on any neighbors. Mr. Tantoco explained that the alternate connection from Hunter Mill Road would require the installation of a new electrical transformer, which would be an unnecessary and expensive duplication of the Marbury transformer. He said the route for the connection from Hunter Mill Road would be through a mature tree covered 30-foot easement that was bordered by five neighbors, and the underground installation could damage or destroy the vegetation and expose the neighbors' backyards, depriving them of privacy. He said the impact on the vegetation would be a violation of Condition 3 of the approved variance that stipulated prevention of damage from construction activities, and approval of Urban Forestry might be necessary. Mr. Tantoco said the Hunter Mill Road connection would cause a major delay in the completion of the construction of his retirement home. He said there was an urgency component to his request because he had health issues and had twice postponed needed surgery because he did not have appropriate arrangements for his prolonged rehabilitation because he was temporarily staying with relatives which required him to use stairs.

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

Mr. Hammack moved to deny VCA 99-P-101. He said it was a difficult decision because the Board was dealing with constraints placed on it by the statute and the Cochran decision, and he was unsure that once a variance was granted, the Board had authority to revisit it under the statute. He said that he thought once the variance was granted and the eight-day reconsideration period had passed, the Board lost its jurisdiction. Mr. Hammack said that the applicant was granted the variance based on hardship provisions that existed prior to the Cochran decision, but had reasonable use of the property under the decision. He said the applicant was requesting a change to the development conditions that was reasonable, but under the Code and the Cochran decision, the Board could not grant the requested relief, and cost was not a consideration under the Ordinance. Mr. Hart seconded the motion.

Mr. Beard said the applicant was requesting a minor adjustment which predated Cochran, and he had heard issues raised regarding tree removal as opposed to cost. He said he could not support the motion.

Mr. Hart said the authority for the Board to grant variances was spelled out in the State Code and repeated with some modifications in the Zoning Ordinance, and he had reviewed the State Code and found the General Assembly had not given the Board guidance procedurally for an amendment of a previously granted variance, so given the lack of basis, the subject application was just another variance application on the same property. He said there was no mention in the Code or any of the reported cases of different or more lenient standards or some procedural basis that would allow the Board the authority to disregard the Court's

decision in Cochran and go backward because it predated Cochran, so the Board must treat the application as a fresh variance application, and absent some procedural basis allowing the Board to look back, the Board had to vote based on the current standards as opposed to those applicable several years prior. Mr. Hart said that only in situations where the Board concluded that the owner was deprived of all reasonable beneficial use of the property taken as a whole, could it then address hardship issues, and he could not conclude that the additional expense to the property owner to bring in the electrical line from one street rather than another would fall in that category. He said one of the examples discussed in Cochran was the placement of a garage relative to a hill, and the Court dealt with the suggestion that it would have been at considerable financial hardship if the owner had shifted the garage farther away from the street and said that was not a reason to allow it, and financial hardship was not the basis for a variance.

Mr. Hart said there were very detailed and explicit procedures for amendments of other previous approvals in the Zoning Ordinance regarding amendments of special exceptions, special permits, existing proffers, and final development plans, but there was nothing about variance amendments. It was not spelled out in the local Ordinance or State Code, so given the absence of any authority and the fact that it did not satisfy the Cochran test, Mr. Hart said he did not think the Board had the authority procedurally to grant the request no matter how compelling the emotional reasons may be. He said he would be willing to support a deferral until after the date where the Board of Supervisors might approve the Zoning Ordinance Amendment that would otherwise allow this, but currently he would vote against granting the variance.

Mr. Beard said the applicant had made clear that time was of the essence, and notwithstanding the arguments of his colleagues who were learned attorneys, as a layman and coming down on the practical side, he stood by the fact that he could not support the motion and would let the Court tell him subsequent to the decision that he was wrong.

Mr. Hammack said he had discussed the Board's authority years ago with the County Attorney as to resolutions and the adoption of resolutions after the Board had granted a request based upon what was later found to be fraudulent testimony, and he had been told that the Board had no authority to change anything after the resolutions were approved, that the Board lost its jurisdiction. Mr. Hammack said there was no authority in the Code to revisit a decision once one had been made, so a variance amendment application had to be treated as a new variance. He said he had a great deal of sympathy for the applicant and his request, but agreed with Mr. Hart that the owner was not deprived of all reasonable use of the property and Mr. Hart's analysis of Cochran where the Court rejected the notion that if it cost more to comply without a variance than it did with a variance, it did not make any difference.

Mr. Ribble referenced a prior case in which an applicant who had lost his job requested additional time to build a garage for which a variance had been approved prior to the Cochran decision and the extension had been granted, and he said in a sense the Board had revisited the decision.

Mr. Beard said he thought one of the Board's functions to the public was to offer relief. He said the variance was approved prior to the Cochran decision, the request was for a change in a development condition, and it was a reasonable change that was beneficial to everyone involved.

Mr. Hart said Mr. Ribble made an excellent point about the ability to extend a previously granted variance, but the distinction between the referenced case and the subject application was that the Board had been legislatively explicitly provided authority regarding time extensions, and every variance that had been granted had been subject to a written request for renewal prior to the expiration date, so all variances had been contingent on being extended.

Mr. Pammel said there was an exception to every rule, and in the subject case, an onerous development condition was imposed without much thought initially given to it. Basically the applicant found that it was a condition that he could not live with, and there was a hardship, so he said he would oppose the motion.

Chairman DiGiulian called for the vote. The motion failed by a vote of 8-3; therefore, the application was denied. Mr. Beard, Mr. Pammel, and Chairman DiGiulian voted against the motion. Paragraph 3 of Section 18-402 of the Zoning Ordinance requires that a concurring vote of four members of the Board of Zoning Appeals is needed to grant a variance. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Hammack and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb recused herself from the hearing.

//

THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE REFERENCED APPLICATION ON DECEMBER 21, 2004. A NEW PUBLIC HEARING WAS SCHEDULED FOR FEBRUARY 15, 2005, AT 9:00 A.M.

//

~ ~ ~ December 14, 2004, Scheduled case of:

9:30 A.M. EXPRESS TINT, A 2004-SU-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are occupying the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53.

Chairman DiGiulian noted that the Board had received a request for a deferral.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

Lynne J. Strobel, the appellant's agent, Walsh, Colucci, Lubeley, Emrich, and Terpak, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, stated that the appellant was the lessee of the property which was the subject of the appeal, and the property owner had filed a separate appeal with separate counsel. She said there was an issue with the notices on the other appeal, so it would have to be deferred, and it would make sense to have both cases heard together. She said she did not believe there were any public safety or health issues involved, and she requested the subject appeal be deferred to the same date as the appeal of the property owner.

Margaret Stehman said that given it was an appeal of the same issue that both the tenant who operated the business and the property owner had appealed, staff would support the deferral.

Chairman DiGiulian called for speakers to address the question of the deferral request; there was no response.

Mr. Hammack moved to defer A 2004-SU-030 to March 8, 2004, at 9:30 a.m., at the appellant's request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 14, 2004, Scheduled case of:

9:30 A.M. DENNIS O. HOGGE AND J. WILLIAM GILLIAM, A 2004-SU-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a tenant to occupy the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance Provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. Notices Not In Order.

The notices for A 2004-SU-031 were not in order. Mr. Ribble moved to defer A 2004-SU-031 to March 8, 2004, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 14, 2004, Scheduled case of:

9:30 A.M. MS. KAREN R. SMITH, A 2004-MA-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an addition which does not meet the minimum side yard requirement for the R-3 District in violation of Zoning Ordinance provisions. Located at 4203 Cordell St. on approx. 12,329 sq. ft. of land zoned R-3 and H-C. Mason District. Tax Map 71-2 ((20)) 66. Admin. Moved to 6/14/05 at appl. req.

Chairman DiGiulian noted that A 2004-MA-032 had been administratively moved to June 14, 2005, at 9:30

a.m., at the appellant's request.

//

~ ~ ~ Decamber 14, 2004, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS, Springfield District. Tax Map 87-1 ((1)) 17. (Deferred from 5/11/04 for noticos.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, and 11/9/04)

Jerry M. Phillips, the appellants' agent, Phillips, Beckwith, Hall, and Chase, 10513 Judicial Drive, Suite 100 Fairfax, Virginia, came forward to speak. He requested a one-year deferral due to Mr. Crabtree's health condition and to allow time to gather facts that would clarify and resolve the issue.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Ms. Gibb asked what kind of facts Mr. Phillips was hoping to gather in the next year. Mr. Phillips said to show that in essence the appellants were in compliance to the satisfaction of the County and that their vehicles present on the property were in compliance with the current Ordinance, so there would be no issue regarding a nonconforming use. He said the factual circumstances were highly unusual.

Chairman DiGiulian called for speakers to address the question of the deferral request; there was no response.

Margaret Stehman, Deputy Zoning Administrator for Appeals, said the notice of violation which was being appealed had been issued on January 23, 2004, and the appellants had sufficient time to produce evidence indicating that the vehicles were parked legally in 1955, and, therefore, the use was legally established, which had not been done. She said staff's position was that the use was not legally established; therefore, it would not be nonconforming, and staff would not support a deferral.

Ms. Gibb said she recalled Ms. Stehman's position was that the trucks could not have been legal under any of the Zoning Ordinances, and she asked whether it was her position that the vehicles would have had to have been there prior to March of 1941 to be legal. Ms. Stehman replied affirmatively.

Ms. Gibb asked whether Mr. Phillips intended to present facts to the Board that supported that the trucks were there prior to 1941. Mr. Phillips said he could not represent that because there had been changes in the vehicles. There had originally been four, which had later been reduced to two, and there were lighter trucks. Mr. Phillips said the son of the person who founded Vannoy Estates was present and could add more testimony to support the appellants' burden to show that there had been the same type of use and conformity of the use back when his father developed Vannoy Estates, but rather than going into those issues, he was requesting the deferral because of the appellant's age, health, and circumstances the Board was aware existed, and the issues could be resolved without more ado.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said there had been five deferrals that commenced back in May of 2004, and it was time to make a decision. He said that it got fairly cloudy when going back into the history, but staff had submitted and presented evidence to the Board that the appellants had not proved their case, had in effect a nonconforming use, and had activity on the lot prior to 1955. Mr. Pammel moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion.

Mr. Beard said he thought the request to defer to do more research was a reasonable one because several of the deferrals had been short, and they showed good intent. Mr. Beard said he would put forth a motion at the proper time to grant a deferral.

Mr. Hart made a substitute motion to uphold-in-part the determination of the Zoning Administrator, to uphold regarding two of the tractor-trailer trucks and overturn regarding the other two tractor-trailer trucks. Mr. Pammel said he thought the record showed that there were dump trucks there in 1955, not tractor-trailers.

Mr. Hart said the Zoning Administrator was correct regarding the dump trucks. Mr. Pammel asked for clarification regarding whether Mr. Hart was saying the dump trucks would be permitted to stay. Mr. Hart said two of the tractor-trailers could stay, and the other two could not. After asking Vice Chairman Ribble to assume the chair, Chairman DiGiulian seconded the substitute motion.

Mr. Hart said it was difficult to keep everything straight after a series of hearings, but based on the information the Board had and the Ordinance provisions, he was prepared to make a decision. He said the decision turned on an interpretation of the 1941 Ordinance under Section III, Agricultural District Use Regulations, and it was clear that whatever was going on began in the mid-'50s, the 1941 Ordinance was applicable, it was in the Agricultural District, and the question was whether the activity was permitted or not. Mr. Hart referenced paragraph A of the use regulations. Paragraph A says that in any agricultural district, no building or structure shall be erected, altered, or used, and no land shall be used unless otherwise provided in the Ordinance except for one or more of the following uses, and Subsection 1 includes farming, dairy farming, livestock and poultry raising, lumber and sawmilling, and all uses commonly classed as agricultural and forestry and uses which are customarily appurtenant thereto and which are in harmony with the character of the neighborhood with no restriction as to the operation of such vehicles or machinery as are incident to such uses. Mr. Hart said that in a district where agriculture, lumber, and sawmilling were expressly allowed by right, there were explicitly no restrictions on the operation of such vehicles or machinery incident to those uses, and other unspecified uses which were in harmony with the character of the neighborhood were allowed, he would conclude that the presence of trucks in the neighborhood in 1941 would be in harmony with those uses, particularly where uses like agriculture, lumber, and sawmilling would customarily have trucks coming and going, and there was no restriction on the use of the vehicles. He said there were different rules today, and the character of the neighborhood had changed, but in 1941 the Ordinance was not as specific on the prohibitions.

Mr. Hart said that despite the lack of clarity in the aerial photographs, the Board had credible evidence that the parking of trucks on the property started in the mid-'50s and certainly prior to 1959, and there was a woodchipping business and an asphalt paving business operated nearby that extensively used commercial vehicles. The evidence demonstrated that at the start there were two tractor-trailers and two dump trucks, and Mr. Hart concluded that the two dump trucks did not ripen into a nonconforming use for tractor-trailers later. He said the dump trucks would be something different, and only two of the tractor-trailers were consistently present from the mid-'50s forward. He said he would not reach the issues regarding whether the trucks were properly licensed and who owned them, or issues of business licensing and whether it predated some occupational tax or registration requirement, or even which two of the four were nonconforming. Mr. Hart said he would not allow the expansion from two to four, but the Zoning Administrator was correct over and above the two. He said the Board would have to go by the 1941 Ordinance because that was the record the Board had.

Mr. Pammel referred to a photograph in the record dated March of 1961 that showed a dump truck, and he said he had not heard any concrete evidence that there were tractor-trailers present on the property prior to the 1959 Ordinance that changed everything, and he would support the Zoning Administrator.

Mr. Ribble said that Mr. Phillips had indicated someone was present who had information regarding the situation prior to 1955, and he thought they should be heard if they could shed any light on the subject.

Mr. Phillips said he had mistakenly thought Mr. Vannoy's son was in the audience, but it was instead the appellants' son. He said that if a short deferral was granted, Mr. Vannoy could attend and address the issue of what tractor-trailers were present and what the character of the neighborhood was when his family founded the subdivision. Mr. Ribble asked in what year Mr. Vannoy had developed his property. Mr. Phillips said he thought it was in the late '40s or early '50s. He said that the factual testimony of the appellants regarding the character of and conformity with the neighborhood and the presence of paving and woodchipping trucks had not been rebutted.

Chairman DiGiulian called for the vote on the substitute motion. The motion failed by a vote of 2-5. Mr. Beard, Ms. Gibb, Mr. Ribble, Mr. Hammack, and Mr. Pammel voted against the motion.

Chairman DiGiulian called for the vote on the original motion. The motion failed by a vote of 3-4. Mr. Beard, Mr. Ribble, Mr. Hart, and Chairman DiGiulian voted against the motion.

Mr. Beard moved to defer decision on A 2004-SP-004 to April 5, 2005, at 9:30 a.m., at the appellants' request. Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Hart and Mr. Pammel voted against the motion.

Mr. Hammack asked staff to research whether the quarry or rock operation in the area that had been referred to by the appellants was legally established. Elizabeth Stasiak Perry, Zoning Administration Division, said it was the appellants' contention that there was a quarry in the area, but there was nothing in the County records that indicated there was one. She said the aerial photography was interpreted by the Department of Information Technology staff, and they could not locate anything of that nature, any large industrial or commercial activity in that area, so it was the County's position that there had been nothing in the neighborhood similar to that use, or if it was there, it was not legally established. Mr. Hammack said maybe the appellants could provide the information so it would be known whether the use was established in the agricultural district. Ms. Perry said that if the appellants had evidence that there was a use, it could be looked at, but as far as the County records, there was nothing to indicate that it was legally established.

Mr. Hart said he was referring to a business called Fairfax Paving on Ruby Drive and the woodchipping company and the associated trucks, equipment, and activity, not to a quarry. Ms. Perry said the street files for Ruby Drive and the Vannoy Acres area were reviewed for any kind of indication that there was any activity that would be similar in nature, and all that was found were the building permits for Vannoy Acres and other notices of violation in the area for adjacent properties for various things like storage, but nothing legally established that would support the appellants' contention.

//

~ ~ ~ December 14, 2004, After Agenda Item:

Approval of December 7, 2004 Resolutions

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

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters arising in the Coohran decision pursuant Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:04 a.m. and reconvened at 11:13 a.m.

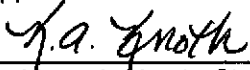
Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board of Zoning Appeals during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

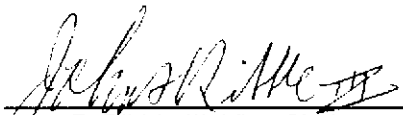
//

As there was no other business to come before the Board, the meeting was adjourned at 11:13 a.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: February 24, 2009


 Kathleen A. Knoth, Clerk
 Board of Zoning Appeals


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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 21, 2004. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. JOHN R. AND DORIS W. PATTESON, VC 2004-PR-116

Chairman DiGiulian noted that VC 2004-PR-116 had been administratively moved to May 3, 2005, at the applicants' request.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. KENNETH J. & JUDITH A. ALNWICK, SP 2004-MV-057 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. from side lot line. Located at 2403 Arrow Park Dr. on approx. 11,834 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Alnwick, 2403 Arrow Park Drive, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an enclosed screen porch addition to remain 7.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a reduction of 5.0 feet was requested.

Mr. Alnwick presented the special permit request as outlined in the statement of justification submitted with the application. He said he resided in his home for 17 years, and the screened porch was an attractive feature when he purchased it. He said that the structure was wooden, was in place for 30 years, and over the years he had done several repairs himself. He said a six-foot high fence screened the porch area and that his neighbors supported his request.

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

Mr. Hammack moved to approve SP 2004-MV-057 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH J. & JUDITH A. ALNWICK, SP 2004-MV-057 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.0 ft. from side lot line. Located at 2408 Arrow Park Dr. on approx. 11,834 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 28. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 2004; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with Section 8-006, in the applicable sections of the Ordinance.

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

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

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

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

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

1. This Special Permit is approved for the location of the screen porch addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated October 5, 2004, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any reconstruction and approval of final inspections shall be obtained.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 2004. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, VC 2004-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. and bay window 16.4 ft. from the front lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with SP 2004-MV-056).

9:00 A.M. BARBARA L. BATTEN, SP 2004-MV-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance To permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.2 ft., deck 1.8 ft. and roofed deck 5.6 ft. from one side lot line and deck 3.6 ft. from other side lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with VC 2004-MV-118).

Chairman DiGiulian noted that VC 2004-MV-118 and SP 2004-MV-056 had been administratively moved to March 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. CHUNG AE AUH, SU HAK AUH, VC 2004-MA-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces less than 10.0 ft. from the front lot line and front yard coverage greater than 25 percent. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Concurrent with SP 2004-MA-024). (Admin. moved from 8/3/04 and 11/2/04 at appl. req.)

9:00 A.M. CHUNG AE AUH, SU HAK AUH, SP 2004-MA-024 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.8 ft., roofed deck 25.6 ft. and stairs 20.9 ft. from front lot line and addition to remain 9.2 ft. from side lot line. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((8)) 20B. (Admin. moved from 8/3/04 and 11/2/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MA-078 had been withdrawn.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kyung Chung, the son of the applicant, Su Hak Auh, 4119 Hummer Road, Annandale, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested permission to have a home professional office and a reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 30.8 feet, a roofed deck to remain 25.6 feet, stairs to remain 20.9 feet from the front lot line; and to permit an accessory structure, consisting of a two-car garage, to remain 9.2 feet from the northern side lot line. A minimum front yard of 35 feet and a minimum side yard of 15 feet are required; however, stairs are permitted to encroach 5.0 feet into the minimum yard; therefore, the dwelling would require a modification of 4.2 feet, the roof deck a modification of 9.4 feet, and the stairs a modification of 9.1 feet. The garage, which was the accessory structure, required a modification of 5.8 feet. Staff recommended approval of the special permit, subject to the development conditions contained in the staff report.

In response to Mr. Hart's question concerning the parking configuration, Ms. Stanfield explained that the parking inside the garage was for the applicants, and around the building there were four spaces for clients. She said staff anticipated that within the graveled area there was sufficient space on-site for one to turn around and not have to back cut onto Hummer Road.

In response to Mr. Hammack's question concerning the removal of the asphalt driveway, Ms. Stanfield explained that the front yard was quite small, perhaps due to the expansion of Hummer Road, and in order to comply with the 25 percent maximum paved area, a portion of asphalt had to be removed.

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

the application. He said that they were applying for a special permit to allow a home professional office for an acupuncture practice and to allow a building with a parking area in the back to remain. He said there had been a problem with their contractor as he had not obtained the necessary permits.

Chairman DiGiulian called for speakers.

Andrew Johnson, 1425 27th Street, N.W., Washington, D.C., came forward to speak in support of the application. He said the acupuncture and herbal treatments provided by Ms. Auh greatly benefited his family and, in particular, his wife who had serious health issues.

Chang Kim, 9758 High Water Court, Burke, Virginia, came forward to speak in support of the application. He said he had great success with acupuncture treatment for his arthritis. He spoke highly of Ms. Auh's character, stating she was extremely compassionate and sensitive to the needs and concerns of her clients. He said that he believed Ms. Auh to be a good neighbor and that her business provided a good buffer zone between her neighbor to the west and the retail area to her right.

Christine Kim, 3932 Poplar Creek Court, Fairfax, Virginia, came forward to speak in support of the application. She said her mother was stricken from several strokes, and Ms. Auh's treatment had proved very beneficial in her recovery.

Joseph Shin (phonetic), no address given, came forward as a translator for Mrs. Shin, 4111 Hummer Road, Annandale, Virginia. He said Mrs. Shin had no problem with the business except that there was a strong odor from the preparation of the herbal treatments. He said the smell was very pungent and permeated the surrounding properties, and although Mrs. Shin supported Mrs. Auh's business, Mrs. Shin requested that the medicines and herbal treatments be prepared at another location.

In response to Mr. Hart's question regarding a disagreeable smell issue, Ms. Stanfield said that there had been no prior mention of that matter.

Ms. Gibb commented that the Board had at one time heard another similar case, but an issue of a disagreeable odor was not mentioned. Ms. Stanfield concurred.

Linda Sellevaag, 4107 Hummer Road, Annandale, Virginia, came forward to speak. She noted her concern over the continued encroachment of businesses into the residential neighborhood. She said she wanted her neighborhood to stay completely residential and the quality of her neighborhood and its residences not be affected by the business.

In response to Mr. Hammack's request for clarification as to whether the applicant was the husband or the wife, Ms. Stanfield said the applicant was the wife, Mrs. Chung Ae Auh.

In his rebuttal, Mr. Chung said the healing properties of the herbs were very beneficial, and their odor would not cause any allergic reaction to even those persons with great sensitivity. He said that theirs was not really a business, but instead a service to the community, and he requested that the Board view it in that perspective.

In response to Mr. Hammack's question concerning the herb preparation, Mr. Chung explained that it averaged one on-site preparation a day.

In response to Mr. Hammack's question as to whether the on-site preparation of herbs qualified under a home-professional office, Ms. Stanfield said she was not aware of the herb preparation, only the dispensing.

Mr. Chung explained that the patients request that their herbs be prepared for them because the preparation is fairly complicated and the cooking process takes over three hours. He said the treatment can sometimes be ready for them to pick up the following day, but usually several days later. He clarified that the potion was more like a tea and prescribed amounts were given the patient to drink at home for 20 days.

In response to Mr. Beard's question concerning times of preparation, Mr. Chung said that there were days when no preparations were necessary. He said that not every patient required herbal treatments and not every day were herbal treatments necessary. He said, in his opinion, the herbal preparations did not produce an offensive odor. He stated that the applicant had a license for both acupuncture and herbal medicine preparation.

Mr. Hart called Mr. Chung's attention to the 15 development conditions, noting that they were specific and compliance was necessary for the Board's approval. Mr. Hart asked whether the conditions had been translated and Mr. Chung's mother clearly understood what was required and whether or not she had any questions. Ms. Stanfield replied that she had worked with Mrs. Auh's daughter throughout the application process, that they had discussed the conditions, and that the daughter explained them to her mother. Mr. Chung said the development conditions were acceptable to his mother.

Concerning Development Condition 13, Mr. Hart asked whether there were additional charges for the herbs. Mr. Chung said that after consultation with the patient, Mrs. Auh prepared each herb treatment specifically for that individual at no additional charge.

Mr. Hart said he remembered another case concerning an acupuncture business where the question arose of whether there was a retail component when a product was involved as opposed to only a service. Ms. Stanfield said she recalled that case, and in that circumstance, staff had determined that it was defined under the framework of the Ordinance as an acceptable home professional office, and although that application was ultimately denied, it was because of other issues such as parking. She confirmed that the Auh's application was within the Ordinance's stipulations.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said staff's determination was that the preparation of herbal remedies on-site was a non-issue and there was no problem concerning that matter, but he had concerns about the emission of the unpleasant odor with their preparation. He said the application should be deferred for staff to research a filtration system that would eliminate the fumes before the exhaust was released into the air and that it would be included as a development condition for the operation of the facility. Mr. Pammel further commented that he believed the location, which was low intensity, was a transitional use between the commercial to the south and the residential to the north and was a perfect fit.

Mr. Hammack said he was concerned over the dispensing of herbal medicines and whether that fit under the category for a home professional office. He said the emission of noxious fumes also was an issue as one of zoning's major functions was to prevent uses that were offensive or a nuisance to a neighborhood. Mr. Hammack said that, in his opinion, perhaps the acupuncture could be approved, but not the dispensing of the herbal medicines, and he requested that staff carefully review the latter and report its determination to the Board.

Mr. Pammel moved to defer decision on SP 2004-MA-024 to January 18, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. MICHELLE S. HENDRIX, SP 2004-DR-055 Appl. under Soot(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 733 Springvale Rd. on approx. 5.02 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((4)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Sarah E. Hall, Esquire, Blankingship Keith, 4020 University Drive, Suite 300, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of a special permit to construct a second dwelling on a lot developed with a 1,587-square-foot home. The existing structure would become the accessory dwelling unit and would be occupied by the applicant's father-in-law. The original plats had reflected only the ground floor of the structures, but that was corrected on the plat dated December 9, 2004, which was distributed to the Board the prior week. The primary dwelling would consist of approximately 10,634 square feet and the accessory dwelling 3,200 square feet. Staff recommended approval of the accessory dwelling unit, but only subject to the proposed development conditions dated December 14, 2004.

In response to Mr. Hart's question concerning whether there was a limit on the number of bedrooms in the accessory dwelling unit, Ms. Stanfield said the applicant was limited to two bedrooms. She explained that, technically, one was allowed two bedrooms, but what some may call a bedroom, another might refer to as

another living area. She said that how the space was utilized was at the discretion of the property owner and that it was a difficult requirement to enforce. Ms. Stanfield confirmed that the applicant represented the new accessory dwelling to have only two bedrooms.

Ms. Hall presented the special permit request as outlined in the statement of justification submitted with the application. She said there was already one house on the approximate five-acre property, and the applicant sought to have a new house constructed and would continue to have her father-in-law occupy the existing home, which would be converted to the accessory dwelling unit. She noted that the only changes to the existing house was the addition of substantial landscaping and the relocation of the driveway to the north, which was a safer access. Ms. Hall confirmed that all the requirements for an accessory dwelling unit were met; only two rooms were used as bedrooms; and Mr. Hendrix, the applicant's father-in-law, was the sole resident. She called the Board's attention to several letters of support.

At the request of Chairman DiGiulian that she comment on a letter of opposition from Ann L. Huffman, Ms. Hall said the bedroom and occupancy issues were just discussed, and the issue of the square footage was resolved to staff's satisfaction. She said she believed the proposal was compatible with the neighborhood. She pointed out that special permits for accessory dwelling units were valid for five years and then must be reviewed to be extended. She affirmed that to be in conformance with the regulation, the applicant understood the conditions for the relationship between the occupants of the new house and the existing house.

In response to Mr. Hart's question concerning the driveway, Ms. Hall explained that the new house was under construction and the new driveway had been built to handle the construction. She said that the driveway had both a Virginia Department of Transportation and a County transportation permit with a development condition that if the smaller house were razed, the driveway leading to that house would be taken up and landscaped. Referencing the December 20, 2004 letter from the Great Falls Citizens Association submitted by the co-chairman, John C. Ulfelder, Ms. Hall explained that the revised plat showed the driveway with a 30-foot width, but it originally was shown as slightly wider on an earlier special permit. She said, as she understood it, there was no issue.

Mr. Hart said that the Zoning Ordinance provision 8-918 required that an accessory unit shall not contain more than two bedrooms and that the Ordinance referenced the structure and not the use. In cases where there was a big house with ten rooms and it was understood that only two of those rooms would be used as bedrooms, he asked whether that would be consistent with the Ordinance, and had staff approved such applications. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff had approved applications where the use was limited and there were more rooms than just the two bedrooms. She explained that most of the accessory dwelling units that were separated did contain more than two rooms that were formerly bedrooms, and a development condition would be imposed restricting that there be no more than two bedrooms. She said that most applicants told staff the extra rooms were used for other uses, such as weight rooms or offices. Ms. Langdon added that as long as there was the condition and the applicant was aware that there can only be two bedrooms, that only two rooms were used as bedrooms.

Ms. Hall pointed out that her two sons now attended college and their bedrooms had been converted into other uses. She said that situation seemed more and more common nowadays with the empty nest syndrome.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2004-DR-055 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHELLE S. HENDRIX, SP 2004-DR-055 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 733 Springvale Rd. on approx. 5.02 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((4)) 7. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 2004; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the required standards for a special permit.
3. Staff has recommended approval.
4. The Great Falls Citizens Association supports the application.
5. There were some issues on the record before the Board, but they have been resolved.
6. With respect to the extent of pavement of the driveway, the applicant has satisfied staff's concerns with the modifications from the application as it was initially submitted.
7. With regard to the satisfaction of 8-918, Subsection 4, relative to the two bedrooms, the application is consistent with previous approvals, and the development conditions require that there will be no more than two rooms used as bedrooms.
8. The standard with respect to the square footages and relative sizes of the two structures, is also satisfied.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Michelle S. Hendrix, and is not transferable without further action of this Board, and is for the location indicated on the application, 733 Springvale Road (5.02 acres), and is not transferable to other land. These conditions shall be recorded among the land records of Fairfax County.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Runyon, Dudley, Associates, Inc., dated August 20, 2004, as revised through November 5, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than two (2) bedrooms.
6. There shall be seven (7) parking spaces provided on the site as shown on the special permit plat.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property be sold, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance or another use as permitted by the Zoning Ordinance.

10. The driveway shown on the plat extending from Springvale Road at the northwest end of the lot to the accessory dwelling unit shall be removed and the area of the driveway and the dwelling shall be revegetated in the event that the accessory dwelling unit is demolished in the future.
11. This special permit shall be null and void without a permit from the Health Department for the proposed septic field.

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

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

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

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:00 A.M. JAMES C. & BARBARA A. HEPLER, SP 2004-SU-063 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to certain R-C lots to permit construction of addition 28.0 ft. and bay window 27.0 ft. from the front lot line of a corner lot. Located at 15101 Philip Lee Rd. on approx. 10,891 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 350.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James C. Hepler, 15101 Philip Lee Road, Chantilly, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to the minimum yard requirements for certain R-C lots to permit construction of an addition 28 feet with a bay window 27 feet from a front lot line of a corner lot. A minimum front yard of 40 feet is required; however, a bay window is permitted to extend 3.0 feet into the minimum front yard; therefore, modifications of 12 feet and 10 feet, respectively, were requested. The property was originally developed under the R-2 Cluster regulations in 1962, but was since rezoned to the R-C District. The R-2 Cluster District allows a minimum front yard of 25 feet, which the proposed addition and bay window met.

Mr. Hepler presented the special permit request as outlined in the statement of justification submitted with the application. He said he purchased his home in November of 1991. He applied for a building permit in the fall of 1999 and constructed an addition that was completed at the end of that year. He said that the September 17, 2004 tornado had destroyed his house, and when applying for building permits, it was brought to his attention that the original building permit for the addition was issued and approved in error. Mr. Hepler requested that the Board allow him to rebuild the addition as well as his house.

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

Mr. Ribble moved to approve SP 2004-SU-063 for the reasons stated in the Resolution.

//

CGUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES C. & BARBARA A. HEPLER, SP 2004-SU-063 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to certain R-C lots to permit construction of addition 28.0 ft. and bay window 27.0 ft. from the front lot line of a corner lot. Located at 15101 Philip Lee Rd. on approx. 10,891 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 350. 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 21, 2004; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicants have met the criteria for approval as stated on the form.

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

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

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

1. This special permit is approved for the location of the addition and bay window, as shown on the plat prepared by Edward L. Johnson, dated February 21, 1986, as revised by James C. Hepler, dated November 22, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Beard seconded the motion, which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:30 A.M. ESTATE OF SCOTT P. CRAMPTON, A 2003-MV-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot width requirements of the Zoning Ordinance when created, does not meet current

minimum lot width requirements of the R-E District, and is not buildable under Zoning Ordinance provisions. Located at 11709 River Dr. on approx. 29,860 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((3)) 3. (Admin moved from 12-2-03 and 6/29/04 at appl. req.)

Chairman DiGiulian noted that A 2003-MV-032 had been administratively moved to June 21, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:30 A.M. COMMONWEALTH HOMES, LLC, A 2004-DR-033.

Chairman DiGiulian noted that A 2004-DR-033 had been withdrawn.

//

~ ~ ~ Decombor 21, 2004, Scheduled case of:

9:30 A.M. VIRGINIA HULKE, A 2004-BR-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has installed an accessory structure (garden box) in the minimum required front yard of a property in the R-3 District in violation of Zoning Ordinance provisions. Located at 5004 Lone Oak Pl. on approx. 9,688 sq. ft. of land zoned R-3. Braddeck District. Tax Map 69-3 ((7)) 4.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report. In response to a complaint, a zoning inspection of the property revealed that an L-shaped accessory structure, that was used as a garden box, 12 feet in length, 3.0 feet in width, with a base height of approximately 32 inches, was constructed in the front yard of the subject lot and was filled with dirt to provide a raised area for growing plants. The property is an interior lot, and the garden box is located in the minimum required front yard of the property, which in the R-3 District is 30 feet. A front yard is defined, in part, in Article 20 of the Zoning Ordinance as a yard extending across the full width of a lot and lying between the front lot line and the principal building. Such as a garden box, an accessory structure is generally allowed in the side and/or rear yards, but is not allowed in the minimum required front yard on any lot or when located in the front yard on a lot containing less than 36,000 square feet in area. The positioning of the garden box was in violation of Par. 6 of Sect. 2-302 of the Fairfax County Zoning Ordinance and may be relocated to the side or rear yard to gain compliance. Ms. Collins clarified that both gardening and landscaping are permitted uses, but the structure was not permitted.

In response to Mr. Hart's question concerning whether there was specific language in the Ordinance which clarified what constituted a structure, Margaret Stehman, Assistant to the Zoning Administrator, Zoning Administration Division, explained that staff looked at the landscaping features and whether they were fairly close to the ground and were part of the landscaping of a house or business, and within those perimeters, staff would allow that as an accessory use. She noted that in the appellant's case, the garden box was a separate, freestanding structure that was not a part of other landscaping features, and, therefore, it was not allowed in the front yard. Ms. Stehman acknowledged that there were some areas of the Ordinance which were not explicit, and it was difficult to define every situation and have a black and white answer. She clarified that in cases of landscaping, when one looked at it in the context of whether or not it was part of the overall landscaping, that would be the determining factor. She noted that the appellant's garden box was more a box than a garden in Ordinance terms, and its uprights gave it more bulk as well as increasing its height to more than 32 inches, and that was not anticipated in the accessory use of gardening or landscaping that was allowed by the Ordinance.

Mr. Hart asked whether the Zoning Administrator had any written determinations on a similar type situation as to where one draws the line as to what was a structure and what was not.

Ms. Stehman responded that with regards to this appeal, the closest interpretation was one in 1996 that revolved around the growing of vegetables that were sold at farmers' markets, and staff determined it was not in keeping with the gardening or landscaping provisions of the Ordinance and would not be allowed in the front yard. She added that the application was ultimately withdrawn.

Mr. Hart posed the scenario of piling dirt around a structure, to which Ms. Stehman explained that would still be considered a violation because it would be similar to a fence where a fence was too high and it was not allowable to put a berm over it to change the height of the fence. She clarified that the stakes were an integral part of the structure and could not be considered a fence.

The appellant, Virginia Hulka, presented the arguments forming the basis for the appeal. She said she did not know the garden box was a violation of the Zoning Ordinance when she built it for her father. She explained that her father had Alzheimer's disease, was a veteran of World War II, had been a farmer in his youth, had several other serious health conditions, and that putting in this garden was one of the few joys he had. Ms. Hulke said that because of the Alzheimer's, he was unsteady, which was why she raised the earth bed so he would not have to bend over and lose his balance. She apologized for not knowing the law and assured she was a good neighbor, noting that many of her neighbors supported the garden. She stated that the pile of firewood would be carried up to the side of the house by a neighbor, and that violation would be cleared immediately. Because of the steep slope of her property, she submitted that there was no other location in the yard that was level and the current location was the only feasible area for the garden box. Ms. Hulke asked the Board to find some way to allow her dad to keep his garden as it was one of the few pleasures he could still enjoy.

Ms. Gibb called attention to a letter of opposition that indicated the structure was used as a patio and in which bags of trash were stored. Ms. Hulke explained that because it was in March when she built the garden box and had the dirt delivered, she immediately covered it with a tarp because her Dad was so anxious to work in it and she wanted to protect him and the plants from the weather. She said the referenced trash bags were leaf bags, which were regularly put out at the curb. She assured that trash was not stored in the structure. She said the chicken wire was also easy to remove.

Chairman DiGiulian called for speakers.

Pamela Thacker, 5006 Lone Oak Place, Fairfax, Virginia, came forward to speak in support of the appellant's position. She said her family was distressed when they learned of the possibility that Ms. Hulke might be required to remove the garden box. She pointed out that the raised bed garden was a selfless act of love on a daughter's part for her ill father. Ms. Thacker said that since Virginia's father was raised on a farm, he enjoyed the outdoors, and the garden provided him many hours of joy and contentment. She said that Mr. Hulke would help his daughter pick out what seeds he wanted to plant, enjoyed the car rides to the garden shops to buy the plants and materials, was proud of his garden, telling the neighbors about it, and took full responsibility for its care and maintenance, assuring not only that it was properly watered, but he also watered the rest of the shrubs and trees on the property. Ms. Thacker pointed out that as the disease had taken hold, Mr. Hulke had struggled to maintain a sense of self and remain a contributing member of both his household and the neighborhood community. She said that society says it values family, and it seemed a small price to pay in order to promote well being, self-worth, and community spirit. Ms. Thacker noted that in her effort to keep her father home as long as possible, Ms. Hulke had struggled to provide her father with as many productive and appropriately challenging activities with which he felt comfortable. Ms. Thacker said it was hoped that Mr. Hulke would be allowed to keep his garden and thus provide an independent activity for a senior citizen, support for a daughter in allowing her father to be in familiar surroundings, and growth of beautiful flowers and plants for the neighborhood to enjoy.

Kathleen Wetherell, 4921 Cove Road, Fairfax, Virginia, came forward to speak. She said she knew Ms. Hulke built the garden for her father, and she was sure Ms. Hulke was unaware of any violations of Ordinances. Ms. Wetherell said the garden was a great joy of Mr. Hulke, and she supported what was said previously by Ms. Hulke and Ms. Thacker.

In closing comments, Ms. Collins submitted that the situation was unfortunate and staff had great sympathy for the appellant, but the garden box was a structure that was not allowed in the front yard.

Ms. Hulke said she would make any modifications that she could in order to keep the garden in its current location. She said that there was no other place to move it.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to defer the decision on A 2004-BR-034 to June 20, 2006, at 9:30 a.m. She said the basis for her deferral was that there was no clear definition in the Ordinance of whether this was an accessory structure, and she wanted to do more research. Ms. Gibb suggested that the appellant be sure that the firewood was removed from the front yard, that perhaps some shrubs could be planted for screening, and

that the tall stakes used for poling some of the plants might be removed. Ms. Gibb complimented staff on its excellent job. She agreed that it was a difficult situation and that the Ordinance did not provide clear guidance.

Mr. Ribble seconded the motion.

Mr. Hart said he supported the motion, that it was a difficult situation, and he did not fault staff. He said his concern was that the definition of a structure was abbreviated and did not seem to have a minimum threshold to it. He said the Ordinance had no definition of a garden box, but it was treated as a structure, and in doing so, it was being said that in a lot anywhere in the County that was less than 36,000 square feet, could not have something like that in the front yard. Mr. Hart submitted that if staff and the Board considered that, there would be circumstances under which something like a garden box would be allowed in a front yard in a lot of less than 36,000 square feet under certain circumstances, and there probably would be some limitations on the size or height of it, and perhaps there would be a procedure for applying for permission to have it, or put landscaping around it. Mr. Hart said that all those things were worth thinking about on the work program so that something like this would not happen again. He submitted that it was conceivable that if the garden box was well screened with bushes, it might not even be noticed, and perhaps no one would have complained. He said that perhaps Ms. Hulke could think about that. Mr. Hart stated that this was a situation where the Ordinance could stand some clarification, and then everyone would have the same information on which to make a determination.

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

//

~ ~ ~ December 21, 2004, Scheduled case of:

9:30 A.M. ANDROULA DEMETRIOU, A 2004-MV-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's property contains two dwelling units in violation of Zoning Ordinance provisions. Located at 8618 Richmond Hwy. on approx. 9,583 sq. ft. of land zoned R-2, HC and CRD. Mt. Vernon District. Tax Map 101-3 ((1)) 65G. (Admin. moved from 7/27/04 at appl. req.) (Continued from 10/5/04)

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in a memorandum dated December 13, 2004, from Leslie Diamond. She said the appeal was deferred from September 27, 2004, to allow staff and the appellant time to do additional research on when the 1941 Zoning Ordinance allowed two dwelling units on a lot. She noted that the memorandum included the amendments to the 1941 Ordinance regarding duplex dwellings and semi-detached dwellings. She explained that only by special exception were the referenced duplexes and some detached dwellings allowed under the 1941 Ordinance, and since the adoption of the 1959 Ordinance, there had been only one dwelling unit allowed per lot. Staff's contention was that the dwelling unit at issue was not constructed originally with two dwelling units, but a second dwelling unit was added later, perhaps in the '60s, and, therefore, would have been an illegal unit. Ms. Stehman said that Leslie Diamond, the staff coordinator, and Michael Simms, the zoning inspector, were present to answer questions.

Discussion followed among Mr. Beard, Ms. Stehman, and Ms. Diamond concerning the County's tax records. Ms. Diamond said she spoke with a Department of Tax Administration (DTA) representative who explained that it was not until the 1970s that the County began to maintain an individual property card for each assessment year. Ms. Diamond said the tax cards, which up until 1964 indicated various tax years that a property was assessed, stopped at 1964, and in the 1970s, the DTA began issuing a separate tax card for each tax year. Ms. Diamond explained that the tax card attached with the staff report indicated various tax years that the appellant's property was assessed and that there were notations about a second dwelling unit. She clarified that after 1970, there was only one tax card for a property.

In response to Mr. Hart's statement that it was not known when the second apartment was started up, Ms. Stehman acknowledged that fact and said the files did not contain building permits or any other approvals that indicated when the unit was changed. She said that the historic preservation planner with the Department of Planning and Zoning reviewed the property and its architecture and determined that the second dwelling was probably added in the 1960s, but that timeframe could not be determined with certainty. She said that anything added after 1941 would have required a permit, and unless it was original or added in the 1938 to 1941 period, it would not be a legal unit.

Mr. Hart commented that he could recall hearing cases with recordation in the 1940s where there were DTA records that stipulated that there was a barn, a house, or something, and those facts were written down. He said he did not understand the difference between what the Board had looked at with those cases and now, and the explanation that with the appellant's case, there were not records until 1970. He questioned whether it was a different kind of record.

Ms. Stehman said that she was a bit confused because she knew of other cases where there were older records that were more complete. She said she assumed that the DTA had purged its files of some of its records over the past 60 years, and, unfortunately, many of these purged records were of importance to other divisions like the Department of Planning and Zoning. She said DTA informed her that some records were more complete than others, and apparently the appellant's record was one of the less complete ones.

Mr. Hart commented that there should be some method to retain all recordation because often in later years good recordation was essential for when the Board had to decide on what may have happened and when.

The appellant's agent, Kevin Wright, presented the arguments forming the basis for the appeal. To support the contention that the structure was constructed in 1938 as a two-dwelling unit, he researched records to determine the property's zoning history. Through a title search, he found that the property changed hands 10 times since 1938. He said that aerial photographs were not explicit enough to ascertain whether there were two dwelling units within one structure. Over the years the property value fluctuated, and there appeared to be no connection between the idea of building a second unit and an increase in the property values. He said there were interior renovations, but nothing to indicate whether or not a second structure had been installed. Mr. Wright pointed out that a DTA notation on the record showed that the property was being taxed as two apartments and asserted that the consistent tax rate was a strong influence that the unit was originally designed as two dwelling units.

Mr. Wright said that there was a legal principle called estoppel where an individual or an entity was prohibited from arguing against a position they had already taken. He pointed out that a 1984 building permit on file indicated that the Zoning Department had taken a position that the property met all zoning compliances when it signed off an approval of an interior renovation. He said the appellant had owned the property for 17 years with neither problems nor complaints. Mr. Wright concluded by stating that it was very difficult to go back 17 years into records, many of which possessed no information, as well as through 10 conveyances of the property since the original construction, to determine exactly what the structure was, when it was built, and all the alterations that may or may not have occurred. He asked that the Board determine, based on the evidence presented, that the more likely inference was that the construction as a two-dwelling unit was done as the building was built originally and, therefore, was a legal, nonconforming use.

Addressing Mr. Wright, Mr. Pammel asked if he was inferring that the 60-day provision of 15-2-23-11, subparagraph C, applied. He explained that the provision was where staff had made an error and they had 60 days to acknowledge the error and take action.

Mr. Wright stated that the 60-day provision was applicable in this case because 20 years ago a zoning approval was rendered when the Zoning Department approved a 1984 building permit, and now an unfair burden was placed on the appellant to produce proof that the decision was proper even though the appellant purchased the property 17 years ago, and the appellant could only assume that all zoning requirements were met when the property was purchased.

Mr. Hart pointed out that the upstairs unit must have existed as it did today prior to August 18, 1984, and because a permit was issued to approve an interior renovation, someone from the zoning office had to have reviewed the structure before the building permit was issued. He asked staff why the 60-day provision would not apply if the building permit was issued and no illegal apartment was cited. Ms. Stehman clarified that although the reproduction of the building permit was extremely difficult to read, what the Zoning Department had signed off on for the interior alterations was the yards, and because there was no change in the yards, as they remained in conformance with the district, the counter person initialed an NC, which signified that there were no changes, and that was what was signed off on for that permit.

In response to Mr. Hart's question concerning staff's responsibility to determine Zoning Ordinance compliances, Ms. Stehman explained that staff reviewed the files to assure permits were consistent; they checked proffers, building plans, and frequently house location plats, but would not necessarily be looking at an interior layout for every building permit that came through. She said staff would be alerted if a person was requesting a permit and said he had a house with two dwellings in it, but if only a request was made for some

minor changes, such as finishing off a recreation room, then staff would sign off on the permit.

Mr. Hart said that he believed the Zoning Administrator was charged with the authority for reviewing building permits to make sure that they were in compliance with the Zoning Ordinance, but perhaps there were other things that by reference should be incorporated, and perhaps the Board may need to review that responsibility at a later date.

Mr. Wright pointed out that there were two lines to be signed off on under the zoning review portion of the 1984 building permit, and one line indicated that someone from the County signed off on a building review. He said he was unsure what was involved with a building review, but to maintain, as staff had, that the zoning review checked only the yards practically ignored the fact that someone also signed off on a building review.

Ms. Stehman stated that staff's contention was that the second dwelling unit was added sometime after 1938 and probably under the 1941 or 1959 Ordinance. The 1941 Ordinance required a special permit, and the 1959 Ordinance mandated only one unit per lot; therefore, it was staff's position that the unit was not legally established whenever it was established, and it was not allowed under the Ordinance.

In his rebuttal, Mr. Wright pointed out that there was no conclusive evidence produced by either staff or the appellant as to when there were two dwellings and when there was one. He noted that the issue in dispute was created 66 years after the house was built and 17 years after his client purchased the property. He said that staff's claim that the tax assessments indicated the unit was taxed as a single unit in the 1980s was refuted by the building permit and the tax card and the fact that in the 1950s and 1960s the property value actually went down. Mr. Wright said that the only possible conclusion was that the unit was constructed originally as a two-dwelling house in 1938, and he asked that the Board concur.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to reverse the Zoning Administrator. He said he believed staff had made a compelling argument, but unfortunately the property owner now bore the brunt of this matter, and because neither side was able to specify whether the subject property was conforming or nonconforming, he would have to find for the appellant.

Mr. Ribble seconded the motion.

Mr. Pammel commented that, in his opinion, staff was probably correct in that at some point prior to 1984 the second apartment was created, and it was probably illegal. He said his concern was that a building permit was applied for which required certain check-offs, and he believed it was imperative that staff perform on-site investigations and record the findings to assure that the structure does meet the County's requirements. He said although it was pointed out that there was not sufficient staff to perform these site visits, because there were laws to which all must comply, he believed it mandatory that the County find a way to accomplish those site visits. Mr. Pammel said he thought that the 60-day provision did apply to this case as staff had the opportunity in 1984 to have looked at the property before making its determination, but apparently they did not, and it was routinely checked off. He said he would hope that as a result of this case, there would be a change in the way matters like this were handled in the future.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

//

~ ~ ~ December 21, 2004, After Agenda Item:

Approval of September 16, 2003, October 7, 2003, and October 26, 2004 Minutes

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

//

Page _____, December 21, 2004, After Agenda Item:

Request for Reconsideration
Felix S. Tantoco, VCA 99-P-101

Noting that the original vote for denial of the Tantoco variance amendment application was a 3-3 vote, Mr. Ribble moved to reconsider Felix Tantoco's variance amendment application.

Mr. Pammel said he ordinarily would not vote for reconsideration as it placed the additional cost of re-advertisement on the County, but he felt strongly about the argument the applicant presented, and, therefore, he would support the motion. Mr. Pammel seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Hammack voted against the motion. Ms. Gibb abstained from the vote.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board of possible public hearing dates and the fact that Mr. Tantoco was required to resend his notices.

Mr. Beard reminded the Board that time was an issue with the Tantoco case, as he remembered, because they were on the verge of beginning construction. He said he thought the soonest public hearing date would be best for the applicant.

Mr. Ribble then moved to schedule the new public hearing date on February 15, 2005. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Ms. Gibb abstained from the vote.

//

Page _____, December 21, 2004, After Agenda Item:

Approval of December 14, 2004 Resolutions

Mr. Pammel moved to approve the December 14, 2004 Resolutions without VCA 99-P-101, Felix S. Tantoco. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Cochran decision, and the cases of Fisenne, Davis Store, Wiseman, and McCarthy, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:11 a.m. and reconvened at 12:05 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

Mr. Ribble called the Board's attention to the February 16, 2005 expiration of Mr. Pammel's term on the Board of Zoning Appeals. He then moved that the Board of Zoning Appeals recommend Mr. Pammel for another term. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

The Board extended to each other and staff wishes for a Merry Christmas and a happy holiday season.

//

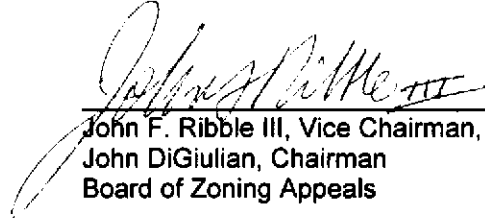
As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

Minutes by: Paula A. McFarland

Approved on: April 5, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 11, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:03 a.m.

Mr. Hart nominated John DiGiulian to be the Chairman and Paul Hammack and John Ribble to be the Vice Chairmen of the Board of Zoning Appeals for the year 2005. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters arising out of the Cochran decision pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

The meeting recessed at 9:05 a.m. and reconvened at 11:01 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

There were no additional Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. JERRY L. WINCHESTER, VC 2004-MV-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.3 ft. with eave 10.3 ft. from both side lot lines and stoop 6.0 ft. with stairs 3.0 ft. from one side lot line and stoop with stairs 6.0 ft. from other side lot line. Located at 6430 Fourteenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (10) 31 and 32. (Reconsideration granted on 6/29/04) (Decision deferred from 9/21/04)

Chairman DiGiulian noted that a deferral request regarding VC 2004-MV-055 had been received.

Mr. Ribble moved to defer VC 2004-MV-055 to May 24, 2005, at 9:00 a.m., at the applicant's request. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. THOMAS & SUZANNE O'BOYLE, VC 2004-MV-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. with eave 7.0 ft. from side lot line. Located at 8202 Chancery Ct. on approx. 12,685 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((12)) (1) 3. (Decision deferred from 7/6/04)

Chairman DiGiulian noted that a decision deferral request regarding VC 2004-MV-070 had been received.

Mr. Ribble moved to defer VC 2004-MV-070 to May 3, 2005, at 9:00 a.m., at the applicants' request. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 8.4 ft. with eave 6.9 ft. from side lot line. Located at 2913

Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A. (Decision deferred from 5/11/04, 6/15/04, 9/21/04, and 10/26/04)

Chairman DiGiulian noted that a decision deferral request regarding VC 2004-PR-027 had been received.

Mr. Pammel moved to defer VC 2004-PR-027 to April 26, 2005, at 9:00 a.m., at the applicants' request. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. VIJAY B. BHALALA, VCA 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-SU-106 to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A. (Decision deferred from 5/18/04 and 7/6/04)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that Mavis Stanfield, Senior Staff Coordinator, had attempted to contact the applicant several times over the prior several weeks and had received no response. Ms. Langdon said it was staff's understanding that the applicant had built an addition based on the previous approval, but staff was unaware of where the current application stood.

Mr. Hammack moved to defer decision on VCA 2003-SU-106 to March 15, 2005, at 9:00 a.m., and directed staff to notify the applicant that the application would be dismissed if no response was received from the applicant. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. KEVIN NORTH, VC 2004-SU-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 17.4 ft. with eave 16.5 ft. and 12.6 ft. with eave 11.7 ft. from rear lot line. Located at 13223 Wrenn House La. on approx. 13,177 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (17) 31. (Decision deferred from 5/18/04 and 7/6/04)

Chairman DiGiulian noted that VC 2004-SU-038 had been withdrawn.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. COMMONWEALTH HOMES LLC, VCA 94-D-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 94-D-158 to permit change in development condition. Located at 419 and 421 Walker Rd. on approx. 4.59 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 39A and 39B. (Deferred from 8/10/04 at appl. req.) (Admin. moved from 10/12/04 at appl. req.)

Chairman DiGiulian noted that VCA 94-D-153 had been withdrawn.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 Braddock Rd. on approx. 6.01 of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24. (Admin. moved from 11/30/04)

Chairman DiGiulian noted that SP 2004-SP-052 had been administratively moved to February 8, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH, SPA 98-M-036-02 Appl. under Sect(s) 3-303 of the Zoning Ordinance to amend SP 98-M-036 previously approved for a church, nursery school and child care center to permit building addition and site modifications. Located at 3439 Payne St. on approx. 2.27 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (B) 12.

Chairman DiGiulian noted that SPA 96-M-036-02 had been administratively moved to February 1, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:30 A.M. MARC SEGUINOT, A 2004-PR-035 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 59-3 ((7)) 45 is in violation of Zoning Ordinance provisions. Located at 3807 Prosperity Ave. on approx. 29,164 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((7)) 45.

Chairman DiGiulian noted that a deferral request regarding A 2004-PR-035 had been received.

Mr. Hammack moved to defer A 2004-PR-035 to April 19, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Scheduled case of:

9:30 A.M. GEORGE RUBIK, A 2004-PR-036 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure (a shed) which exceeds eight and one-half feet in height and is located in the front yard of the property, in violation of Zoning Ordinance provisions. Located at 2765 Winchester Way on approx. 8,125 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 326.

Chairman DiGiulian asked for confirmation that the notices for this case were not in order. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, confirmed that they were not and informed the Board that staff had spoken with the appellant and determined that the appellant might be withdrawing the appeal. She suggested the appeal be deferred to April 26, 2005.

Mr. Hammack moved to defer A 2004-PR-036 to April 26, 2005, at 9:30 a.m., as suggested by staff. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 11, 2005, Affer Agenda Item:

Consideration of Acceptance
Application for Appeal submitted by Webb Property, LLC.

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

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that staff believed the subject application was not appealable under the Zoning Ordinance. She stated that it was staff's position that the disapproval of the overlot grading plan was done in accordance with Chapter 104, the Erosion and Sediment Control Regulations, of the County Code, and not under Chapter

112, the Zoning Ordinance; therefore, the decision was not made by the Zoning Administrator in the administration of the Zoning Ordinance. She said staff further believed that the appeal was premature in that the appellant had not sought a determination from the Zoning Evaluation Division as to whether or not the subject grading plan was in substantial conformance with a special exception and suggested the appellant seek such a determination, and stated that if the appellant did not receive the desired answer, it would then be appealable.

Mark Jenkins, the appellant's agent, presented the arguments forming the basis for the consideration of acceptance. He explained that this was a proposed revision to a grading plan, and the decision made by the agent of the director who disapproved the grading plan and did not refer it or delay a decision so other questions could be answered. He said the reason stated for the disapproval was the failure of the plan to match, in their view, the terms of a special exception that had been granted for the property three or four years prior. He stated that the Zoning Ordinance was explicitly invoked in making the decision, which he said was not unusual in that various permissions or permits obtained from the County in connection with construction involved ensuring that there was conformance to a variety of Ordinances, such as the Zoning Ordinance, the Chesapeake Bay Act, and Erosion and Sedimentation Control. Mr. Jenkins said that in the subject case a final decision was made, the rights of his client were affected, and the Zoning Ordinance was invoked, administered, and enforced, thereby placing the decision squarely within the purview of the Zoning Ordinance, and his client was obligated to appeal. He explained that stamping the revision denied rendered his client an aggrieved party, who then had 30 days to appeal or lose his rights if an appeal was not submitted because it would be a thing decided. He stated that based on his understanding of the County's position, there was no merit to the idea that his client had to get some other decision from the Zoning Administrator first. Mr. Jenkins said there was nothing in the Statute or the Ordinance that said that when there was a denial from an administrative officer, one had to go to another administrative officer, but rather the opposite, that there shall be an appeal, and the Board of Zoning Appeal's mandatory jurisdiction included appeals not only from the Zoning Administrator, but from other administrative officers. He stated that his client was required to appeal, and the Board of Zoning Appeals was required to hear the matter.

Mr. Pammel asked whether the disapproval was the result of a failure of the appellant and the County to agree on resolving the issues as identified. Mr. Jenkins replied that he thought, legally speaking, the disapproval was the agent's determination that they did not believe that the submitted revision complied with the special exception and that no understanding or agreement had been come to otherwise, but in his opinion, that was not what was currently legally pertinent. He said the plat his client submitted was stamped disapproved, initialed, and dated, which started the 30 days.

Mr. Hart asked, based on the assumption that the November 9, 2004 memorandum from the Environmental and Facilities Review Division was a decision in some fashion, and the situation was that the Board of Supervisors had adopted a special exception with development conditions pursuant to the Zoning Ordinance and then later someone in the County wrote a memorandum saying what was asked for did not substantially match the special exception for Lots 3 and 4 and could not be approved without a special exception amendment, which would be under the Zoning Ordinance, or a letter of interpretation from the Department of Planning and Zoning (DPZ), why would that sentence in the memorandum not be from someone administering the Zoning Ordinance? Ms. Stehman replied that it was staff's position that it fell under Erosion and Sediment Control because the overlot grading plans were submitted to the Department of Public Work and Environmental Services (DPWES) in accordance with Chapter 104, rather than Chapter 112, of the County Code; therefore, any decision or approval granted relative to the overlot grading plan was a determination made under Chapter 104, rather than Chapter 112.

Mr. Hart said the Erosion and Sediment Control Regulations could be germane to a particular submission, but the November 9, 2004 event dealt with someone red flagging three problems: that it did not match the special exception; could not be approved without a special exception amendment or a letter of interpretation; and, were issues dealing with something in the Ordinance. He asked how in the memorandum it would be seen that it was Erosion and not the Zoning Ordinance, and whether there was some other document or information that would indicate it was something other than an interpretation of the Zoning Ordinance. Ms. Stehman replied that there were no other documents that she was aware of that were relative. She explained that the general way that DPWES handled plans was that a plan was submitted under Chapter 104 of the Code, a review was done, and comments were arrived at. She said it was customary for DPWES to disapprove a plan if there were any problems, with the assumption that the applicant would then come back with the corrections or discuss them, which would be termed a resubmittal, and then the plan would be approved or disapproved depending on the outcome. Ms. Stehman said because it was a DPWES determination made under Chapter 104, the appellant needed to go to Zoning Evaluation to get the determination that was suggested by the DPWES determination.

Mr. Hart asked whether the 30 days ran from the denial accompanying the November 9, 2004 memorandum. Ms. Stehman replied that it was not staff's position that the denial was made in the administration of the Zoning Ordinance; therefore, there was no 30-day clock running.

Ms. Gibb asked whether an appeal had been accepted on a denial of a grading plan previously. Ms. Stehman replied that appeals had been accepted on grading plans when the appeal had been of Section 2-601 of the Zoning Ordinance, but not when there had been no reference to a particular part of the Zoning Ordinance. She said the cases that had been accepted were violations of the Zoning Ordinance where there had been complaints that were investigated by Zoning Enforcement and it was a clear zoning determination.

Mr. Jenkins stated that there was nothing in the disapproval that had anything to do with Chapter 104, Erosion and Sedimentation Control. He said the mere fact that a zoning reason to deny was asserted showed that the Zoning Ordinance was being administered and enforced as applied to a grading plan. He referenced Section 2-600 of the Zoning Ordinance and stated that in the Zoning Ordinance there were requirements for the submission of grading plans, and grading plans were documents that included erosion and sedimentation control standards and other standards as well. He said that in any event one needed to comply with a variety of ordinances, including the grading plan, which is what occurred in the subject case. Mr. Jenkins stated that there was no other reason it occurred other than that the Zoning Ordinance was being enforced because otherwise they had no authority to act at all since the Zoning Ordinance reason was relied upon to make the disapproval.

Mr. Hart moved to accept the appeal. Mr. Ribble seconded the motion.

Mr. Hart said the November 9, 2004 memorandum dealt with only three things and that all three were Zoning Ordinance issues. He said there might be erosion and sediment issues buried within it, but the appellant was appealing a denial by some officer that was based on an administration of the Zoning Ordinance that it did not match the special exception, assuming that was the approval with the development conditions pursuant to the Zoning Ordinance; a determination that an special exception amendment was needed; or a letter of interpretation was needed from DPZ. He stated that the denial referenced Zoning Ordinance provisions, and it was within the scope of what could be appealed.

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

Mr. Hart commented that if there was any doubt, there should be a letter to the Zoning Administrator asking the three questions that were in the memorandum, and if the answers were the same and it was appealed, the two appeals should be handled together.

//

~ ~ ~ January 11, 2005, After Agenda Item:

Grace Presbyterian Church, SPA 73-L-152-02
Status update regarding progress made in resolving parking overflow problems

Russ Waddell, representative of Grace Presbyterian Church, came forward to speak. He stated that he was appearing at the Board's request to address the issue of outside groups using the church. He noted that copies of the church's building use policy had been submitted, which stated "may not park on the street" as a condition of the use.

Chairman DiGiulian called for speakers.

Ina Sadler, 4504 Sleaford Road, Annandale, Virginia, came forward to speak. She presented photographs which she indicated showed a vehicle parked across the driveway of her property, vehicles parked on the both sides of the street, a full church parking lot with vehicles parked on the street, vehicles parked in a parking lot adjoining park land located between the two sections of church property, vehicles parked on the park land property and the adjoining parking lot, and a vehicle parked in a driveway. She said that although the church had made an effort to abide by the guidelines, the parking lots were full, and the overflow went into the street.

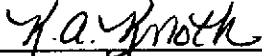
Chairman DiGiulian asked staff whether any action by the Board was needed. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the item had been brought back as a result of a request the Board had made at the approval of the application.

//

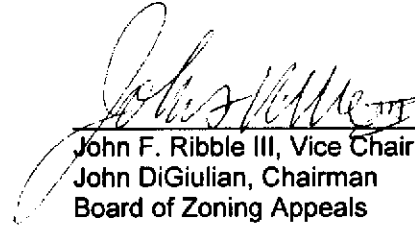
As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Kathleen A. Knoth

Approved on: April 12, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 18, 2005. The following Board Members were present: Vice Chairman John Ribble; V. Max Beard; Nancy Gibb; James Hart; James Pammel; and Paul Hammack. Chairman DiGiulian was absent from the meeting.

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

~ ~ ~ January 18, 2005, Scheduled case of:

9:00 A.M. JOHN F. KELLY, VC 2004-MV-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6.5 ft. with eave 5.5 ft., deck 4.0 ft. and chimney 4.5 ft. with eave 3.5 ft. from side lot line and porch 26.8 ft. with stairs 21.8 ft. from front lot line. Located at 6423 Thirteenth St. on approx. 14,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (27) 1. (Decision deferred from 6/29/04 and 7/13/04)

Susan Langdon, Chief, Special Permit and Variance Branch, said Mr. Kelly had a special exception approved and may not be in need of a variance, but was not able to reach Mr. Kelly.

Mr. Pammel moved to defer decision on VC 2004-MV-054 to February 15, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-9. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:00 A.M. MARIANELA ROJAS, VC 2004-MA-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 13.2 ft. with eave 12.5 ft. from one side lot line and 9.4 ft. with eave 8.1 ft. from other side lot line. Located at 4811 Seminole Ave. on approx. 7,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (B) 21. (Deferred from 7/13/04)

Vice Chairman Ribble noted that VC 2004-MA-075 had been withdrawn.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:00 A.M. DEBORAH K. RAFI AND REZA RAFI, SP 2004-DR-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. with eave 9.2 ft. from side lot line. Located at 7205 Matthew Mills Rd. on approx. 16,440 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((8)) 53.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit reduction to the minimum yard requirements based on error in building location to permit an accessory structure, specifically a detached garage, to remain 10.2 feet with eave 9.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15.0 feet with permitted eave extensions of 3.0 feet; therefore, modifications of 4.8 feet and 2.8 feet were requested. In addition to the Notice of Violation, there was a Consent Decree signed in October, 2004, providing the applicant with an option for filing a special permit.

Mr. Hart asked if there was more than 25% pavement in the front yard. Ms. Hedrick responded that there was and that another notice of violation was issued. She said Development Condition Number 2 addressed the issue of coverage exceeding 25%.

Mr. Hart asked if the Board could approve an application that had a violation for something else. Ms. Langdon said you could if the development condition was adopted and the excess pavement was removed.

Mr. Hart asked about the structure's footprint being over 200 sq. ft. Ms. Hedrick said because the structure was considered to be an accessory structure and not an accessory storage structure, the square footage did not come into effect. The applicants were using it as a detached garage.

Mr. Hart asked about the building permit. Ms. Hedrick answered that the building permit appeared to be approved with a side yard being maintained at 15 feet, but there was no plan in the street file.

Ms. Langdon said Article 10 of the Zoning Ordinance distinguished between an accessory storage structure and an accessory structure which could be other detached structures such as garages. The building permit was approved for a storage shed. Ms. Langdon said there was nothing that specified the maximum building height for the storage shed.

Bridgette Rose, Zoning Enforcement Division, said she reviewed the structure and said it was being utilized as a garage.

Lynne Strobel said the applicant requested the special permit for an error in building location. Ms. Strobel went through a brief history of what had transpired. She said that the applicant contracted with Capital City Builders to construct a two-story, single family dwelling and a one-story detached accessory structure. The builder submitted a lot grading plan and building permit application to Fairfax County. The lot grading plan showed a proposed dwelling and a one-story detached structure with a maximum wall height of eight feet, five inches. The size was shown as 12 by 18 feet, for a total area of 216 square feet. The distance from the accessory structure to the side lot line was 11.8 feet. Everything was shown on the lot grading plan, there was nothing misleading or false about what was intended to be built. The builders raised the issue of the accessory structure with supervisory personnel in the Zoning Permit Review Branch (ZPRB) at the time of building permit approval. John Crouch, Branch Chief, ZPRB, reviewed, approved it with a note referencing the detached storage shed and issued the permit in April 2003. The storage structure was inspected by Fairfax County officials in response to alleged zoning violations, after construction began and it was understood at the time of the inspections that the structure would be used for the storage of a vehicle and no zoning violations were issued.

Ms. Strobel explained that subsequent to the completion of the garage, the applicant's received a notice of violation dated October 8, 2003. The notice of violation characterized the garage as a storage structure which exceeded the 200 square foot side limitation and because of its height, the setback requirement. The applicant's did not appeal the notice of violation. They did retain an attorney to represent them in seeking the necessary approvals to bring the structure into compliance.

There appeared to be a miscommunication; the attorney subsequently resigned from representation in August 2004. The applicant's applied on their own for a special permit application. The applicants contacted Ms. Strobel for representation. The litigation was resolved by consent decree, dated October 22, 2004. A copy was provided to the Board of Zoning Appeals (BZA). The decree stated that the applicants' could pursue a resolution by obtaining approval of a special permit to allow a reduction in the minimum side yard requirement due to an error in building location.

There were letters sent to the BZA from neighbors asserting that a variance was required and Ms. Strobel remarked that that contention was incorrect. Ms. Strobel said the Zoning Ordinance had different provisions for accessory storage structures and accessory structures, such as a detached garage as Ms. Hedrick had explained earlier. A private garage is a permitted accessory use and is not limited to 200 sq. ft. The location is governed by its height and in this instance the setback was greater than what was provided.

Ms. Strobel asserted that the applicants met the requirements of the standards set forth in 8-914 of the Zoning Ordinance. The error did exceed 10% of the minimum requirement. The error was committed in good faith. A grading plan was processed and approved. A building permit was processed and issued. It was acknowledged that the concrete slab would be used for a garage. The applicants understood that what they proposed was in conformance with the Zoning Ordinance. The regulations would not impair the purpose and intent of the ordinance. Ms. Strobel presented photographs of the structure to the Board. She said the garage was not detrimental to the use and enjoyment of other properties. The construction of the structure did not create an unsafe condition with regard to road safety, access, or site distance. Ms. Strobel concluded that the applicants relied on their builder to meet all zoning requirements.

Mr. Hart asked about the grading plan and what the free-standing structure was. Ms. Hedrick said that it was a one-story detached storage, 8.5 feet maximum wall height. She added that the height could not exceed its distance from the side yard.

Ms. Strobel said the building permit and grading plan were submitted together to Fairfax County.

Ms. Langdon stated that in Article 10 there was a difference in the yard requirements on whether it was an accessory structure or an accessory storage structure. An accessory storage structure could be up to 8.5 feet maximum height and be located anywhere in the side and rear yards, but an accessory structure such as a detached garage over seven feet in height had to meet the side yard specifications.

Ms. Strobel said if it were an accessory storage structure, it would be limited to 200 sq. ft. The structure was 216 sq. ft. There was clearly confusion as to how to define the structure.

Ms. Langdon said that Mr. Crouch may have approved it because it was less than 10% in error.

Mr. Hart said the paperwork did not identify that it was a garage or how tall it was.

In response to Mr. Hart's question, Ms. Langdon replied that Zoning did not ordinarily get involved in the approval of structural drawings.

Ali Khazai, 1913 Woedford Road, Vienna, Virginia, came forward to speak in support of the application. He identified himself as the managing partner for Capitol City Builders. Mr. Khazai said he built everything exactly as it was submitted to the County.

Phil Gross, 7203 Matthew Mills Road, McLean, Virginia, came forward to speak in opposition to the application. Mr. Gross said he was the adjacent property owner to the applicant. He said he represented two other neighbors who had signed Attachment B which outlined the zoning violations. There was no error in the location of the building. The grading plan filed in February 2003 showed a side yard setback of between 10 and 11 feet and showed the eaves of 9 plus feet to his property line. The applicant's March 2003 building permit application was false in stating that the side yard setback was 15 feet and not stating that the height was 15 feet and in stating that the use was a storage shed, when it turned out to be a garage. The application showed that the shed was illegally 216 sq. ft. Any approval by a county official was improper and illegal. The permit based upon on the application was null and void when it was issued because it purported to authorize the building for a different use than what was stated and because of the false and misleading statements that were on the permit. By authorizing the special permit it would validate a false and misleading building permit.

Mr. Gross said a variance should be required. The notice of violation specifically required both a variance and special permit. The special permit could not remedy the height and square footage conditions; it only goes to the side yard requirements. The applicants could not meet the standard of Cochran with respect to a variance. In addition, the special permit filed was not under the jurisdiction of the BZA to approve, Section 15.2-2309 of the Virginia Code specifically stated that the Board had the authority to hear special exceptions. Special Exceptions were covered under the ordinance by Article 9. This application was a special permit filed under Article 8. It did not appear that the application was properly filed under Article 9, a special exception. The applicants' did not meet the standards set forth in Article 8.

Ms. Strobel said she disagreed that the BZA did not have the authority to hear and approve special permit applications. The applicant's pursued this in good faith and did meet the standards of the Zoning Ordinance for approval of a special permit for error in building location.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said what was applied for and the facts stated, were in his opinion, misleading. It was initially submitted as a storage building and then later identified as a garage and clearly did not meet the requirements for a storage building at 216 sq. ft. and the wall height requirement did not meet the County's height requirements. Mr. Pammel said because the building stood out it was an imposing structure. He did not think it was the intent of the appellants' and the builder to deceive the County in what was being done. The confusion came in as to how the accessory building was defined and how the County treated it. The County did not pursue it during the construction phase, but after it was developed, the County cited the owners for violation of the yard requirements. It went to court and the courts ruled through a consent decree that there was a recourse which is why the appellants were before the BZA. Mr. Pammel said even without

the Cochran case he would not be disposed to granting the variance. There were a lot of errors made. The error did exceed the 10% allowed and such reduction would impair the intent and purpose of the Ordinance and would be detrimental to the use and enjoyment of other properties in the immediate vicinity. And it become a blocking element in the view of the adjoining property owner. Mr. Pammel said he did not believe it created an unsafe condition with respect to both of the properties and the public streets. To force compliance of the setback requirements would not create an unreasonable hardship. Mr. Hart seconded the motion.

Mr. Beard said the appellant went to the county and asked for a supervisor, but a citizen has to be able to rely on County approval.

Ms. Gibb said the owner acted in good faith and said she was comfortable with the other standards for the granting of a special permit. She said she did not support the motion.

Mr. Hart said he did not think that the case turned on the good faith issue. Even if it was found that it was done in good faith, the application still had to meet the standards in 8-006 and number 2 and 3 standards were not met. He said if they had not had the Cochran case and this had come in for a variance, they probably would not have approved a free-standing one-car garage in what was essentially a front yard of a house that had an attached two-car garage, even if it was behind the front building restriction line. It was a very unusual thing to have and general standard 3 had not been met or number 2, so it could not be approved for those reasons.

Ms. Gibb made a substitute motion to defer decision on SP 2004-DR-058 to January 25, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Pammel noted that it was unique in that at the outset the request never complied with the County standards. If it was called a storage structure which was what the plat indicated, the wall height was 8.5 feet which was not how height is measured. The height is measured in accessory storage structures to the peak, so the building would probably be 12 - 13 feet in height. If they changed it later to be a garage, it was a height of 7 feet. It simply did not comply, whether it was defined as a storage structure or a garage with any of the standards. They got a permit from the county in error.

The applicants wanted to add another garage and they already had two which was what the code permitted. Mr. Pammel said he thought the builder was trying to get around the code requirements to do what his client had asked him to do.

//

~ ~ ~ January 18, 2005, Scheduled case of: (Ribble skipped this one & went to Cecelia case)

9:00 A.M. STEVEN AND BARBARA MINK, VC 2004-BR-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line such that side yards total 18.8 ft. Located at 4902 Locsestrife Ct. on approx. 10,385 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 60. (Deferred from 8/3/04 for notices.)

Vice Chairman Ribble noted that VC 2004-BR-088 had been administratively moved to March 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:00 A.M. CECELIA C. PANICH, TRUSTEE, DEORMAN L. ROBEY, JR., TRUSTEE AND FREIDA E. ROBEY, TRUSTEE, VC 2004-PR-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2524 Avon La. and 2525 Ogden St. on approx. 6.21 ac. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 166, 167A, 167B and 168. (Deferred from 6/29/04 at appl. req.) (Admin. moved from 9/14/04 for notices)

Vice Chairman Ribble noted that VC 2004-PR-058 had been withdrawn.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:00 A.M. OAKWOOD L.L.C., VC 2004-LE-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 2 buildings 55.46 ft. and 47.61 ft. from one side lot line and 105.47 ft. and 105.21 ft. from other side lot line and within 75 ft. of an interstate highway. Located on the S. side of I-95, at the terminus of Oakwood Rd. and N. of La Vista Dr. on approx. 10.56 ac. of land zoned I-I. Lee District. Tax Map 82-1 ((1)) 2A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit construction of two office buildings, to be located 55.46 feet and 47.61 feet from the north side lot line and 105.47 and 105.21 feet from the south side lot line and within 75 feet of an interstate highway (I-95).

The Zoning Ordinance requires a minimum side yard of 200 feet in the I-I zoning district and does not permit construction within 75 of an interstate highway. Therefore, side yard variances of 144.54 feet and 152.39 feet were requested for the north sides of the two buildings, and variances of 94.53 feet and 94.79 feet were requested for the south sides of the buildings. Variances of 19.54 and 27.39 were requested to permit construction within 75 feet of the interstate. There had been a previous varianco approval on the site, but it had expired.

Mr. Hart asked about a rezoning to another I district or I-I with proffers if the Board of Supervisors could modify the minimum yards for the placement of the building. Ms. Langden answered that the Board of Supervisors could modify the 75-foot setback from the highway. Mr. Hart asked why they were not applying for rezoning.

Mr. Martin responded that he did originally submit a rezoning application which was in conformance with the Comprehensive Plan, but thought it would be more expedient to go to the BZA to get the variance that was previously approved rather than go through the rezoning process. The first variance was approved in 2001 and expired in 2003 during the site plan process. It expired because no one was paying attention while they were vigorously pursuing site plan approval and going through a geotech review. The two buildings that were approved for the site needed a variance for the 200-foot and 75-foot setbacks. This was one of the few I-I properties left in Fairfax County. It met the standards of the Cochran decision. The two, 200-foot side yards overlap each other and leave no buildable area. Denial of a variance would create a hardship to be considered confiscation without compensation. All the development conditions were agreeable to the applicant. And denial of the application would mean they both would be condemned by the governing bodies rather than dcdicated at nc expense to the taxpayers. The site plan was shown to the homeowners association. It meets all the criteria for hardship. It was acquired in good faith by the applicoants. Denial of the application would approach confiscation of the property because there was no buildable area under the I-I District provisions. Approval of the application would not be a detriment to the surrounding properties therefore it would be a reasonable request that the BZA had approved before, although it was granted before Cochran, but there was no reasonable use of the property without a variance.

Responding to a question from Mr. Hart, Ms. Langdon said she had no conversations with staff and Ms. Byron that it should have been a variance. Her notes went back to April 9, 2004 which was pre-Cochran that was contrary to it being a variance.

Mr. Martin said that it was an I-I and the BZA had authority to grant a variance where there was no reasonable use for the property without the granting of a variance.

Mr. Hart asked if the building envelope was obliterated for the I-I district. Ms. Stanfield answered that it was.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 2004-LE-119 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

OAKWOOD L.L.C., VC 2004-LE-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 2 buildings 55.46 ft. and 47.61 ft. from one side lot line and 105.47 ft. and 105.21 ft. from other side lot line and within 75 ff. of an interstate highway. Located on the S. side of I-95, at the terminus of Oakwood Rd. and N. of La Vista Dr. on approx. 10.56 ac. of land zoned I-1. Lee District. Tax Map 82-1 ((1)) 2A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 2005; and

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

1. The applicants are the owners of the land.
2. It may be that the property is eligible for rezoning, however, the threshold determination of whether the owner is deprived of all reasonable beneficial use of the property taken as a whole has been met.
3. The configuration of the property is long and narrow along the Beltway which causes other problems.
4. The set backs in the I-1 District and the required set back from an interstate highway impact the utility of this property down to nothing. Absent a variance, the owner can do nothing. The lot is fairly large, 10.56 acres with access to a public road. Absent a variance this owner is deprived of all reasonable beneficial use. If there is no buildable area, on a 10.5 acre lot it can't be used for anything in the I-1 District.
5. It is adjacent to similar properties to the west that are zoned to a C district or an I district. The plan contemplated that there would be some development of these properties.
6. Pursuant to the statute, the determination is alleviating a hardship as opposed to a convenience.
7. The Ordinance unreasonably restricts the property in this circumstance.

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

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

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

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

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

1. This variance is approved for the location of the two (2) buildings shown on the plat prepared by Bowman Consulting Group, Ltd., dated July, 2000 as revised through October 14, 2004, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for this lot.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. This Variance is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). A coordinated review shall be executed by DPWES in concert with the Virginia Department of Transportation (VDOT) to ensure compliance with VDOT construction standards. Any plan submitted pursuant to this variance shall be in substantial conformance with these conditions. Minor modifications to the approved variance may be permitted pursuant to Sect. 2-419 of the Zoning Ordinance.
4. Transitional screening shall be provided as depicted on the variance plat, with the following additions:
 - Notwithstanding that which is shown on the variance plat, additional landscaping materials, consisting of ground cover, shrubs or deciduous or evergreen trees shall be planted along the periphery of the site and in the interior parking areas. Additional plantings along the southern lot line shall be provided to mitigate the visual impacts of the proposed development on the residences to the south. The size, species and location of such planting shall be provided in consultation with the Urban Forest Management Branch (UFMB).
 - Notwithstanding that which is shown on the variance plat, plantings around the eastern stormwater management pond shall be provided to buffer the view of the site from the adjacent Lot 76, to the south. The size, species and location of such planting shall be provided in consultation with the UFMB.
 - The applicant shall provide plantings of native species in the disturbed area of the Resource Protection Area (RPA), size, location and species as deemed appropriate by UFMB.
5. The limits of clearing and grading shall be no greater than that shown on the variance plat. No further encroachment into the Resource Protection Area (RPA) shall be permitted.
6. The eastern stormwater management pond shall be redesigned to avoid encroachment into the right-of-way for the future bridge extending across the Capital Beltway and to incorporate low impact design techniques for storm water management and water quality, as determined appropriate by DPWES.
7. Building materials with characteristics pursuant to commonly accepted industry standards shall be used in order to achieve a maximum interior noise level of 45 dBA Ldn in both office buildings. The following acoustical attributes shall be employed:
 - Exterior walls shall have a laboratory sound transmission class (STC) of at least 39.
 - Doors, windows and other glazed areas shall have a laboratory STC rating of at least 28. If doors, windows and other glazed areas constitute more than 20% of any façade, they shall have a laboratory STC rating of at least 39.
 - Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

8. The applicant shall provide dedication of right-of-way, 190 feet from the existing centerline of I-95/495, at the time of site plan or upon demand, whichever occurs first.
9. The applicant shall provide, upon demand, all necessary easements that may be required for construction of the bridge extending from the subject property over the Capital Beltway.
10. The applicant shall provide a pedestrian access easement for the extension of a trail, extending from land identified as Tax Map Number 81-2 ((14)) 63, across the Capital Beltway.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 2005. This date shall be deemed to be the final approval date of this variance.

//

The meeting recessed at 10:35 a.m. and reconvened at 10:41 a.m.

//

~ ~ ~ January 13, 2005, Scheduled case of:

9:00 A.M. CHUNG AE AUH, SU HAK AUH, SP 2004-MA-024 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.8 ft., roofed deck 25.6 ft. and stairs 20.9 ft. from front lot line and addition to remain 9.2 ft. from side lot line. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Admin. moved from 8/3/04 and 11/2/04 at appl. req.) (Decision deferred from 2/21/04)

Ms. Gibb moved to approve SP 2004-MA-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHUNG AE AUH, SU HAK AUH, SP 2004-MA-024 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 30.8 ft., roofed deck 25.6 ft. and stairs 20.9 ft. from front lot line and addition to remain 9.2 ft. from side lot line. Located at 4119 Hummer Rd. on approx. 26,939 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((6)) 20B. (Admin. moved from 8/3/04 and 11/2/04 at appl. req.) (Decision deferred from 2/21/04) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 2005; and

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

1. The applicants are the owners of the land.
2. The applicant has met the standards A through G.

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

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

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

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

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

1. This approval is granted to the applicants only, Chung Ae Auh and Chung Ae Auh, and is not transferable without further action of this Board, and is for the location indicated on the application, 4119 Hummer Road (26,939 square feet) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys International, LLC, dated October 10, 2003, as revised through November 15, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The Special Permit is for a home professional office, consisting of an acupuncture practice.
6. There shall be only two patients vehicles on-site at any one time and the maximum number of patients per day shall be limited to twelve (12). Patient appointments shall be limited to no more

than one per half hour.

7. The hours of operation of the home professional office shall be a maximum of 10:00 a.m. to 7:00 p.m., Monday through Friday. No weekend hours shall be permitted, except for emergency patient care.
8. The maximum number of employees including the applicant shall be two (2). The applicant (Chung Ae Auh) shall be the only acupuncture practitioner operating from this property.
9. Notwithstanding that which is stated on the plat, the area utilized for the home professional Office shall not exceed 970 square feet.
10. The dwelling that contains the home professional office shall also be the primary residence of the applicants.
11. Parking shall be limited to (2) spaces for the dwelling and three (3) spaces for the home professional office. All parking shall be on-site as shown on the special permit plat.
12. There shall be no signs associated with the home professional office.
13. The dispensing of herbs shall only occur at the time of patient treatments. Herbs shall not be sold independently of acupuncture treatments.
14. Prior to issuance of a Non-Residential Use Permit for the home professional office, the driveway on the north side of the front yard and a portion of the gravel area in the rear yard, as depicted on the plat, shall be removed and shall be revegetated with grass and/or landscaping. There shall be no additional clearing or extension of the parking area on-site.
15. A row of evergreen trees, a minimum of six feet high at the time of planting, and shrubs to soften the view of the parking area, shall be planted along the northern lot line, extending from the garage to the northeastern edge of the gravel surface (not to include the gravel area to be removed). The number, species and location of these trees shall be determined in consultation with the Urban Forest Management Branch.

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

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

Mr. Pammel and 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 January 26, 2005. This date shall be deemed to be the final approval date of this special permit.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Cochran decision pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 10:44 a.m. and reconvened at 11:52 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04 and 10/12/04 at appl. req.)

Vice Chairman Ribble noted that A 2004-PR-011 had been administratively moved to April 5, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:30 A.M. RICHARD PLEASANTS, A 2004-MA-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has established a second dwelling on the property in violation of Zoning Ordinance provisions. Located at 3133 Valley La. on approx. 12,790 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 221. (Deferred from 10/26/04 for notices)

Elizabeth Perry, Staff Coordinator, made staff's presentation as contained in the staff report. In response to a complaint staff of the Zoning Enforcement Branch, ZEB conducted inspections of the property and found two independent dwelling units which were in violation of Section 2-501 of the Zoning Ordinance.

Richard Pleasants, applicant, presented the arguments forming the basis for the appeal. Mr. Pleasants explained that the Zoning Inspector, James Ciampini, only spoke with Mrs. Lopez, the tenant that Mr. Pleasants was in a dispute with over past due rent. Ms. Lopez was subsequently evicted, so the inspector was given a misrepresentation of the facts from the tenant regarding how the property was set up.

Mr. Pleasants was asked to remove the range in the lower level laundry level by Mr. Ciampini because the range constituted a second dwelling. He also indicated that due to an unpleasant conversation between Mr. Ciampini and him, the Zoning Inspector might have become biased toward Ms. Lopez. He requested that the Board view the property in light of the alleged bias.

Mr. Hammack asked about the range. Mr. Pleasants said it was installed in 1991 or 1992 to replace the one he acquired upon purchase of the dwelling.

Ms. Gibb inquired about tenants renting rooms and then sharing the rest of the house. Ms. Stehman answered that the Ordinance allowed for two roomers or borders as an accessory use, but when there was a separate dwelling unit then it becomes a different situation.

Mr. Pleasants answered Ms. Gibb that there were no written agreements between he and the tenants, but only verbal ones.

Mr. Hart asked if Mr. Pleasants was allowed to rent out to multiple tenants irrespective of the downstairs living arrangements while he was not a resident of the property. Ms. Stehman answered that he could rent it out to up to four unrelated people but could not have two separate dwelling units. In order to make it one dwelling unit one of the stoves would need to be removed so that it did not meet the definition of a separate dwelling unit. Ms. Stehman said that a second kitchen letter allowed for a second kitchen.

Mr. Pleasants asked if he could have more time to obtain the second kitchen letter so that he would be in compliance with the Zoning Ordinance.

Ms. Perry answered that the property had separate dwelling units; therefore staff maintained that the appellant was in violation of the Zoning Ordinance provisions.

Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ January 18, 2005, Scheduled case of:

9:30 A.M. RON JOHNSON, A 2004-MA-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is conducting a use on property in the R-3 District which is not in substantial conformance with the conditions of Special Exception Amendment SEA 81-M-034 in violation of Zoning Ordinance provisions. Located at 6071 Arlington Blvd. on approx. 10,300 sq. ft. of land zoned R-3, SC and CRD. Mason District. Tax Map 51-4 ((2)) (A) 8. (Deferred from 7/27/04) (Notices not in order on 11/2/04; action on deferral request deferred from 11/2/04) (Dismissed on 11/16/04) (Dismissal reconsidered on 11/30/04) (Deferred from 11/30/04)

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated January 10, 2005. The appellant had exceeded the hours of operation in development condition number 5. The sign was in violation of Paragraph 2M of Section 12-208 of the Zoning Ordinance and the neon signs were not in compliance with development condition number 6 and at the time the notice of violation was issued, the appellant and his family resided on the subject property which was not in conformance with the approved office use identified on the special exception application plat. Staff had learned that the appellant had sold the property and would be moving out within the next month.

Royce Spence, the appellant's agent presented the arguments forming the basis for the appeal. Mr. Spence requested a one-month deferral in order for the appellant's family to be moved out of the property.

Vice Chairman Ribble called for speakers.

Juan-Carlos Lotharius, 6070 Wooten Drive, Falls Church, VA, came forward to speak in opposition to the deferral. He stated that it had been going on for over nine months.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that since the initial notice of violation the case had been deferred numerous times because the appellant did not satisfy the notice requirements to the adjacent property owners. The appellant did not provide a defense when he submitted the appeal application; therefore, staff would oppose any further deferrals. Regardless of the culmination of the sale of the property, there was still an existing violation that the BZA needed to act on.

Mr. Spence explained that the appellant would be out of the property by February 15th and the violation would be solved. Mr. Spence said the staff had received a copy of the sales contract.

Mr. Hart said he did not think the sale of the property wiped out the violation and the Board had an obligation to hear the appeal that day.

Mr. Pammel moved that the Board hear the appeal. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Spence said that Mr. Johnson had no microwave in the basement of his house and the other violations would be resolved within the next few days after the hearing. Ms. Stehman responded that since April 2004 there had been no efforts to resolve the violations so staff requested that the Zoning Administrator's position be upheld.

Mr. Lotharius showed pictures of the buffer zone in which Mr. Johnson had added trees that were in violation of buffer zone requirements under the Zoning Ordinance. This was not in Mr. Ciampini's report.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to uphold the determination of the Zoning Administrator for the following reasons: the appellant had exceeded the permitted hours of operation as set forth in the development condition number 5; the free standing sign identifying the business was in violation of Paragraph 2M, Section 12-208 of the Zoning Ordinance; the neon signs in the windows were not in compliance with approved development condition number 6; and, the appellant and his family resided on the subject property which was not in conformance with the approved use as identified in the Special Exception Amendment. Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ January 18, 2005, After Agenda Item:

Status update for Olam Tikvah
SPA 81-P-068-3, from Lynne J. Strobel

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate would be affected.

Mr. Pammel stated that all of the conditions in the January 11, 2005, memorandum from Mavis Stanfield had been addressed. The contact information had been complied with as well.

Ms. Strobel added that there were no outstanding violations and there was an on-going dialogue with the community even though it was not a requirement of the development conditions.

//

~ ~ ~ January 18, 2005, After Agenda Item:

Request for Additional Time
Chesapeake Healthcare Corporation, VC 00-H-027

Mr. Pammel moved to approve 24 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date was December 13, 2006.

//

~ ~ ~ January 18, 2005, After Agenda Item:

Approval of October 21, 2003 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ January 18, 2005, After Agenda Item:

Request for Additional Time
Thanh Chau Huynh, VC 2002-LE-079

Mr. Hammack moved to approve 2 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting. The new expiration date was March 31, 2005.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Minutes by: Vanessa A. Bergh

Approved on: September 19, 2006

K.A. Khoth

Kathleen A. Khoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 25, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; and Paul W. Hammack, Jr. James D. Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m.

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the following litigation: the Cochran case, Davis Store, Hickerson, Golfpark, Zoroastrian Temple, Fisenne case, Wiseman, McCarthy, West Lewinsville Heights, and Lake Braddcok, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Hammack and Mr. Beard were not present for the vote. Mr. Pammel was absent from the meeting.

The meeting recessed at 9:06 a.m. and reconvened at 10:30 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

Mr. Hart moved to direct the Chairman to send a letter on behalf of the Board of Zoning Appeals to the County Executive regarding the issues and items discussed during the closed session. Mr. Ribble seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

Chairman DiGiulian called for the first scheduled case.

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. CAROL Y. & CHONG HYUP KIM, VC 2004-BR-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. with eave 8.0 ft. from side lot line. Located at 9304 Nester Rd. on approx. 21,161 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 3. (Decision deferred from 7/20/04)

Chairman DiGiulian noted that there was a request for a deferral to May 10, 2005. He asked if there was anyone present who wished to speak on the issue of deferral and received no response.

Mr. Hammack moved to defer VC 2004-BR-080 to May 10, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. DAN F. BRINKWORTH, VC 2004-LE-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. with eave 4.3 ft. from side lot line. Located at 3718 Logan Ct. on approx. 14,879 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((14)) (14) 6. (Decision deferred from 5/25/04 and 7/20/04)

Chairman DiGiulian noted that VC 2004-LE-039 had been withdrawn.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. VIRGINIA N. MARTINEZ, SP 2004-LE-059 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 6.47 ft. from side lot line. Located at 6718 Ruskin St. on approx. 14,400 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 169.

Deborah Hedrick, Staff Coordinator, informed the Board that Ms. Martinez had requested a deferral. She said staff recommended a date of February 8, 2005.

Mr. Ribble moved to defer SP 2004-LE-059 to February 8, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. DEBORAH K. RAFI AND REZA RAFI, SP 2004-DR-056 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. with eave 9.2 ft. from side lot line. Located at 7205 Matthew Mills Rd. on approx. 16,440 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((8)) 53. (Decision deferred from 1/18/05)

Chairman DiGiulian announced that a letter was received that morning from the applicant's agent requesting a deferral of the decision for two weeks to allow the Board members who were not present for the public hearing to review the video tape. He asked if there was anyone present who wished to speak on the issue of the deferral.

Phil Gross, 7203 Matthew Mills Road, McLean, Virginia, came forward to speak in opposition of the deferral request. He asked the two Board members who were absent from the public hearing, Chairman DiGiulian and Mr. Hammack, if they intended to vote after reviewing the tape. Each replied that after viewing the tape and any pertaining materials, they intended to vote on the case.

Responding to Mr. Gross' question regarding what the legal authority was for an absent member of the Board to vote on cases, Chairman DiGiulian explained that it was a long time practice of the Board that if there was a request to defer a decision, any Board member who was not present for the public hearing could view the video and then may participate in the decision; he said he knew of no specific Virginia statute regarding the issue, but it was the Board's practice for over 20 years.

Mr. Gross stated that the case's first deferral was to allow Ms. Gibb to conduct a site visit. Ms. Gibb confirmed that she had made a site visit.

Mr. Gross said he was concerned about the deferrals, saying that he took off work to attend each meeting. He said that from what he had observed, the violations were on-going. He asked that his concern over the delay in the vote be noted for the record, and that he wanted to be present for the vote.

Mr. Ribble stated that Mr. Gross did not need to be present for the vote.

Mr. Gross stated that he could not be sure that there would not be more deferral requests, and if he were not present, his opposition to a deferral would not be noted for the record, and therefore, he felt it was necessary that he be present to protect his interest in the matter.

Lynne Strobel, Esquire, Walsh, Colucci, Lubeley, Emrich and Terpak, Arlington, Virginia, the agent for the applicant approached the podium to speak to the issue of deferral. She said she thought it beneficial for those Board members who were not present at the public hearing to view the tape and consider the application and because there were no issues of public health or safety, she believed a delay of a few weeks was not problematic.

Mr. Beard moved to defer SP 2004-DR-066 to February 8, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. PETER & KATE GOELZ, VC 2004-MV-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. with eave 11.2 ft. from the front lot line.

Located at 6060 Woodmont Rd. on approx. 15,056 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 88-3 ((14)) (4) 1. (Decision deferred from 10/19/04)

Chairman DiGiulian noted that the case was deferred for decision from October 19, 2004.

Susan Langdon, Chief, Special Permit and Variance Branch, said that a request from the applicant was received requesting a deferral. She said staff suggested a date of May 3, 2005.

Chairman DiGiulian asked if there was anyone present who wished to speak on the issue of deferral and received no response.

Ms. Gibb moved to defer VC 2004-MV-107 to May 3, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit a private school of general education, building additions, site modifications and an increase in land area. Located at 3913, 3918, 3921 and 3925 Old Mill Rd. and 9004 Chickawane Ct. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 9B, 33, 36 pt., 39 and 110-2 ((10)) 60A pt; 110-2 ((9)) 11B.

Chairman DiGiulian noted that the application had been administratively moved to March 1, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. BENNY D. HOCKERSMITH, VC 2004-SP-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. with eave 5.83 ft. from side lot line such that side yards total 21.1 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 86-3 ((2)) 287. (Concurrent with SP 2004-SP-010). (Decision deferred from 5/25/04 and 7/20/04)

Chairman DiGiulian noted that there was a request to defer the decision to March 15, 2005. He asked if there was anyone present who wished to speak on the issue of deferral and received no response.

Mr. Hammack moved to defer VC 2004-SP-036 to March 15, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((26)) 5A. (Decision deferred from 5/25/04 and 7/20/04)

Chairman DiGiulian noted that there was a request for a deferral of the case's decision. He asked if there was anyone present who wished to speak on the issue of deferral and received no response.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff suggested a date of May 3, 2005.

Mr. Ribble moved to defer VC 2004-PR-037 to May 3, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a 6-0 vote. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. KENNETH ARTHUR & DEBRA SPRADLIN, VC 2004-BR-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. with eave 16.8 ft. from rear lot line. Located at 9325 Hcbart Ct. on approx. 8,803 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((19)) 13. (Deferred from 5/25/04 and 7/20/04)

Chairman DiGiulian noted that VC 2004-BR-046 had been withdrawn.

//

~ ~ ~ January 26, 2005, Scheduled case of:

9:00 A.M. DAVID A. DISANO AND CAROL S. DISANO, VC 2004-SU-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.1 ft. from rear lot line. Located at 5856 Linden Creek Ct. on approx. 5,016 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((7)) 14. (Decision deferred from 6/8/04 and 7/20/04)

Chairman DiGiulian noted that there was a request for a deferral. He asked if there was anyone present who wished to speak on the issue of deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that this case would be converted to a Final Development Plan Amendment (FDPA) and staff had just received the application. She said staff recommended a date of May 10, 2006, adding that there was a possibility the application may be withdrawn before then.

Mr. Hart moved to defer VC 2004-SU-048 to May 10, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:00 A.M. HOME PROPERTIES VIRGINIA VILLAGE, LLC, SP 2004-MA-060 Appl. under Sect(s). 3-2003 of the Zoning Ordinance to permit a community club and meeting hall. Located at the terminus of Southland Ave. on approx. 1.33 ac. of land zoned R-20 and HC. Mason District. Tax Map 72-3 ((1)) 54 pt.

Chairman DiGiulian noted that SP 2004-MA-060 had been administratively moved to March 1, 2005, at 9:00 a.m., for notices.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (Deferred from 4/15/03, 10/14/03, and 1/6/04). (Deferred from 4/13/04 and 9/28/04 at appl. req.)

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7901 and 7828 Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/93, 10/14/03, and 1/6/04) (Deferred from 4/13/04 and 9/28/04 at appl. req.)

Chairman DiGiulian recused himself from these cases.

Vice Chairman Ribble assumed the Chair. He noted that there was a request for a deferral and asked staff to address the request.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position, stating that staff opposed the deferral request. She explained that the subject properties of the appeals were abutting lots, the entire parcel containing 17 acres split zoned R-1 and I-6, with Lots 1 and 2 owned by Silvio Diana, and Lots 3A and 3B owned by Vincent Tramonte, Robert Tramonte, Louise Ann Caruthers and Silvio Diana. A 2002-LE-031 was an appeal of the determination that the appellants had allowed the property to be divided into individual lots on which tenants had established contractor's offices, shops, storage yards and motor vehicle impoundment yards without site plan, building permit or Non-Residential Use Permit (Non-Rup) approvals. She stated that some of the uses were established within the 100-year floodplain for Long Branch and those portions of the property that were zoned R-1.

Ms. Collins stated that A 2003-LE-001 was an appeal of the determination that the appellant had expanded a pre-cast stone concrete mixing and batching plant on Lots 3A and 3B without the approval of a special exception, and that some of the storage and construction equipment associated with the concrete plant was located within the 100-year floodplain of Long Branch in the R-1 portions of the property. She stated that Notices of Violation were issued in August of 2002, and since the notices were issued, the appellants had done little to remedy the zoning violations through actions other than to file three special exception applications. On June 25, 2003, almost a year after the first Notice of Violation was issued, the appellants' attorney filed three special exception applications which, if approved, may remedy some but not all of the problems on the site, and Zoning Evaluation staff had continued to recommend denial of all three applications because the applications did not adequately address the environmental concerns on the property, and because they did not demonstrate that they would satisfy Zoning Ordinance requirements. The violations which would not be remedied by the approval of the special exceptions included the presence of uses in the R-1 zoned portion of the property which were not allowed in an R-1 District, allowing industrial uses to remain without obtaining site plan, building permit or Non-Rup approvals for uses that were allowed but had not been legally established, and not taking measures to correct the environmental problems caused by the illegal activities on the property. She noted that the appellants had not pursued the rezoning of the R-1 zoned portion of the property to the I-5 or I-6 District. Staff was very concerned that the appellants were focusing all of their attention on the special exception applications and had not taken substantial steps to remedy any of the other elements of the Notices of Violation which would remain unlawful even if the special exceptions were approved. Ms. Collins noted that given the length of time that had elapsed since the Notices of Violation were issued, and the appellants' failure to remedy those elements of the notices which were not included in the special exception applications, the lack of progress in seeking special exception approval, and the environmental damage that persisted on the site, staff could not support further deferrals of these appeal applications and requested the BZA uphold the Zoning Administrator's determinations of August 15 and December 13, 2002, so that enforcement could go forward on those items which would not be remedied by the special exception applications and which were not being addressed.

In response to Mr. Hart's question concerning what things had changed or were corrected since the last deferral, Ms. Collins said that Joseph Bakos, Assistant to the Zoning Administrator, Zoning Enforcement Division, had conducted several site visits and although some things were moved from the floodplain, the situation was essentially the same.

The agent, Lynne Strobel, said the appellants were requesting a deferral. She pointed out that they had prepared and submitted a Phase I Environmental Report which was typically done after a land use rezoning or special exception action but the appellant took the opportunity to have the work done and was responsive in that regard. She stated that a majority of the items in the floodplain were taken out, saying that it took time as well as numerous truckloads because much of the materials were large pieces of concrete which required crushing and then hauling out. She stated that the area was in much better shape and that the cleanup was an active, ongoing process. She explained that the issue regarding Campbell's Gas, a tenant on the property, had been a continued problem for the appellants. The tenant was put on notice in July of 2004 to vacate the premises within 30 days and was not willing to do so, and after a recent court hearing, the appellant was granted an order of possession, but to date was unable to force the tenant out. This complication was out of the appellants' control and was for the reason they were unable to present the case before the Lee District Land Use Committee because it wanted resolution to the holdover tenant issue. With regard to the floodplain, Ms. Strobel said the appellant agreed to put the floodplain area into a conservation easement and that she did not believe staff wanted that portion of the R-1 property to be rezoned to industrial. At staff's suggestion to amend one of the special exception applications to include the R-1 property, she stated that she had filed an application on November 22, 2004; it had to be resubmitted, and was finally accepted January 13, 2005. She stated that their issues list had become somewhat of a moving

target and when the appellant believed that an issue was resolved, there became another pertaining factor to address. An example was the road crossing in the floodplain which had existed for 40 years, and now staff wanted the road eliminated or at least its use minimized, which was problematic because of the interparcel access with the adjacent property and the road's heavy truck traffic. Ms. Strobel clarified that there was not just one issue with which to deal but multiple issues. She said they were scheduled before the Planning Commission on February 2, 2005, and although staff's current recommendation was for denial, they intended to proceed. She said they would go before the Lee District Land Use Advisory Committee February 7th. Ms. Strobel stated that the frustration sensed from staff was also shared by the appellants because they had tried to move forward, but some things had been out of their control. Ms. Strobel said she realized the case had been outstanding for a while and she would not request a lengthy deferral, but she believed 90 days was appropriate.

Mr. Hammack asked Ms. Strobel why, over two years, the appellant had not addressed staff's issues to remove the contractor's shops, offices, storage yards, and vehicle impoundment on Lots 1 and 2, had not filed a rezoning application to rezone the R-1 portion to I-6, and the single family dwelling as a residence in an I-6 District. He noted that the special exception application did not address those issues.

Ms. Strobel said she submitted a letter to staff October 27, 2004, referencing the Zoning Ordinance, Sect. 2-501, which allowed a single family use in I-6, which was part of her special exception application and that addressed the single family dwelling issue. She said it was her understanding that the special exception application also would resolve the issue regarding the contractors' offices and shops. Ms. Strobel clarified that there were three special exception applications filed; one for the I-6 property; one to allow the crossing of the floodplain with the existing road; and, one to allow the concrete batching plant use on the I-6 portion of the property.

Mr. Bakos said that there were both environmental and administrative issues concerning the operations conducted on the four lots; that they were operating without the required permits, there were site plan issues and they were within the floodplain. He noted that there was some cleanup within the floodplain over the last several months, but he had also observed additional storage of product manufactured from the batching plant that was being stored on another area of the floodplain.

Dino Diana, who identified himself as a son of Silvio Diana, one of the property's owners, stated that he ran American Stone, Inc., 7901 Cinder Bed Road, Newington, Virginia. He explained that an approval was granted in 1977 to store concrete products in the floodplain, and that storage had continued over the years. He said that significant cleanup had occurred in several areas of the floodplain, and the appellant sought to address and be responsive to the issues the County raised. He said they wanted to remain a viable business, but the nature of the business required a lot of outdoor storage, and the product was big and heavy.

At Mr. Hart's request to clarify their special exception applications, Ms. Strobel explained that their applications filed in September of 2004 agreed to put the R-1 portion of the property within a conservation easement although the R-1 area was not a part of the application. The applicant subsequently amended the application to include the R-1 property within the special exception.

Margaret Stehman, Assistant to the Zoning Administrator, explained that staff's first concern on page 3 remained an open issue in that the contractors' shops and offices continued to exist without the proper permits and approvals for the uses. She concurred with Mr. Hart that the removal of Campbell's Gas resolved issue 2.

In response to Mr. Hart's question regarding staff's issue 3, Mr. Bakos said that there was more concrete product stored in the woods, which appeared to have been there for some time, and he believed it was storage of surplus material of the concrete plant.

Ms. Strobel explained that the material cited by Mr. Bakos was there for 30 years, was minimal, and Mr. Diana was concerned that its removal would cause more damage to the environment as trees and varied vegetation had grown thick around it.

Dino Diana assured that after the other issues were resolved, he would clean up that small area.

Addressing staff's concern 4, Ms. Stehman stated that a caretaker was allowed as part of an accessory service use to an industrial use but the issue remained that there was no special exception in place and

therefore, now and at the time the Notice of Violation was issued, it was a clear violation that there was a residence in the I-6 District.

Mr. Hart asked Ms. Strobel what difference it made if the Board went forward with its decision that day.

Ms. Strobel said that if the Board were to uphold the Zoning Administrator, her two concerns were that the appellants would be taken to court and she sought not to get involved in a litigious process, but wanted to resolve it through filing the special exception applications, and that compliance would be required within an unrealistic timeframe.

Ms. Gibb noted that the first three issues remained unlawful even if the special exception applications were approved, to which Ms. Stehman concurred. Ms. Stehman clarified that the contractors' offices and shops would be allowed if they obtained site plan and other necessary approvals, and that the uses were allowed in the I-6 District and could have been legitimized at any time by going through the appropriate County processes. She said that the concrete batching plant was issued a special permit in 1963; that the plant had expanded a great deal since that time, and at any time since 1963 and the present, the appellant had the opportunity to amend its special permit to validate the uses on the property and if it had done so, they would not be before the BZA that day.

Vica Chairman Ribble called for a motion.

Mr. Hammack stated that he believed the progress on resolving some of the issues had been somewhat slow, but he believed the appellant had tried to bring the property into compliance by taking some actions. He said he wanted to see what the special exception applications would resolve and then the Board could deal with a little more certainty with remaining issues. Mr. Hammack moved to defer the decisions on A 2002-LE-031 and A 2003-LE-001 to April 19, 2005, at 9:30 a.m.

Ms. Gibb seconded the motion, which carried by a 5-0 vote. Chairman DiGiulian recused himself from the vote. Mr. Pammel was absent from the meeting.

//

Chairman DiGiulian resumed the Chair.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:30 A.M. ROBERT AND JOYCE HARRISON, A 2004-PR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have constructed an addition which does not meet the minimum side yard requirement for the R-1 District in violation of Zoning Ordinance provisions. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1. Providence District. Tax Map 58-2 ((4)) 76.

Chairman DiGiulian noted that A 2004-PR-038 had been administratively moved to July 26, 2005, at 9:30 a.m., at the applicants' request.

In response to Mr. Hammack's question as to why the Harrison appeal was moved to July at the applicant's request, Margaret Stehman, Assistant to the Zoning Administrator, said it was anticipated that the proposed amendment that would allow some flexibility in the administration of the Ordinance similar to variances would resolve the issue, and the appellants would have time to apply for and be granted a special permit should that amendment be adopted. Ms. Stehman said staff had no objection to the requested deferral.

//

~ ~ ~ January 25, 2005, Scheduled case of:

9:30 A.M. THE EL-INMAN LEARNING CENTER, A 2004-MA-039

Chairman DiGiulian noted that A 2004-MA-039 had been withdrawn.

//

~ ~ ~ January 25, 2005, After Agenda Item:

Approval of January 18, 2005 Resolutions

Mr. Hart moved to approve the Resolutions with a spelling correction to the word 'threshold' on the first page of Oakwood L.L.C., VC 2004-LE-119, and the addition of the word "all" to be inserted in the form on page 2, middle paragraph, of the language commencing with "That the applicant has satisfied the Board . . ." and referencing to "all reasonable use." Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

//

Chairman DiGiulian called the Board's attention to the January 24, 2005, letter from Jane Kelsey requesting an intent to defer the appeal, Lancaster Landscapes, Inc./Walter G. Fitzgerald, A 2004-PR-024, and stated he would recuse himself.

Vice Chairman Ribble assumed the Chair.

Margaret Stehman, Assistant to the Zoning Administrator, informed the Board that the appeal was currently scheduled for February 1, 2005. In response to Mr. Hart's question of whether staff supported the deferral request, she stated that staff preferred to go forward with the case on the February 1st date noting that this was a Notice of Violation issued in July of 2004, and it had already been deferred once from November of 2004 to February of 2005 to allow the appellant time to pursue site plan approval, which apparently had not happened. Ms. Stehman explained that there had been a question at the hearing of whether a site plan or a minor site plan was required, and the appellant went to the Department of Public Works and Environmental Services where it was determined a full site plan must be submitted. Addressing Ms. Kelsey's letter that referenced the possibility of the storage units being grandfathered, Ms. Stehman said that the three buildings that were at issue in the appeal were constructed about 1995, and therefore, they would most likely not be grandfathered.

Mr. Hammack moved an intent to defer A 2004-PR-024 to March 1, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a 5-0 vote. Chairman DiGiulian recused himself. Mr. Pammel was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Paula A. McFarland

Approved on: April 15, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 1, 2005. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack. V. Max Beard was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:09 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. EDWARD C. GALLICK, TRUSTEE, ET. AL., VC 2003-PR-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 95.14 ft. Located at 7935 Shreve Rd. on approx. 30,155 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 129. (Reconsideration granted on 2/10/04) (Deferred from 5/18/04 at appl. req.) (Admin. moved from 7/20/04 and 9/28/04 at appl. req.)

Chairman DiGiulian noted that VC 2003-PR-157 had been deferred indefinitely.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. ENRIQUE SUAREZ DEL REAL, VC 2004-PR-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.9 ft. from front lot line. Located at 2829 Cherry St. on approx. 6,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 22. (Decision deferred from 10/19/04)

Chairman DiGiulian noted that a request for a decision deferral to May of 2005 had been received by the Board, which Susan Langdon, Chief, Special Permit and Variance Branch, confirmed and suggested a date of May 24, 2005.

There were no speakers to address the issue of the decision deferral request.

Mr. Ribble moved to defer decision on VC 2004-PR-109 to May 24, 2005, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. RANDALL P. MOLEN AND GINA M. MOLEN, SP 2004-SU-061 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of additions and roofed deck 34.0 ft. from front lot line. Located at 15109 Philip Lee Rd. on approx. 13,347 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 373.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gina Molen, 15109 Philip Lee Road, Chantilly, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to modify the minimum lot requirements for certain R-C lots to permit construction of two additions and a roofed deck to be located 34 feet from the front lot line. A minimum front yard in the R-C Zoning District of 40 feet is required. The additions met the minimum yard requirements of the R-2 Cluster District that were applicable to the subject lot on July 25, 1982, which required a minimum front yard of 30 feet.

Ms. Molen presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the house could no longer accommodate the size of her family, and the

additions would provide a garage to allow covered parking, a bedroom for her daughter who was currently using the dining room as her bedroom, and a family room for family activities.

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

Mr. Hammack moved to approve SP 2004-SU-061 for the reasons stated in the Resolution. Mr. Ribble seconded the motion and stated that his action was based upon the justification in the staff report as well as the speaker.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RANDALL P. MOLEN AND GINA M. MOLEN, SP 2004-SU-061 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of additions and roofed deck 34.0 ft. from front lot line. Located at 15109 Philip Lee Rd. on approx. 13,347 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 373. 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 1, 2005; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-008, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a family room addition, a garage addition and a porch, as shown on the plat originally prepared by Andrew P. Dunn, updated by Gina Molen, September 28, 2004 and November 12, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 9, 2005.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 13.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 19 feet with eave 17 feet and stoop 13 feet from the front lot line. A minimum front yard of 50 feet is required; however, eaves are permitted to extend 3.0 feet and stoops are permitted to extend 5.0 feet into the minimum front yard; therefore, variances of 31 feet, 30 feet, and 32 feet, respectively, were requested.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She explained that Gunston Manor Subdivision was a unique community with lots of unique sizes and shapes that were created as summer and vacation homes for District of Columbia residents in the 1940s. She said the real estate records showed the subject house was built in 1948 and appeared to have had several additions throughout the subsequent years. Ms. Kelsey stated that she believed the application met the Coohran test because without the variance, there would be no beneficial reasonable use of the property because the house had been poorly constructed before there were any requirements for building code standards and currently was in bad shape structurally. She said Mr. Schulster (phonetic), a structure engineer, had been asked to inspect the property, but that this was a Catch 22 situation because if the engineer had found that the property was totally unsafe, the applicant would have had to move from the property and would have had no place to live because without the variance, she could not rebuild on the same footprint as the current house and could not build a new house. Ms. Kelsey submitted a letter to the Board which she said reflected Mr. Schulster's findings and reported that he had found that while the house was not yet unsafe enough to be condemned, it would not be long before the house would be rendered unsafe if the ongoing deterioration continued; it was currently deteriorated to the extent that it was not possible to renovate it; and it could not be shored up to add a second floor to make it larger. Ms. Kelsey presented photographs taken at the inspection which reflected the condition of the structure and showed rotted beams and joists, a questionable foundation, a beam that was not of the correct size, standing water, and patched mortar between cement blocks. She said the septic field on the right had failed; the property was currently on a pump and haul situation; the Health Department had approved a new septic field on the left; and it was found that a reserve field would be necessary and would be permitted on the right-hand side of the house. She reported that the real estate assessment records showed that in 2004 the property appraised in excess of \$400,000, the land in excess of \$300,000, and the house at \$80,000; and the previous record showed the land valued at \$280,000 and the house at \$85,000, so the appraisal on the house had gone down.

Ms. Kelsey said the lot was extremely shallow, consisted of 15,000 square feet, and was located in the R-E District, which required two acres, so it was a substandard lot. She stated that the lot was uniquely constrained because the rear sloped down 40 feet to the Potomac River, and septic fields would be located on both sides of the property. She presented photographs of the current deck and the slope in the rear. Ms. Kelsey said the house was currently located 19 feet from the property line, and the new house would sit on approximately the same footprint and just be squared up. She stated that the buildable area was only eight percent of the lot, and the existing house was completely outside of that area. She explained that the proposed location for the house would not create an adverse impact on any adjacent properties because the property to the left was vacant and owned by the people across the street, who wanted a view of the water

and did not want to build there, and the property across the street from the applicant was vacant land that would not perk and would not likely be built upon.

Ms. Kelsey indicated that if the Board did not agree that the application met the tests for a variance, the applicant would request a deferral to see what the result was of the County's proposed Zoning Ordinance amendment; however, she pointed out that the subject application did not meet the test that was currently proposed of 50 percent because the reduction needed was more than 50 percent.

Mr. Hammack asked for further explanation as to why the house could not be rebuilt on the same footprint if it were demolished. Ms. Kelsey replied that it was because the entire house was currently located in the front yard.

Mr. Hammack asked whether there were any nonconforming or grandfathering provisions that applied based on the build date in 1948. Ms. Kelsey said her understanding was that the house could not be built in the same location and a new house would have to meet the current requirements. She said one would have to look at whether the front wall could be left standing in its current condition and she did not know the answer to that, but understood that it could not be substantially renovated. Susan Langdon, Chief, Special Permit and Variance Branch, replied that she would have to consult with the Zoning Administrator, but that she understood part of the problem had to do with the foundation likely not being able to hold a new house, and rebuilding could not be done once the foundation was removed.

Mr. Hart asked whether a small addition could be built by right at the rear of the structure or whether there was a problem because the house was nonconforming. Ms. Langdon replied that as long as the addition met the current standards, it could be done without a variance.

Mr. Hart commented that he had no problem with the unusualness of the property because of the shallowness and topography and the hardship involved, but had difficulty getting over the threshold test. He said that although it was compelling and there should be a way for a property owner to get relief from the literal terms of the Ordinance, because of Cochran or Hickerson, the Board could not necessarily relax the rules because it thought it fair or unfair and had to obey what the Court had said. He explained that in the Hickerson case, the house had been built in approximately 1936; Hickerson could not get a building permit to fix up the electrical system, plumbing, and heating system; the Board granted a variance, which the Circuit Court upheld; and the Supreme Court said that following the Cochran test, Hickerson was not eligible, did not experience an undue hardship, had enjoyed the use of his home since 1964, and the effect of the Zoning Ordinance did not interfere with all reasonable beneficial uses of the property taken as a whole. Mr. Hart asked how the current application met the test when the Supreme Court said Hickerson did not. Ms. Kelsey replied that anticipation of that question being asked was why they had the structural engineer determine that the house was close to not being habitable. She said that once the house becomes uninhabitable, the test could be better met than currently when the house was standing, but it was unreasonable to have to wait until the house is condemned.

Mr. Hart asked whether there was any reason why the applicant could not get a new drain field. Ms. Langdon replied that it would be up to the Health Department to make that decision.

Mr. Hart asked whether there was any reason why repairs could not be made to the existing structure. Ms. Langdon replied that she would consult with the Zoning Administrator to determine whether repairs could be made without a variance, but she understood that repairs could be made, and the question was whether rebuilding could be done on the existing foundation or not. She cited a section regarding nonconforming uses which may be continued and enlarged that said structural alterations may be made in a building housing a nonconforming use set forth in paragraph 1 above, but only to a total aggregate extent not to exceed 50 percent of its current appraised value according to the records of the Department of Tax Administration.

Mr. Hart asked what was different in the current case from Hickerson, which flunked the test. Ms. Kelsey replied that in the Hickerson case there was no structural engineer that testified in writing as to the condition of the house and how close it was to condemnation. She read from a document prepared by Mr. Schulster, "The house is currently safe for occupancy despite the fact that the sub-floor would not support the loads mandated by the building code. Furthermore, as a practical matter, the house is too poorly constructed and too deteriorated to permit renovation." Ms. Kelsey said it was not possible to predict how long a period of time might elapse before the ongoing deterioration rendered the home unsafe, and if it was unsafe, the applicant could not live there and would have no use of the house.

Mr. Hart commented that the 1980 Virginia Supreme Court case, Packer versus Hornsby (phonetic), involved a waterfront lot in Virginia Beach which needed improvements to the existing structure, and development of adjacent properties made adherence to setback a hardship and many of the other homes in the block were built in such a way that the Ordinance would not have required it. He said Packer versus Hornsby was cited and reaffirmed in Cochran with the Court saying, "The Packers do not face a hardship approaching confiscation nor has the use of their land been effectively prohibited or unreasonably restricted. The applicants already have a dwelling, which they did not seek to expand for ten years, and they can enlarge the house without violating the setback requirement by adding to the west side of the structure. The evidence shows that the Packers simply would prefer to expand to the east in order to have a better floor plan with a better view of the ocean. Mr. Hart asked how the current case was different from Packer versus Hornsby. Ms. Kelsey replied that in Packer versus Hornsby there was not a structure that was near condemnation, the addition was going closer to the water and would be blocking the view of the other houses, and the adjacent property owners objected. She said in the subject application there was no house on the left at all, there was a very large house farther down that stuck out closer toward the Potomac River than the subject house and there were also docks, and the house to the right was closer to the water than the subject existing or proposed house.

Mr. Pammel asked whether the earlier citation regarding improvements up to 50 percent of the assessed value related to the assessed value of the structure alone or the assessed value of the land and the structure. Ms. Langdon replied that it did not specifically say which and she would ask the Zoning Administrator to make that decision.

Ms. Gibb asked what effect the resource protection area (RPA) had and how it was addressed. Ms. Kelsey replied that the applicant would have to address the issue and the applicant felt she was grandfathered. She said that if the case was deferred to get the answer from the Zoning Administrator on the renovation issue, she would also try to get an answer to the RPA issue.

Mr. Hammack asked whether the earlier referenced situation of building to not more than 50 percent of the assessed value could be done more than once. He gave a hypothetical example of an assessed value of \$400,000 and \$200,000 of improvements increasing the value to \$600,000. He asked whether another \$300,000 of improvements could later be done. Ms. Langdon said she would consult the Zoning Administrator on that question also.

The applicant, Elsie D. Weigel, 11317 River Road, Lorton, Virginia, came forward to speak. She stated that she had received a \$935,000 appraisal of her property and an offer of over a million dollars to sell her property. She said there was a \$5 million house two lots away from her, and she was paying excessive taxes for a house worth only \$85,000 to \$100,000 that could be torn down at any time. She stated that the house had many structural problems and was in no way adequate for the land it was located on.

Mr. Hammack asked whether the applicant had discussed the dilemma with any of her elected representatives, and he noted the Board had received a letter from Gerald Connolly. Ms. Weigel replied that she had. She said she was being put in undue hardship, emotionally, physically, and financially, because she was paying \$500 a month in taxes for land that was not supporting a structure that was in any way equal to the \$5 million mansion two lots down from her.

Mr. Hammack asked whether the applicant had appealed to the Board of Equalization. Ms. Weigel replied that she had not because she thought she might have been able to replace the structure. She explained that it had taken two years to get permission to locate a septic field in another location on the property, and by that time the Supreme Court decision regarding zoning had occurred.

Mr. Pammel asked how long the applicant had owned the subject property. Ms. Weigel answered 13 years.

Mr. Hart asked why the proposed Zoning Ordinance would not work for the subject case if it provided a way to modify the minimum front yard by 50 percent. Ms. Kelsey explained that the 50-foot line was at the back of the house and the existing structure was located 19 feet from the property line, so it would have to be moved back to 25 feet, which would leave a 19-foot wide house.

Mr. Hart asked whether the house would fit in the buildable area if the porch was removed. Ms. Kelsey replied that would be getting into the RPA issue and whether it would be permitted that close to the bank of the Potomac River.

Mr. Hart asked whether the house would be forward of the 50 percent line by six feet, to which Ms. Kelsey replied that was correct.

There were no speakers.

A discussion ensued regarding how much time would be needed to get the additional information the Board requested.

Mr. Pammel moved to continue VC 2004-MV-112 to February 15, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. WAYNE T. HEINRICHS, VC 2004-DR-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory storage structure 5.8 ft. with eave 5.4 ft. from side lot line and 5.4 ft. with eave 5.0 ft. from rear lot line. Located at 2140 Haycock Rd. on approx. 10,295 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((6)) (E) 2. (Admin. moved from 10/12/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-106 had been administratively moved to March 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. SHAWN AND CATHLEEN BASSETT, VC 2004-MV-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 22.6 ft. with eave 21.5 ft., roofed deck 20.9 ft. with eave 19.8 ft. and a two-story addition 23.4 ft. from rear lot line. Located at 1606 Old Stage Road on approx. 12,136 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 5. (Admin. moved from 10/12/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MV-108 had been administratively moved to April 12, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. FOUNDATION FOR THE COLLINGWOOD MUSEUM ON AMERICANISM, SP 2004-MV-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit accessory structure to remain 3.0 ft. from rear lot line, 5.0 ft. from one side lot line and 7.7 ft. from another side lot line. Located at 8301 East Blvd. on approx. 8.80 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-4 ((01)) 71 and 71A.

Chairman DiGiulian gave a disclosure and indicated that he would recuse himself from the public hearing. Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Schukraft, McGuireWoods LLP, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to the minimum yard requirements based on an error in building location to permit a detached garage to remain 3.0 feet from the rear lot line, 5.0 feet from a western side lot line, and 7.7 feet from an eastern side lot line. A minimum rear yard of 11.7 feet, which corresponds to the height of the garage, and minimum side yard of 15 feet are required; therefore, modifications of 8.7 feet, 10 feet, and 7.3 feet, respectively, were requested.

Mr. Hart commented that the staff report indicated there was a building permit in 1988 and that apparently what was done was not what the permit said. Ms. Stanfield stated that was correct. She said the building

permit indicated no change for the garage, which would indicate that permission was given to reconstruct the garage in the same footprint, but the garage was subsequently build larger than the footprint.

At his request, a copy of the building permit was presented to Mr. Hart.

Mr. Hart asked for confirmation that the mistake was that the structure existed now, but was not what was on the 1988 building permit, which Ms. Stanfield confirmed.

Ms. Schukraft presented the special permit request as outlined in the statement of justification submitted with the application. She noted that although the application language said no change, the drawings that were approved showed that there was an extension from the existing footprint. She reported that on October 27, 2003, approval had been received from the Board of Supervisors for a special exception to build a conferenco center that was a separate building, and part of the development approvals that were granted required that it be shown that the garage was built to the satisfaction of the Department of Public Works and Environmental Services and was legally constructed and located three feet from the property line. In terms of the land use history of the property specifically related to the garage, Ms. Schukraft said she believed the original structure was built around the turn of the century, and the first pictorial evidence was a 1930 photograph showing the garage in the current location. She reported that in 1939 the property was subdivided to create the Collingwood Estate and the McCormack (phonetic) Estate to the north, at which time there were no County requirements regarding building setbacks, and in 1988 a building permit was granted to demolish the existing garage and rebuilt it with a discrepancy between the language in the application and the drawings that were approved. She said there had been discussions with staff because the conditions said the applicant would come in and get a variance, but they did not think one would be granted by the Board, so staff suggested a special permit for error in building locetion be applied for instead. Ms. Schukraft reported that the McCormack Estate property was covered with an open space easement granted to the Virginia Outdoors Foundation and was currently the subject of APR application to change the zoning to R-E and proffer only two dwelling units for the 25 acres, so she did not believe the garage in its current locetion three feet from the property line would pose any hardship to the neighbors because there would never be a residence built anywhere near the structure. She indiceted that Bill Williamson, the president of the Foundation for the Collingwood Museum on Americanism, was present to answer questions.

Ms. Gibb asked for confirmation that if the building predated the Ordinance and it had not been expanded, it would not have been a problem, but the fact that it was enlarged was the problem, and that no one questioned that the development conditions should have said special permit rather than variance, which Ms. Stanfield confirmed.

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

Mr. Hart moved to approve SP 2004-MV-062 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FOUNDATION FOR THE COLLINGWOOD MUSEUM ON AMERICANISM, SP 2004-MV-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on error in building location to permit accessory structure to remain 3.0 ft. from rear lot line, 5.0 ft. from one side lot line and 7.7 ft. from another side lot line. Located at 8301 East Blvd. on approx. 8.80 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-4 ((01)) 71 and 71A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hoaring was held by the Board on February 1, 2005; and

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

1. The applicant is the owner of the land.

2. There would be no significant impact on anyone based on the photographs and the rationale in the staff report.
3. It was fortunate that there was a mistake about the location compared to the building permit to allow this structure to fit into the special permit for error in build location category.

That the applicant has presented testimony indiceting compliance with Sect. 3-005, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

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

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

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

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

1. This Special Permit is approved for the location of an accessory structure, as shown on the plat prepared by Kenneth A. Maroeron, dated May 2, 2003, as revised through October 13, 2004, submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian recused himself from the hearing. Mr. Beard was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 9, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH, SPA 98-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 previously approved for a church, nursery school and child care center to permit building addition and site modifications. Located at 3439 Payne St. on approx. 2.27 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (B) 12. (Admin. moved from 1/11/05 et appl. req.)

Chairman DiGiulian noted that SPA 98-M-036-02 had been administratively moved to March 1, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A.

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to May 17, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 08-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A.

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to May 17, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A.

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to May 17, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 1, 2005, Scheduled case of:

9:30 A.M. LANCASTER LANDSCAPES, INC./WALTER G. FITZGERALD, A 2004-PR-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing outdoor storage on the property which exceeds allowable total area and has expanded the use on the property without a valid site plan in violation of Zoning Ordinance provisions. Located at 6515 (Posted as 8505) Lec Hwy. on approx. 4.07 ac. of land zoned I-5, R-1 and HC. Providence District. Tax Map 49-3 ((1)) 50A. (Deferred from 11/16/04 at appl. req.)

Chairman DiGiulian noted that the Board had issued an intent on January 25, 2005, to defer A 2004-PR-024 to March 1, 2005.

Chairman DiGiulian indicated that he would recuse himself from the public hearing.

Ms. Gibb moved to defer A 2004-PR-024 to March 1, 2005, at 9:30 a.m., at the appellant's request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian recused himself from the hearing. Mr. Beard was absent from the meeting.

//

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation matters, including Cochran, Fisenne, Wiseman, McCarthy, and Sant Nirankari Mission, and administrative matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

The meeting recessed at 10:02 a.m. and reconvened at 11:51 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel and Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

Mr. Hart moved that the Board authorize Chairman DiGiulian to send the letter the Board discussed to the Chairman of the Board of Supervisors. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

Mr. Hart moved that the Board authorize Chairman DiGiulian to send the memorandum the Board reviewed to the Board of Supervisors. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

Mr. Hart moved that the Board authorize Mr. McCormack to take the actions that the Board discussed. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

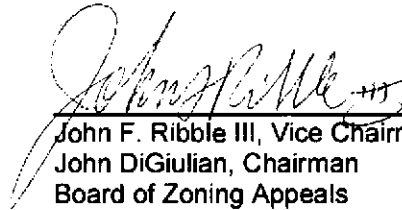
As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Kathleen A. Knoth

Approved on: April 12, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 8, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board.

//

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Cochran, Fisenne, Heisler, McCarthy, West Lewinsville Park, Demetriou, and Golf Park matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

The meeting recessed at 9:02 a.m. and reconvened at 10:27 a.m.

Mr. Hart then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board of Zoning Appeals during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

Chairman DiGiulian called for the first scheduled case.

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. GEORGE C. VAN DYKE, TRUDI C. VAN DYKE, VC 2004-BR-104 (Admin. moved from 10/5/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-BR-104 had been administratively moved to March 29, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. ANDREW H. ARNOLD AND LESLIE K. OVERSTREET, VC 2004-MV-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 24.9 ft. with eave 23.5 ft. from the front lot line. Located at 7735 Tauxemont Rd. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 5. (Deferred from 7/27/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MV-084 had been administratively moved to March 29, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. VIRGINIA N. MARTINEZ, SP 2004-LE-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 6.47 ft. from side lot line. Located at 6718 Ruskin St. on approx. 14,400 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 189. (Deferred from 1/25/05 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Virginia Martinez, 6718 Ruskin Street, Springfield, Virginia, replied that it was.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit reduction to the minimum yard requirements based on error in building location to permit a deck to remain 6.47 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 5.53 feet was requested.

Ms. Martinez presented the special permit request as outlined in the statement of justification submitted with the application. She said she needed the steps going down from the second floor to get to the deck in the backyard.

In response to questions by Mr. Hart, Ms. Martinez said she used a contractor for part of the construction, and her son, who was not a licensed contractor, had done part of the construction to save money. She said she thought a permit had not been needed for the part built by her son because it was in the back, bethered no one, and there was a lot of space. There was no engineer, architect, or any professional used to design the steps or structural members, but she knew it would pass inspection because it was well constructed by her son.

Mr. Hart asked whether a building permit was needed. Ms. Hedrick said it was and explained that the applicant had attempted to obtain a building permit subsequent to the construction, but it was denied due to the location being too close to the lot line.

Mr. Beard asked whether there had been a complaint filed. Ms. Hedrick said there was no notice of violation. When the applicant applied for a building permit, she was informed that a special permit would be needed for the error in the location of the deck and stairs.

Mr. Pammel asked whether both sets of stairs were included in the application. Ms. Hedrick said the stairs and the deck were all being treated as one item, a deck, because they were all attached to one another, and the portion of the deck which was the stairs was 6.47 feet from the side lot line.

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

At Mr. Hammack's request, Chairman DiGiulian reopened the public hearing.

In response to questions by Mr. Hammack, Ms. Martinez said she had not tried to get a permit for the deck before her son started to build it, but had permits for all the rest of the construction. She said she knew she needed permits for the electricity and the addition, but not the deck. She said her son did not live with her and did not work in the construction field. She said someone from the County had come out to do an inspection for the addition and told her at that time that a permit was needed for the deck.

Ms. Hedrick explained that the applicant had an approved building permit for the construction of a two-story addition in 2003, and during an inspection on the addition, it was discovered the deck was in error.

In response to questions by Mr. Hammack, Ms. Martinez indicated she had used a licensed contractor to build the addition, but had not talked to him about building the deck. The stairs on the side of the house were included in the permit for the addition, but were built by her son rather than the contractor.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that some stairs could extend five feet into the side yard. She said although there was no approved building permit or plat showing that, some approval may have been given to build stairs from the second floor extending less than five feet into the side yard. She said the permit for the addition may have just shown stairs or an exit from the second floor, but not the rest of the deck.

Mr. Hammack asked what was shown on the building permit the applicant said included the stairs. Ms. Hedrick said there had been no plat in the street files, but the description of work on the building permit was to put in a rear addition, demolish the existing two-story addition, and build a new one. She said the final inspection was signed off on in August of 2003.

Mr. Hammack asked to see the building permit, and Ms. Langdon presented that to the Board along with the documentation the applicant had brought.

In response to Mr. Hammack's question regarding whether she had a written contract with her son, the applicant said she had not.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 2004-LE-059 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Pammel summarized what he understood had occurred based on reviewing the plat and the presentation of the applicant, that the stairs coming down from the second floor were built and subsequently approved by the County, so the son used the line for the steps which was approved by the County and thought he could build the deck to that line without getting a permit because the deck was almost at grade other than at one end. He said he was sure the error was done totally in good faith, and the son did what he had thought had already been permitted by the County.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA N. MARTINEZ, SP 2004-LE-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 6.47 ft. from side lot line. Located at 6718 Ruskin St. on approx. 14,400 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 169. (Deferred from 1/25/05 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 2005; and

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

1. The applicant is the owner of the land.
2. Based on the applicant's testimony, the applicant has met the Standards A through G.
3. Specifically, under section B, the non-compliance was done in good faith.
4. The applicant's testimony was that her son did the work for no consideration to help his mother.
5. The applicant had inspections and a building permit for the addition to which the deck was attached, and it would seem logical and believable that her son, who had some carpentry skills, would do that for his mother.
6. The intent was not to try to get around the Ordinance.
7. The reduction will not impair the purpose and intent of the Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
8. A letter was received from a neighbor who said the construction of the deck and the stairs did not in any way lessen the value of her home.
9. No other neighbors appeared saying the value of their homes was lessened.
10. It will not create an unsafe condition with respect to the property or public streets.
11. Forcing compliance with minimum yard requirements will cause an unreasonable hardship to the applicant.

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

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

- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To forco complianco 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 purposo 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 forco complianco with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This Special Permit is approved for the location of the deck, as shown on the plat prepared by Thomas F. Conlon, Jr., Cervantes & Associates, P.C., dated August 13, 2004, submitted with this application and is not transferable to other land.
- 2. A Building Permit shall be obtained within 30 days of approval of this special permit and approval of final inspections shall be obtained or this speeial permit is null and void.

This approval, contingent upon the above-noted conditions, shall nct relieve the applicant from complianco with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. DEBORAH K. RAFI AND REZA RAFI, SP 2004-DR-058 Appl. under Sect(s) 8-914 of the Zoning Grdinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. with eave 9.2 ft. from side lot line. Located at 7205 Matthew Mills Rd. on approx. 16,440 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((8)) 53. (Decision deferred from 1/18/05 and 1/25/05)

Chairman DiGiulian said the decision had been deferred from January 25, 2005, to allow the chairman and Mr. Hammack to view the videotapes. He said he had done so and was ready to vote.

Mr. Beard moved to approve SP 2004-DR-058. He said he had gone out and looked at the property from various locations. He said he was torn on one side by the fact that the builder proceeded based upon what he felt was authority from the County to the extent that even a supervisor had signed off on the structure, but he also could appreciate the fact that there seemed to have been a misunderstanding and the fact that the unit was built in excess of the 200 square feet that was permitted. Mr. Beard said the applicants had presented testimony and evidence indioating compliance with the general standards for error in building location. He said a letter had been received from a neighbor stating there was no objection although there had been others who had objected. Ms. Gibb seconded the motion.

Mr. Hart said he could not support the motion. He said he was unsure that the Board had entirely sorted out what had happened at the ccounter with the drawings cr why a building permit had been approved without

showing the height of the structure or whether it was an accessory structure or an accessory storage structure. He said the problem he had related to Section 8-006, General Standards 2 and 3, and Section 8-914, Subsections 1C and 1D, and in looking at the surrounding homes, the structure seemed too big, too far forward, out of place, and was somewhat elevated over the house to the left. Mr. Hart said that if an application had been filed prior to construction, the Board would probably not have approved a free-standing one-car garage reversed in front of a two-car garage in that location. He said he could not conclude it was in harmony with the general purpose and intent of the regulations and that it was not detrimental to the use and enjoyment of other properties. He said there was very minimal landscaping between the brick wall and the neighbor to the left, and there was some detriment and impact. Mr. Hart said that even if the applicants were given the benefit of the doubt regarding the paperwork mix-up, the application did not meet the other standards.

Ms. Gibb said she had been present at the previous hearing, had visited the site to view the garage, and had watched the videotape. She said that the similar names for the types of structures of an accessory storage structure, which had the standard of less than 200 square feet, and an accessory structure like a garage, which could be greater than 200 square feet, opened things up to there being errors made at the counter with long lines and people working quickly. She said she thought Ms. Strobel's explanation of what probably had happened and the confusion with the building code requirements was probably what happened, and everyone had acted in good faith. Ms. Gibb said she thought the builder was wise to attempt to get a second opinion on something that was so substantial in what appeared to be the front yard and had done what he thought was the right thing to do. She said the County had gone out twice and viewed the project while it was being built, and that was when the construction should have been stopped if there was a violation. She said she was uncomfortable with the ratification that had occurred in that the County gave the applicants the permit, then ratified the approval by going out twice, and then the County Attorneys in the court proceeding ratified it again by saying they should get a special permit. Ms. Gibb said she did not think she would have supported the granting of the application if it had been a variance because it was big and appeared to be in the front yard, but because of the confirming activity on the part of the County and the amount of money spent on the project, she did not think it would be fair to now say it was wrong after it was built, so she intended to support the motion.

Mr. Pammel said that when comparing the plat dated October of 2004 with the construction site grading plan submitted on April 15, 2008, the County had approved it because the setback shown was 11.8 feet, which almost met the side yard requirements. He said that what made it more complicated was that it showed 15 feet between the primary building and the garage, but on the plat it had moved closer by nearly a foot and a half to the side lot line and showed a width for the driveway of 14 feet, so somewhere in the process the measurements were askew on the original presentation that the County approved. When the builder found that out in the field during the construction process, he went ahead on his own and constructed the garage in the current location with a 1.5-foot-plus encroachment into the side yard rather than coming back to the County, saying there was a problem, and getting permission to put the building where it was desired. He said the neighbor had testified that he had communicated on several occasions that the building was too close, but had been ignored. Mr. Pammel said he could not find that the error had been done in good faith and was simply a mistake, but rather that it was intentional. He said he had viewed the garage, and it had a pleasing appearance and was a compatible addition to the main structure, but the circumstances around what had happened were not acceptable, and he would not support the motion.

Mr. Hammack said he would abstain from the vote because he did not feel he had enough information on some issues. He said he had viewed the videotape and reviewed the record, but had not been present for the hearing and did not have the benefit of examining the applicant or the builder. He said there was a certain reliance on the County, but also the knowledge on the part of the builder that the structure was not in compliance.

Mr. Pammel made a substitute motion to defer SP 2004-DR-058 for one month, at which time the public hearing would be reopened, provided the hearing would not have to be readvertised, in order to obtain the additional information requested by Mr. Hammack. Susan Langdon, Chief, Special Permit and Variance Branch, said that if the hearing was reopened and there would be additional testimony, it would have to be readvertised because it had previously been deferred for decision only. Mr. Pammel amended his motion to defer SP 2004-DR-058 until early April rather than one month.

Mr. Beard asked Mr. Pammel whether he felt that if the builder committed the error, the homeowner should bear the brunt and suffer the consequences of the error whether he was or was not aware, which had not been established. Mr. Pammel said that if the builder had acted in bad faith and on his own and as a result the property owner had to pay, there would be redress as far as the property owner was concerned.

Mr. Beard asked Mr. Pammel whether he saw the owner and builder as one and the same as far as the breach was concerned. Mr. Pammel said that when circumstances such as the subject one occurred, unfortunately the blame was shared.

Mr. Hammack seconded the substitute motion.

Mr. Hart said the Board had two or three thorough discussions regarding the application, and it would be an inconvenience to everyone to come back again. He said he would go along with the deferral, but he was ready to vote.

Chairman DiGiulian called for speakers to address the question of a deferral; there was no response.

Chairman DiGiulian called for the vote on the substitute motion. The motion failed by a vote of 3-4. Mr. Beard, Ms. Gibb, Mr. Hart, and Chairman DiGiulian voted against the motion.

Chairman DiGiulian called for the vote on the original motion. The motion failed by a vote of 2-4-1. Mr. Ribble, Mr. Hart, Mr. Pammel, and Chairman DiGiulian voted against the motion. Mr. Hammack abstained from the vote. The application was denied.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH K. RAFI AND REZA RAFI, SP 2004-DR-058 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. with eave 9.2 ft. from side lot line. Located at 7205 Matthew Mills Rd. on approx. 16,440 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-1 ((8)) 53. (Decision deferred from 1/18/05 and 1/25/05). Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 2005; 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 lot area is 16,440 square feet.
4. The builder proceeded based upon authority from the county, and a supervisor had signed off on the structure.
5. The unit was built in excess of the permitted 200-square-foot requirement.
6. The applicant presented testimony and evidence indicating compliance with the general standards for error in building.
7. Based upon observation, the Board of Zoning Appeals reached the conclusions that the granting of this special permit will not impair the intent or purpose of the Zoning Ordinance nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
8. There was a letter from a neighbor with no objection, although there was other objection.
9. The granting of this special permit will not create an unsafe condition with respect to other properties and public streets.
10. To force compliance with setback requirements would cause unreasonable hardship upon the owner.

That the applicant has presented testimony indicating compliance with Sect. 8-008, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

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

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

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

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

1. This Special Permit is approved for the location of the accessory structure, as shown on the plat prepared by R.B. Thomas, RBT Engineering, Inc., dated November 20, 2003, as revised through October 7, 2004, submitted with this application and is not transferable to other land.
2. Notwithstanding what is depicted on the plat, pavement in the front yard shall not be greater than 25 percent.

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

Ms. Gibb seconded the motion, which **FAILED**** by a vote of 2-4-1; **THEREFORE, THE APPLICATION WAS DENIED.** Chairman DiGiulian, Mr. Hart, Mr. Pammel, and Mr. Ribble voted against the motion. Mr. Hammack abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 2005.

**Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

//

~ ~ ~ February 6, 2005, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2906 Westcott Street on approx. 11,627 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 66. (Decision deferred from 4/20/04, 5/25/04, and 7/27/04).

Chairman DiGiulian noted that the Board had received a request for a deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, said the letter asked that the application be deferred until the Board was able to make a decision.

Ms. Gibb asked whether the applicant was waiting for the proposed Zoning Ordinance amendment. Ms. Langdon replied affirmatively.

Ms. Gibb asked whether the subject application would be within the scope of the proposed amendment. Ms. Langdon said the fence could be addressed as a special permit under the proposed amendment, but the balance of the application would remain a variance.

Ms. Gibb asked whether the problem with the shed was discovered when the applicant applied for the fence. Ms. Langdon said there had been two existing sheds for many years in the front yard, a new shed was built in the other corner of the front yard, and a complaint was received regarding the new shed.

Ms. Gibb said that if the Board deferred the application, the applicant would be able to maintain the alleged violation, and there was no prospect for relief. She asked whether it was going to be the Board's policy to defer. Mr. Ribble said the Board could make a decision, but the applicant apparently thought the Board could not or had decided not to make a decision.

Mr. Ribble moved to defer VC 2004-PR-019 to February 15, 2005, at 9:00 a.m., to determine what the applicant had been referring to in her letter. Ms. Gibb seconded the motion. She said some people were under the impression that the Board could not hear them, and an applicant the prior week had a letter from Chairman Connolly stating that. Ms. Langdon said staff had been making it very clear to applicants that was not the case.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit building addition, site modifications and increase in land area. Located at 9105, 9111, 9115 and 9117 Backlick Rd. on approx. 1.35 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B, 27 and 27A. (Admin. moved from 5/18/04, 7/6/04, and 9/14/04 at appl. req.) (Deferred indefinitely from 5/25/04 and 11/80/04)

Chairman DiGiulian noted that SPA 87-V-070 had been administratively moved to March 1, 2005, at 9:00.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. BECKY MARTIN, VC 2004-PR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 2512 Swift Run St. on approx. 10,684 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 19. (Decision deferred from 7/27/04 at appl. req.)

Chairman DiGiulian noted that the Board had received a decision deferral request regarding VC 2004-PR-083.

Mr. Hart moved to defer VC 2004-PR-083 to April 12, 2005, at 9:00 a.m., at the applicant's request. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. EDWARD AND GINA BAKER, VCA 74-S-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 74-S-143 to permit construction of addition 3.4 ft. with eave 2.8 ft. from side lot line such that side yards total 13.9 ft. Located at 7010 Spaniel Rd. on approx. 14,856 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 68-4 ((2))135. (Concurrent with SP 2004-SP-029). (Decision deferred from 7/27/04)

Chairman DiGiulian noted that the Board had received a decision deferral request regarding VCA 74-S-143.

Mr. Ribble moved to defer VCA 74-S-143 to April 12, 2005, at 9:00 a.m., at the applicants' request. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:00 A.M. SIR VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 Braddock Rd. on approx. 6.01 of land zoned R-C and WS. Springfield District. Tax Map 65-2 ((1)) 24. (Admin. moved from 11/30/04 and 1/11/05 at appl. req.)

Chairman DiGiulian noted that SP 2004-SP-052 had been administratively moved to March 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:30 A.M. DIDIER VANTHEMSCHE, A 2004-DR-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory structure, which does not comply with the minimum yard requirements for the R-E District, without a valid Building Permit and has installed two entrance gates, which exceed the allowable height regulations, in violation of the Zoning Ordinance provisions. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22 C. (Deferred from 8/10/04 for notices) (Admin. moved from 11/9/04 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-016 had been administratively moved to May 3, 2005, at 9:30 a.m., at the appellant's request.

Ms. Gibb asked about the status of the appeal. Margaret Stahman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant had a pool house that was located within the minimum required yard as well as pool decking that covered more than 30 percent of the rear yard. The appellant had submitted a special permit application for an error in building location for the pool house and had agreed to remove the portion of the deck that exceeded 30 percent coverage. The appellant had also agreed to reduce the height of the entrance gates, but as of the most recent inspection, they had not yet been reduced. Ms. Stahman said the reduction in height would occur in conjunction with the special permit.

//

~ ~ ~ February 8, 2005, Scheduled case of:

9:30 A.M. BROOKS H. LOWERY, A 2004-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 60-2 ((15)) 148 is in violation of Zoning Ordinance provisions. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 148. (Decision deferred from 11/9/04)

Chairman DiGiulian noted that the Board had received a decision deferral request regarding A 2004-MA-023.

Mr. Ribble moved to defer A 2004-MA-023 to May 3, 2005, at 9:30 a.m., at the appellant's request. Ms. Gibb seconded the motion.

Mr. Hart said the rationale in the memorandum dated January 31, 2005, from Jayne Collins, Zoning Administration Division, contemplated that the Zoning Ordinance amendment would go forward with the Board of Supervisors at their meeting the prior day, but it had not. He said if that was the reason for the deferral request, the requested date of May 8, 2005, would be too soon, and he asked whether staff had a view regarding the date. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff preferred to go forward with the decision on the appeal because it was staff's position that sufficient time had passed given that the notice of violation had been sent July 19, 2003, and to wait for an amendment that may or may not be adopted was not what should be done when there was a violation.

Mr. Hart stated that Ms. Collin's memorandum said staff supported the deferral request. Ms. Stehman said staff had supported the deferral request when it was thought the amendment was going forward, which would have given the appellant time to get the special permit approved or on the road to being approved prior to May 3, 2005.

Brocks Lowery, 3212 Ccfer Road, Falls Church, Virginia, came forward to speak. He said he wanted to get his deferral extended until a decision was made regarding the amendment. Mr. Lowery said there had been two other violations that had been taken care of, a shed that was taken down and a swing that was moved, but he wanted to maintain the height of the fence, which was less than six feet, in the front yard.

Mr. Hart moved to defer decision on A 2004-MA-023 to July 12, 2005, at 9:30 a.m., at the appellant's request. Ms. Oibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ February 8, 2005, Scheduled oaso of:

9:30 A.M. SYED ARID HUSSAIN, A 2004-SU-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has graded the side and rear yards of the property in an area in excess of 2,500 sq. ft. including the addition of fill that exceeds 18 in. in depth without an approved grading plan in violation of Zoning Ordinanca provisions. Located at 13591 Cobra Dr. on approx. 22,135 sq. ft. of land zoned R-3. Sully Distriot. Tax Map 25-3 ((4)) 922. (Decision deferred from 12/7/04)

Jane Collins, Zoning Administration Division, stated that the appellant had found an engineer to draw the grading plan and had submitted a letter the morning of the hearing which withdrew the appeal.

Chairman DiGiulian asked whether a motion was required. Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that a motion was not required.

//

~ ~ ~ February 8, 2005, After Agenda Item:

Approval of December 16, 2003, and April 13, 2004 Minutes

Mr. Ribble moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ February 8, 2005, After Agenda Item:

Approval of February 1, 2005 Resolutions

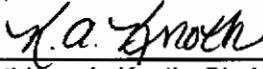
Mr. Ribble moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Beard abstained from the vote. Mr. Pammel and Mr. Hammack were not present for the vote.

//

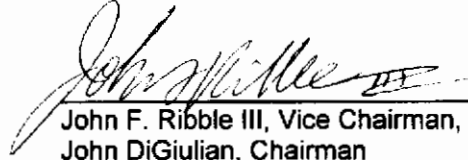
As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: March 24, 2009



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 15, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m.

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Lee, Heisler, and Fisenne cases, and administrative matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

The meeting recessed at 9:01 a.m. and reconvened at 9:34 a.m.

Mr. Hart moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Hart then moved that Brian McCormack, Esquire, be authorized to take the actions that were discussed in the Closed Session. Mr. Hammack and Mr. Ribble seconded the motion, which carried by a 4-0 vote. Ms. Gibb and Mr. Beard were not present for the vote.

//

Chairman DiGiulian called for the first scheduled case.

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. JOHN F. KELLY, VC 2004-MV-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6.5 ft. with eave 5.5 ft., deck 4.0 ft. and chimney 4.5 ft. with eave 3.5 ft. from side lot line and porch 26.8 ft. with stairs 21.8 ft. from front lot line. Located at 6423 Thirteenth St. on approx. 14,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((3)) (27) 1. (Decision deferred from 6/29/04, 7/13/04, and 1/18/05)

Susan Langdon, Chief, Special Permit and Variance Branch, said staff was unable to reach Mr. Kelly and had not received a letter requesting withdrawal. Staff had determined the applicant was permitted to construct the house requested, but was not positive what the applicant wanted.

Chairman DiGiulian asked if there was anyone present to present the case, and receiving no response, recognized Mr. Hammack for a motion.

Mr. Hammack moved to indefinitely defer VC 2004-MV-054. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. ARMANDO AND ELENA MESCHIERI, VC 2004-DR-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.8 ft. with eave 2.6 ft. from side lot line such that side yards total 20.0 ft. Located at 1311 Titania La. on approx. 18,452 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 139. (Deferred from 8/3/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-085 had been administratively moved to April 12, 2005, at 9:00 a.m.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. BARBARA ELKIN & PAUL KLEIN, VC 2004-MV-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. with eave 7.0 ft. from side lot line. Located at 6404 Tenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 20. (Concurrent with SP 2004-MV-038). (Decision deferred from 8/10/04)

Chairman DiGiulian noted that there was a request to indefinitely defer VC 2004-MV-096.

Mr. Pammel moved to indefinitely defer VC 2004-MV-096. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. AMY LOUISE LA CIVITA, VC 2004-BR-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stairs 3.3 ft. from side lot line. Located at 10212 Glen Chase Ct. on approx. 9,718 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-2 ((27)) 8. (Decision deferred to 2/15/05 at appl. req.)

Susan Langdon, Chief, Special Permit and Variance Branch, said that the applicant had verbally stated that she wished to withdraw her variance application, and staff had requested it in writing but to date, the letter was not received.

Mr. Hammack moved to defer the decision on VC 2004-BR-090 to March 15, 2005, at 9:00 a.m., with the application to be administratively withdrawn if the letter requesting withdrawal was not received by that date. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. GORDON L. BOSCH, VC 2004-BR-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. with eave 17.0 ft from the front lot line of a corner lot. Located at 4211 Willow Woods Dr. on approx. 13,149 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 297. (Decision deferred from 8/10/04)

Chairman DiGiulian noted that there was a request to indefinitely defer VC 2004-BR-094.

Mr. Hammack moved to indefinitely defer VC 2004-BR-094. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. MARTHA L. HARRIS, SP 2004-LE-064 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2820 School St. on approx. 9,797 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 57.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William M. Baskin Jr., Esquire, agent for the applicant, 301 Park Avenue, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested to permit a home professional office for a private mental health practice that would consist of a single practitioner operating between the hours of 11:00 a.m. and 8:00 p.m., Monday through Friday. The driveway would be widened to accommodate four vehicles, two for the dwelling and two for the home professional office. The original plat depicted a single-width driveway extending from School Street to the front of the dwelling; however, to provide sufficient parking for the dwelling and clients, staff requested that

the driveway be widened and extended to the street in order to provide two additional parking spaces. A revised plat dated February 15, 2005, depicting the driveway's extension and the area for two additional parking spaces was submitted that morning, and staff recommended approval of the special permit application subject to the development conditions and the plat dated February 15th.

Ms. Stanfield clarified that the driveway's extension was a 0.1% difference and that it complied with the minimum coverage requirement.

Mr. Baskin said they agreed with staff's analysis and concurred with the proposed development conditions. In response to Mr. Hammack's question concerning Ms. Harris having evening clients, he explained that there were to be only a few evening appointments in an effort to accommodate their work schedules. He said there were no group sessions, but only individual, one-on-one, visits.

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

Mr. Pammel moved to approve SP 2004-LE-064 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTHA L. HARRIS, SP 2004-LE-064 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 2820 School St. on approx. 9,797 sq. ft. of land zoned R-4. Lee District. Tax Map 83-3 ((4)) 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 February 15, 2005; and

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

- 1. The applicant is the owner of the land.
- 2. The applicant has met the requirements for a special permit approval.

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

THAT the applicant has presented testimony indiciting compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-907 of the Zoning Ordinance.

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

- 1. This approval is granted to the applicants only, Martha L. Harris, and is not transferable without further action of this Board, and is for the location indicated on the application, 2820 School Street (9,797 square feet) and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by John F. Veatch, dated August 31, 2004, as revised by Lewis and Associates Ltd., through February 15, 2005, and approved with this applicetion, as qualified by these development conditions.
- 3. A cepy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted

pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The special permit is for a home professional office, consisting of a mental health practica.
6. There shall be no more than one client on-site at any one time and the maximum number of clients per week shall be limited to thirty (30).
7. The hours of operation of the home professional office shall be a maximum of 11:00 a.m. to 8:00 p.m., Monday through Friday. No weekend hours shall be permitted.
8. The home professional office shall consist of one practitioner, the applicant, only. No other employees shall be permitted.
9. The home professional office shall not exceed 702 square feet.
10. The dwelling that contains the home professional office shall also be the primary residence of the applicant.
11. Prior to issuance of a Non-Residential Use Permit (Non-RUP) for the home professional office, the existing driveway shall be expanded, as shown on the plat, to provided two (2) additional parking spaces, and the additional landscaping shall be planted.
12. Parking shall be limited to (2) spaces for the dwelling and the (2) spaces for the home professional office. All parking shall be on-site as shown on the special permit plat.
13. There shall be no signs associated with the home professional office.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 2, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. FRANKLIN P. & MARGARET S. GIBSON, VC 2004-DR-120

Chairman DiGiulian noted that VC 2004-DR-120 had been administratively moved to March 22, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, VCA 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 99-P-101 to permit a change in development conditions. Located at 10408 Marbury Rd. and 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence

District. Tax Map 37-4 ((1)) 17H and 17I. (Reconsideration granted on 12/21/04)

Chairman DiGiulian noted that VCA 99-P-101 had been administratively moved to March 22, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1885 and 1889 Virginia Ave. on approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44. (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, and 11/30/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-081 had been administratively moved to March 8, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-081). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, and 11/30/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-DR-027 had been administratively moved to March 8, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF VIRGINIA PRESBYTERIAN CHURCH, SPA 90-L-050-02 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 90-L-050 previously approved for church and related facilities to permit building addition and site modifications. Located at 6021 Franconia Rd. on approx. 2.32 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((2)) 5A.

Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert G. Kohari, an elder with the church and the applicant's representative, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of an amendment to an existing special permit for a church to permit a building addition and site modifications. The existing church consisted of 5,920 square feet of gross floor area. The proposed addition consisted of 3,900 square feet, of which 1,950 was considered cellar space. The gross floor area for the site would increase to 7,870 square feet resulting in an FAR of 0.149 for the R-1 portion of the site. The additional space would be used for classrooms and meeting space. The proposed site modifications included changes to the barrier and transitional screening required by the existing special permit approval. He noted that the applicant had submitted revised elevations for the building addition, and these revisions were referenced in the revised development conditions dated February 15, 2005, distributed to the Board that morning. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval of SPA 90-L-050-2, subject to the approval of the revised proposed development conditions dated February 15, 2005.

In response to Mr. Hart's question concerning staff's determination on whether the site was in harmony with the residential neighborhood, Mr. Sherman said that with the approval of the development conditions

requiring the additional transitional screening, staff's determination was that the application was in harmony with the residential surroundings. The building was basically a one-story building, had a flat roof, appeared like a box, and although a portion of the site was steeply graded, which made the structure appear somewhat taller, it was in character with the residential neighborhood.

Mr. Kohari said the structure would be a steel modular building placed on top of a cement foundation. He noted that their architect, Jae Cha, the engineer, Miguel Mora, and Kevin Mayer, the modular designer, were present to answer specific questions concerning the building and construction materials. He presented a scale model of the project. The addition would not increase the number of church attendees but only place students in an area with more room in which to operate. Mr. Kohari stated that there were no transportation or environmental issues, and if requested they were prepared to add additional transitional screening to minimize impact.

Discussion followed among the Board members, the applicant's architect, Ms. Cha, and Ms. Langdon, Chief, Special Permit and Variance Branch, regarding the color, a soft off-white tone, slated for the addition so as to blend with the church, the surroundings and to minimize impact.

Mr. Hart commented that he found the term off-white unclear.

Discussion followed among Board members, Mr. Kohari, Mr. Mora, Mr. Sherman and Ms. Langdon, concerning the board-on-board and split rail fences and the screening issue. Ms. Langdon noted that Conditions 11 and 12 addressed the issues, and it was staff's intention that the 25-foot area between the building and the property line would have transitional screening as per Condition 11. She pointed out that what was depicted on the model was not what staff intended or what the conditions required.

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

Mr. Hart commented that he wanted to review the site and surrounding property. He moved to defer the decision on SPA 90-L-050-02 to March 1, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 13.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.) (Continued from 2/1/05)

Chairman DiGiulian noted that this case was continued from February 1, 2005.

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, agent for the applicant, said she was present to respond to the questions raised by the Board at the February 1, 2005, meeting, noting that her February 12th and 14th, 2005, letters addressed the questions. She clarified that the applicant was required to obtain an RPA exception as requested by the Department of Public Works and Environmental Services (DPWES) staff, and after DPWES received a wetland study, a civil engineer survey, and the area mappings, it would be determined whether or not a public hearing was required before the Wetlands Review Board or if it could be administratively reviewed by DPWES staff. She pointed out the attachment to her February 12th submission, which showed the setbacks required for the proposed and reserved septic field, the steep slopes and the buildable area. Ms. Kelsey mentioned the emotional testimony her client presented during the February 1st public hearing. She noted that her February 14th letter explained the circumstances of an offer letter received by Ms. Weigel that left a number to call and then quoted a sum amount for her property which was misleading, inaccurate, served to confuse her client, and was not a concrete offer. Ms. Kelsey said that Ms. Weigel's house was severely deteriorated and a structural engineer determined it unable to be renovated.

Bill Sherman, Staff Coordinator, noted that the Zoning Administration Division indicated that the applicant could not rebuild on the existing footprint, not even if done on the existing foundation, without the approval of a variance.

Ms. Kelsey said that both an appraiser and supervisor with the County Real Estate Assessment Department advised her that if Ms. Weigel's house could not be rebuilt and continued to deteriorate rendering it uninhabitable, the \$322,000 assessed value of the land in 2004 would drop to \$25,000 to \$28,000, like the other vacant lots in the area. In response to Mr. Hammack's question of whether Ms. Weigel could repair or make improvements to her property, Ms. Kelsey referenced a letter dated January 31, 2005, submitted at the public hearing from a structural engineer, John A. Shuster, Geofreeze Engineering firm, who assessed that it was not possible to accurately predict how long a period of time may elapse before the ongoing deterioration rendered the home unsafe, that the sub-floor would not support the Code's mandated building loads, and the home was too poorly constructed and too deteriorated to permit renovation.

Mr. Hart asked staff if the house was rendered inhabitable from a damaging storm, whether Ms. Weigel could apply for a special exception, as had several other home owners in the new Alexandria area.

Susan Langdon, Chief, Special Permit and Variance Branch, said it was assumed Ms. Weigel could, if the storm scenario occurred, but stated that was not currently the case. She explained that it was not illegal to repair the existing house, but if the house came down and the foundation was no longer there, they could not build another house in the same spot without a variance. Ms. Langdon said that Ms. Kelsey's testimony clarified that the house was in such bad shape, it could not be repaired on the existing foundation.

Mr. Sherman said that with very extensive repairs to a house in a non-conforming situation, it would have to be evaluated on a case-by-case basis to determine whether or not it was permissible, and after consulting with Zoning Administration Division, with the Weigel's recordation, the applicant would not be allowed to rebuild the house; however, a small addition at the rear of the house, if it met the minimum yard requirements, was allowed.

Mr. Hart commented that one problem presented by the Hickerson case was the court's discussion of the appropriate timeframe one looked at when determining when one had all beneficial reasonable use of their property interfered with, was that currently, as in right now, the past, or looking at sometime in the future. The court pointed out that Mr. Hickerson had use of his old house since 1964, and a variance was denied because it was determined that he had had use, 40 years in that case, in the past.

Ms. Kelsey responded that Ms. Weigel indeed had 13 years of past use; however, the absence of a variance would soon preclude her from having any reasonable use of the property. She pointed out that the Hickerson case was an illegal lot issue which prohibited Mr. Hickerson from having any house on the lot, and the variance he had requested was for a subdivision.

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

Mr. Pammel stated that the case was an unusual situation that was certainly not considered in the Cochran case. He said he was concerned that the lot was 15,000 square feet, an R-2 zoning, but the parcel's zoning was R-E, which was a minimum of two acres, and grandfathered as a nonconforming lot. He said he believed there was nothing anticipated that would permit a landowner from having just, rightful property use for as long as they chose, as long as it met Code standards and building requirements. He noted that the structure's deterioration was adequately proven by Ms. Kelsey's testimony, and he believed the requirements were met to rebuild because in the foreseeable future, Ms. Weigel would not be able to reside in the house. Mr. Pammel said he did not believe it was the intent of the Virginia General Assembly to deprive a landowner to live on his/her property and its rightful use. Mr. Pammel moved to approve VC 2004-MV-112. He clarified that in rebuilding, they must adhere to the front yard setbacks.

Ms. Gibb seconded the motion. She said she wanted to incorporate into the record Ms. Kelsey's February 12th and 14th letters, as well as her testimony that day regarding the distinguishing differences in the court cases.

Chairman DiGiulian called for discussion.

Mr. Hart said he could not conclude under the appropriate Ordinance section that the requested house size was the minimum variance that would afford relief. He noted that the courts had instructed that historical use of a property over a period of time was one of the circumstances that can negate interference with all reasonable beneficial use, and he believed in Ms. Weigel's case, there was reasonable use over time and the use was still continuing. He said he thought that the use of an occupied house in whatever condition could be construed as reasonable, beneficial use that was continuing, at least for the present. He said he could support a deferral, and he believed this situation was one that the Board of Supervisors needed to sort

out, where relief could be allowed from Ordinance requirements such as this, and in what fashion. Mr. Hart concluded that the courts were clear in their determination that variances were only to be granted sparingly, and the Weigel case did not meet the criteria.

Chairman DiGiulian called for a vote on Mr. Pammel's motion to approve. The motion failed by a vote of 2-2-2. Chairman DiGiulian and Mr. Hart voted against the motion. Mr. Ribble and Mr. Beard abstained from the vote. Mr. Hammack was not present for the vote.

Mr. Ribble asked that the Board reconsider deferring the decision because Mr. Hammack was interested in the case but had to leave. Mr. Ribble then moved to reconsider and defer decision on VC 2004-MV-112 to March 22, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Ms. Kelsey stated that the applicant agreed with the deferral of one month so as to have the opportunity to review the house design and feasible reductions.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 38,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2908 Westcott Street on approx. 11,627 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 68. (Decision deferred from 4/20/04, 5/25/04, 7/27/04, and 2/8/05).

Thomas Torok, 2908 Westcott Street, Falls Church, Virginia, asked for a further deferral. He explained that there were three sheds, two of which had been there for many years and the third just recently placed. Of the two complaints, both neighbors had since agreed that there was no problem with the sheds' locations. An updated plat showed the new locations, as well as Leland Cypross' planted for screening. He noted that his property had no back yard because it was a corner lot. He intended to speak to staff and understood an amendment was to be phased in at a later date that would relax the Board's ability to render favorable decisions on variances. Mr. Torok requested a deferral until that amendment was implemented.

Mr. Hart explained that the Board had been deferring cases at the request of the applicant for those situations that the authorized Zoning Ordinance amendment would permit. He noted that the variance for the fences was within the scope of what the Board had authorized but there had not been, nor would be, a provision for sheds in front yards. He requested that staff clarify whether sheds were to be considered in the Phase II of the Ordinance amendment.

Susan Langdon, Chief, Special Permit and Variance Branch, said sheds had not been discussed particularly in the Phase II portion; however, she said things were continually changing, but as of the present, sheds were not being considered.

To clarify his deferral request, Mr. Torok said he hoped to have an indefinite deferral.

Bill Sherman, Staff Coordinator, informed the Board that there currently was a violation assigned to the case. He said an indefinite deferral was not appropriate, but perhaps a deferral to some time this summer would allow time to resolve the issues.

Mr. Hart moved to defer decision on VC 2004-PR-019, to July 19, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 8-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:30 A.M. V. RAILAN, A 2004-DR-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a masonry wall in excess of four feet in height, which is located in the front yard of a property located at Tax Map 21-4 ((1)) 55 and was erected without a Building Permit, is in violation of Zoning Ordinance provisions. Located at 6531 Georgetown Pi. on

apprcx. 1.5 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 55.

Chairman DiGiulian noted that A 2004-DR-043 had been withdrawn.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales offica in a model home without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 13534 Lavender Mist La. on apprcx. 2,546 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 128.

Chairman DiGiulian noted that A 2004-SU-044 had been administratively moved to April 26, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 15, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales office in a model home without a valid Temporary Special Permit in violaticn of Zoning Ordinance provisions. Located at 13530 Lavender Mist La. on approx. 1,938 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 65.

Chairman DiGiulian noted that A 2004-SU-045 had been administratively moved to April 26, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ February 15, 2005, After Agenda Item:

Approval of May 25, 2004, and November 9, 2004 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ February 15, 2005, After Agenda Item:

Request for Additional Time
Trustees of Capital Worship Center, SP 02-Y-001

Mr. Pammel moved to approve the 24 months requested for Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was nct present for the vote. The new expiration date was January 10, 2007.

//

Referencing an After Agenda Information Item concerning Batal Builders, Ms. Gibb asked if there was any recurre if a builder did not honor agreements such as tree save. Susan Langdon, Chief, Special Permit and Variance Branch, explained that the referenced case was a rezoning application with limits of clearing and grading that showed areas of tree save. She noted that the builder had cver-cleared, and Barbara A. Bryon, the Director of Zoning Evaluation, was working on the case with an interpretation ongoing. Ms. Langdon said she believed the builder would be required to replant and/or do a Final Development Plan Amendment. She stated that the case was not one that nrmally came before the Board of Zoning Appeals, but the citizen's letter was directed to the BZA Chairman which was why it was included in the Bcard's package.

//

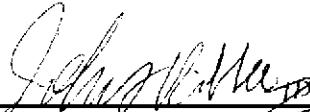
As there was no other business to come before the Board, the meeting was adjourned at 11:54 a.m.

Minutes by: Paula A. McFarland

Approved on: April 15, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 1, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; and James D. Pammel. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF PILGRIM COMMUNITY CHURCH, VC 2004-BR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 15.0 ft. with stoop 11.0 ft. from front lot line. Located at 4925 Twinbrook Rd. on approx. 5.16 AC. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A (Concurrent with SPA 81-A-002-04). (Decision deferred from 3/16/04, 5/25/04, 7/13/04, and 10/5/04).

Chairman DiGiulian noted that the Board had received a request for a decision deferral regarding VC 2004-BR-008 until the end of July of 2005.

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the request had been discussed with the applicant, and it was one of the cases that might be helped by the proposed Zoning Ordinance amendment. She said the applicant had agreed to have the application indefinitely deferred if the Board agreed.

Mr. Ribble moved to indefinitely defer decision on VC 2004-BR-008. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH, SP 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit site modifications and trailers to remain. Located at 8616 Pohick Rd. on approx. 3.98 ac. Of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (in association with SE 2004-MV-001) (Admin. moved from 6/1/04 and 6/29/04 at appl. req.) (Deferred indefinitely from 10/26/04)

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

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Ko, 6412 Whippany Way, Burke, Virginia, replied that it was.

Aaron Shriber, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to bring an existing place of worship under a special permit approval and to permit site modifications and trailers to remain. He advised the Board that the application was initially filed as a special permit amendment concurrent with a special exception request to construct a wireless telecommunications facility on the subject property, and during staff's analysis of the cases, it was determined that a Non-RUP was never obtained for the church use; therefore, the original special permit had expired. The application was amended to the special permit request currently before the Board to permit the existing church to establish under special permit and to permit the construction of a wireless telecommunications facility to be constructed on the property. He reported that the Board of Supervisors had approved the special exception request for the wireless telecommunications facility on September 13, 2004. No further building additions or site modifications were proposed by the special permit application. The applicant requested a modification of the transitional screening and barrier requirements along all property boundaries, which were addressed in the proposed development conditions. Mr. Shriber said staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the adoption of the proposed development conditions.

Mr. Ko presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the church had been previously approved but they had not received the occupation permit and therefore the approval had lapsed.

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

Mr. Hart moved to approve SP 2004-MV-025 for the reasons stated in the Reselution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CALVARY KOREAN BAPTIST CHURCH, SP 2004-MV-025 Appl. under Sect(s). 3-103 of the Zoning Ordinance for an existing church to permit site modifications and trailers to remain. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 21. (In association with SE 2004-MV-001) (Admin. moved from 6/1/04 and 6/29/04 at appl. req.) (Deferred indefinitely from 10/26/04). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and Ccounty Codes and with the by-laws of 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 1, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony showing compliance with the applicable standards.
3. But for the failure to get a Non-RUP, there would be no issue.
4. The Board of Supervisors has approved the telecommunications facility.
5. The Board has a staff recommendation of approval.

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

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

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

1. This approval is granted to the applicant, Trustees of the Calvary Korean Baptist Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 8616 Pohick Road (3.98 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the Special Permit Plat (SP Plat) prepared by Clark Nexsen June 4, 2004 with revisions through October 8, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. There shall be a maximum of 70 seats in the sanctuary of the church.
6. Parking shall be provided as shown on the SP Plat. All parking shall be on-site.
7. All signs, existing and proposed, shall be in conformance with Article 12 of the Zoning Ordinance.
8. Within 90 days of approval of this Special Permit, the applicant shall apply for and obtain approval of a Non-RUP for the use of the church and trailers on the subject property.
9. Prior to issuance of the Non-RUP, the applicant shall install a single row of evergreen plantings along the southern and western boundaries of the parking area to shield automobile headlight glare from impacting Pohick Road and the property identified as Tax Map 98-1 ((1)) 20. These evergreen plantings shall be installed subject to the approval by the Urban Forest Management Branch.
10. Transitional screening shall be modified as shown on the SP Plat and as described in Condition 8.
11. Barriers shall be waived in favor of that shown on the SP Plat.
12. Any new lighting, or replacement lighting installed on the subject property shall be provided in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
13. The limits of clearing and grading shall be no greater than shown on the Special Permit Plat.
14. The trailers shall be approved for a period of five (5) years from the final approval date of this special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this Special Permit shall not be valid until this has been accomplished.

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

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. ROBERT AND CYNTHIA MCELROY, VC 2004-MA-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.8 ft. with eave 17.1 ft. from the rear lot line, fence greater than 7.0 ft. in height to remain in the side and rear yards and to permit minimum rear yard coverage greater than 30 percent. Located at 3911 Sandalwood Ct. on approx. 15,893 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-3 ((18)) 26. (Admin. moved from 6/15/04 and 9/28/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MA-053 had been administratively moved to April 19, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. CARL J. UNTERKOFER, SP 2004-SU-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with VC 2004-SU-041). (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 at appl. req.)

9:00 A.M. CARL J. UNTERKOFER, VC 2004-SU-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. with eave 3.1 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with SP 2004-SU-012). (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-SU-012 and VC 2004-SU-041 had been administratively moved to April 26, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. EKKLESIA USA, SPA 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-Y-050 previously approved for a church to permit a change in permittee. Located at the S.W. quadrant of the intersection of Pleasant Valley Rd. and Blue Spring Dr. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) 12A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Farrell, the applicant's agent, no address given, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 00-Y-050, previously approved for a church and related facilities, to permit a change in permittee from Grace Covenant Church, Inc., to Ekklesia USA. No other changes to the site or the development conditions were proposed other than to Development Condition 1. The applicant requested that Development Condition 1 be changed so the approval ran with the land, and staff did not object to the language, but had included a proposed development condition similar to the usual language used granting approval to the applicant only. As the only requested change to the previously approved special permit was to change the permittee, staff had no objection.

Mr. Farrell presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the only issue to address was the nature of the first development condition, and the only question was in regard to tying a special permit to the individual permittee. He stated that under the law of the Commonwealth of Virginia and a majority of other states, special permits ran with the land. He presented a copy of a Virginia Supreme Court case and stated that land use laws were intended to regulate the use of the land and not who used it or how it was zoned. He said that previously, when the Board was able to administratively allow a change in permittee, it was not a problem; however, at the current time an applicant had to go through the special permit process, which was expensive and time consuming. He said the church was ready to go forward and file a site plan but could not do so until the change in permittee occurred. Mr. Farrell said the only justification he had heard for the practice of having the special permit run with the permittee was that typically when someone sold a property subject to a special permit use, there were changes made to the use. He stated that the issue was already covered by the language in the Zoning Ordinance, and if the new owner was able to operate in substantial conformance with the prior special permit development conditions, then there was no change in the land use. He said that if the new owner was proposing to make a change in the operation of the special permit use that was not in substantial conformance with the existing development conditions, they would have to apply for a special permit amendment regardless of who owned the property. Mr. Farrell said it was his opinion that the only issue before the Board was whether it was going to conform to the law of the rest of the Commonwealth of Virginia, and stop limiting special permits to the particular permittee and allow the special permit to run with the land. He stated that a number of members of the congregation were present, and asked them to stand in support of the application.

Mr. Hart asked whether the language in the development conditions that referred to the applicant would need to be changed to read "their successors in interest" if the reference to "the applicant only" in Development Condition 1 was removed. Susan Langdon, Chief, Special Permit and Variance Branch, said she believed Mr. Hart was correct, and the language suggested by Mr. Hart could be added if the Board desired.

Mr. Hart asked whether the Board had ever done this before. Ms. Langdon replied that in her experience with the Board, the condition had always been to the applicant only, and it was included that way at the direction of the Board.

Mr. Farrell stated that when dealing with the issue of special exceptions or proffers, the applicant understood that would include any successor in interest, and that was consistently how the development conditions or proffers had been interpreted. He said he would agree to have a sentence added that stated that wherever the word applicant appeared, it meant owner, but in his experience, the term "applicant" had always meant whoever owned or attempted to develop a property.

Mr. Hart asked whether there was a time factor involved such that if the special permit had not been implemented, it would be appropriate to hold a public hearing and let the neighbors speak to any changes that may have occurred. Mr. Farrell replied that under Sect. 2-307 of the Zoning Ordinance, as long as it was within the 30-month timeframe to begin construction, it was a vested right.

Mr. Hart asked whether the subject application was within the 30 months. Mr. Farrell replied that the Board had granted an extension. Mr. Sherman stated that the special permit was approved on May 16, 2000, and an additional 30 months was granted on December 16, 2003, with the current expiration date of May 16, 2006.

Mr. Beard asked for clarification regarding the references to limited occasions and special events in the operating hours clause in the statement of justification. Mr. Farrell replied that there was an outside picnic pavilion that would enable people to have social occasions outside when it was seasonally appropriate as part of the original approval of the property.

Mr. Beard asked whether the application would need to be re-advertised in light of the proposed changes in language regarding successors in interest or whether staff was comfortable with an approval of the application as it was presented before the Board. Ms. Langdon replied that staff was comfortable as it was.

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

Mr. Pammel moved to defer decision on SPA 00-Y-050 to April 5, 2005, at 9:00 a.m., so the Board could review its procedures because what the applicant requested was not consistent with the Board's current procedures. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit a change in permittee, building addition, site modifications, change in development conditions and increase in land area. Located at 9105, 9111, 9115 and 9117 Backlick Rd. on approx. 1.35 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B, 27 and 27A. (Admin. moved from 5/16/04, 7/6/04, and 9/14/04 at appl. req.) (Deferred indefinitely from 5/25/04 and 11/30/04). (Admin. moved from 2/6/05).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nam Ngo, Buddhist Association of America, the applicant's agent, no address given, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 87-V-070, previously approved for a place of worship and related facilities, to permit a change in permittee from Frank N. Vinh to the Buddhist Association of America; the addition of land area consisting of Lots 26B, 27 and 27A; the demolition of the existing Pagoda on Lot 26A and the existing single-family dwelling on Lot 26B, which total 3,933 square feet; the construction

of a new Pagoda on Lots 26A and 26B consisting of 4,470 square feet; an increase in the number of seats permitted in the main worship area from 49 to 100; site modifications including the removal of the existing parking lot and the construction of a new parking lot with 31 spaces, resulting in a net increase of 2 parking spaces on the site; and the addition of landscaping and screening along all lot lines. The residential structures on Lots 27 and 27A would be used as residences for church employees. Staff recommended approval of the application subject to the proposed development conditions in Appendix 1 of the staff report.

Mr. Ngo presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the existing structure was a one-story single-family house that had been converted into a Pagoda, accommodating 29 people; however, that number had doubled. He stated that the existing Pagoda was showing signs of deterioration. The new Pagoda would promote peace, harmony and would contribute not only to the well being of the Vietnamese community but also to the community at large. Mr. Ngo said the new facility would be compatible with the surrounding area and requested approval from the Board.

In response to Mr. Beard's question, Mr. Ngo said that the applicant had applied for a waiver of the underground detention facility. Mr. Sherman stated that staff was concerned with underground detention facilities for small places of worship such as this because of the maintenance requirements they required. He said that it was likely that in this situation, because the net increase in impervious surface would be small, they would be granted a waiver or some modification that would allow them not to have to put in an underground facility as shown on the plat. He said a development condition had been included that would allow the applicant to install a rain garden or some other type of Best Management Practices facility to meet those requirements without returning for a special permit amendment. Mr. Sherman said it was staff's opinion that that issue had been addressed.

Mr. Hart referred to the Planning Commission's approvals of underground detention facilities and indicated that he thought they required that an escrow account be established for maintenance, to include periodic renewals. He stated that the development condition did not specify that the applicant had to maintain the facility and pay for needed services and asked staff if that should be added to the conditions. Mr. Sherman stated that that language had not been included because there was no anticipation that the requirement would be waived. He said it was his understanding that to get an approved site plan with an underground detention facility the applicant would have to enter into a maintenance agreement with the Department of Public Works and Environmental Services.

Mr. Hart asked Mr. Ngo about Development Condition 5 which would limit the seating capacity in the main area of worship to 100 people and to his statement of justification which indicated that there would be approximately 100 patrons. He asked if there were events held by the members that would be larger than that and how it would work. Mr. Ngo said that once or twice a year they would go over the 100 participants but on those occasions they would request a permit for an outdoor activity. He said that when they performed weddings or had special events, they split them up into two or three hour sections. In reply to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, stated that the conditions limited the seats and parking to 100 but it did not necessarily restrict them if they had something going on site because there were no restrictions as to how many people could be in the social hall. She said there were temporary permits that could be obtained for outdoor festivals and some uses did apply for those approvals. Ms. Langdon stated that in order to obtain a temporary permit the applicant had to address parking.

Chairman DiGiulian called for speakers.

The following speakers came forward in support of the application. Toa Do, 4710 Bristow Drive, Annandale, Virginia; Huy N. Bui, 7406 Add Drive, Falls Church, Virginia; and Jeff Chateria (phonetic), 1369 Court Place, Woodbridge, Virginia. Their main points were that there were 70,000 Vietnamese Americans in the metropolitan area and more than half of them lived in Fairfax County; there were only two Pagodas to support the population; insofar as they knew there had never been any complaints against them; the Pagoda was not only a place of worship but one of social, educational and charitable activities; worshipers came from the surrounding metropolitan area and North Carolina; the architecture and landscaping enhancements would enhance the beauty of the community; property values would increase; and, parking would be more efficient. They requested that the Board approve the application.

The following speakers came forward in opposition to the application. Ann Blount, 9119 Backlick Road, Ft. Belvoir, Virginia; and Everett Wilson, 9119 Backliok Road, Ft. Belvoir, Virginia. Their main points were that 31 additional parking spaces would not support the number of people attending services; worshipers were

not respectful of the neighbors; yard debris was not disposed of properly; traffic was impeded when activities were in progress; and, the use of loud audio equipment was unacceptable. They requested that the application be denied.

In answer to Mr. Ribble's question, Ms. Blount stated that the activities she had described happened all the time, there were too many vehicles being parked illegally.

Ms. Blount, responding to Mr. Beard's question, stated that her property abutted the applicant's property.

In answer to Mr. Ribble's question, Ms. Blount stated that she had filed complaints with the Zoning Enforcement Branch and they had been on her property to evaluate the situation. Mr. Sherman stated that he had not been aware of Ms. Blount's complaints until late yesterday afternoon and had not had a chance to talk to Zoning Enforcement. He said there were several departments to which she could have complained other than to Zoning Enforcement.

Mr. Beard confirmed with Ms. Blount that she had purchased her home five years ago.

Responding to Mr. Hart's question, Ms. Blount said she had seen as many as 50 or 60 cars or more that were parking in the neighborhood.

Mr. Beard asked if any photographs had been taken to corroborate the complaints. Mr. Wilson said his wife had taken some but had not had them developed.

In his rebuttal, Mr. Ngo stated that the two buildings on the property interfered with parking on-site, the celebration of the Chinese New Year took place only once a year and they would celebrate the New Year during the day and no longer in the evening.

Ms. Gibb asked if the buses that had been referred to were in connection with the New Year celebration. Mr. Ngo said they brought celebrants on the occasion of the New Year and the birthday of Buddha. He said approximately 400 people attended the birthday celebration. He indicated that they would be willing to split the celebration into two segments, 200 persons attending in the morning and 200 in the afternoon.

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

Mr. Ribble stated that he was in favor of deferring this application to allow staff to review any complaints received from the neighbors and to determine whether Zoning Enforcement had looked into the problem.

Mr. Hart said he also wanted staff to look into the wording on the condition of the maintenance of an underground stormwater facility.

In answer to Ms. Gibb's question, Mr. Sherman stated that the information contained in the development conditions concerning the maximum seating of 100 people was a case where the congregation was not actually seated. Ms. Langdon stated that in the past staff had taken that to mean space for kneeling and that was how it had been indicated in the conditions. She clarified that the definition of seating was whether people were sitting in chairs, in pews, on the floor, or standing and that was why staff said "in the main area of worship" as distinguished from a social hall, which had an unlimited capacity.

Mr. Ribble moved to defer decision on SPA 87-V-070 to May 3, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177
 Appl. under Sect(s) 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit a private school of general education, building additions, site modifications and an increase in land area. Located at 3913, 3918, 3921 and 3925 Old Mill Rd. and 9004 Chiokawane Ct. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 9B, 33, 36 pt., 39 and 110-2 ((10)) 60A pt; 110-2 ((9)) 11B. (Admin. moved from 1/25/05 at appl. req.)

Chairman DiGiulian noted that SPA 75-S-177 had been administratively moved to March 22, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF VIRGINIA PRESBYTERIAN CHURCH, SPA 90-L-050-02 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 90-L-050 previously approved for church and related facilities to permit building addition and site modifications. Located at 6021 Franconia Rd. on approx. 2.32 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((2)) 5A. (Decision deferred from 2/15/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bob Kohari, the applicant's agent, no address given, replied that it was.

Bill Sherman, Staff Coordinator, stated that the application had been deferred for decision only. He said the revised development conditions dated March 1, 2005, had been distributed that morning and reflected a change to Condition 8, removing the language about earth tones and the requirement that the applicant match the color of the new building with that of the existing siding on the rear of the church.

Ms. Gibb gave a disclosure, but indicated she did not believe her ability to participate in the case would be affected.

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

Ms. Gibb moved to approve SPA 90-L-050-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF VIRGINIA PRESBYTERIAN CHURCH, SPA 90-L-050-02 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 90-L-050 previously approved for church and related facilities to permit building addition and site modifications. Located at 6021 Franconia Rd. on approx. 2.32 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((2)) 5A. (Decision deferred from 2/15/05). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 2005; and

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

1. The applicant is the owner of the land.
2. Based on the favorable staff report and the new development conditions, the applicant has made a case for the approval of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 3-203 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Trustees of Virginia Presbyterian Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 6021 Franconia Road (2.32 acres) and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat Huntley, Nyce and Associates, date June 25, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main worship area shall be a maximum of two hundred and fifty (250) seats.
6. The number of parking spaces provided shall be one hundred (100). All parking shall be on site as shown on the Special Permit Plat.
7. The maximum permitted hours for use of the proposed building addition shall be from 8:00 am to 10:00 pm. Lights in the proposed building addition shall be turned off within one half-hour of the end of use. No worship services shall be held in the proposed building addition.
8. The proposed building addition shall conform in terms of size and physical layout with the elevation and cross section submitted by the applicant and attached to the development conditions as Attachment 1, date stamped February 14, 2005. Exterior colors for the proposed building addition shall match the color of the existing siding on the rear of the church.
9. A tree preservation and planting plan shall be submitted to the Department of Public Works and Environmental Services (DPWES) including the Urban Forest Management Branch (UFMB) for review and approval at the time of site plan review and shall be implemented. The plan shall depict the limits of clearing and grading as delineated on the special permit plat. It shall provide for the preservation of all vegetation located outside of the limits of clearing and grading. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Division, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction.
10. Transitional Screening 1 shall be maintained along the eastern and western lot lines. A berm, a minimum of four (4) feet and a maximum of five (5) feet in height shall be maintained 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 as shown on the SPA plat and subject to the approval of the Urban Forest Management Branch (UFMB). In order to soften the impact of a Non-residential building and blend the development in with the surrounding residential area, landscaping shall consist of a combination of hedges, flowering and evergreen shrubs and ornamental tree plantings along the site frontage and building foundation landscape plantings to the satisfaction of the Urban Forest Management Branch (UFMB). Landscaping and screening plant materials that die shall be replaced as soon as possible depending upon plant availability and weather permitting.
11. Transitional Screening 1 shall be maintained along the eastern portion of the southern lot line, adjacent to Lots 9A and 9B. Vegetation sufficient to provide a substantial visual screen shall be provided in the portion of the site located to the south of the proposed new building addition, adjacent to Lots 10 and 11. Species and number of planting shall be determined in consultation with UFMB, but shall consist of a minimum of two rows of evergreen trees measuring a minimum of 6 feet in height at the time of planting. Dead, dying or hazardous vegetation shall be replaced with vegetation of like kind.

12. The barrier requirement shall be modified as shown on the plat, except that the proposed board on board fence of eight (8) feet in height depicted in the southern portion of the property adjacent to the proposed building addition shall be a maximum of seven (7) feet in height.
13. The Applicant shall provide onsite storm water detention (SWM) and best management practices (BMP) in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. If required, SWM and BMP facilities shall be constructed in the general locations shown on the Special Permit Plat. The location of these facilities shall not encroach into any required areas of Transitional Screening or result in the displacement of any existing or proposed vegetation as shown on the Special Permit Plat.
14. The church steeple shall not exceed fifty (50) feet in height from the average ground elevation around the perimeter of the church.
15. Any proposed parking lot lighting shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance, except the combined height of the light standards and fixtures shall not exceed twelve (12) feet. When any existing lighting is replaced, it shall meet the performance standards for outdoor lighting.
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 the 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 turnout is expected;
 - 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 measure necessary to prevent parking from spilling into the residential neighborhood.
 - f. 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. The metal shed depicted in the southeast corner of the site on the special permit plat shall be moved out of the area of required Transitional Screening and shall meet all Zoning Ordinance requirements for the location of an accessory 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.)

Susan Langdon, Chief, Special Permit and Variance Branch, requested that the case be moved because the notices were not in order. She said there was a violation on this application property; however, staff administratively moved it several times because of the pending Zoning Ordinance Amendment. She said staff thought it would help the applicant and could allow them to apply for a special permit rather than a variance. She said that until the appeal was placed on indefinite deferral, it was within the same timeframe the applicant had to do their notices and she thought there was some confusion on their part about what to do. Ms. Langdon stated that she had spoken to the Chief of Zoning Enforcement and he was in agreement that the case not be dismissed.

Mr. Hart asked if the appellant had built a fence that had been denied by the Board a few years ago. Ms. Langdon said the violation was different from the original request that had been modified by the Board. Mr. Hart indicated that he had no objection to deferring indefinitely those cases that had no violations; however, where there were violations staff needed to determine what would be done if the prospective amendment didn't help them. Ms. Langdon said staff was notifying the appellants to that effect but in the case of Ms. Reid, there was a miscommunication at the time the amendment was finalized and then indefinitely deferred. She reiterated that the appellant did not understand that the amendment would not help her and because of that they had not done their notices which caused a mix-up between the appellant and staff and that was why she was recommending that the case not be dismissed.

Mr. Pammel asked staff to review with Zoning Enforcement staff the complaint that had been received concerning the residents running a business from their home, trash and other assorted concerns.

Mr. Ribble moved to reschedule VCA 2002-MA-176 to April 19, 2005, at 9:00 a.m., for notices. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH, SPA 98-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 previously approved for a church, nursery school and child care center to permit increase in seating, building addition and site modifications. Located at 3439 Payne St. on approx. 2.27 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (B) 12. (Admin. moved from 1/11/05 and 2/1/05 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Fox, the applicant's agent, no address given, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 98-M-036, previously approved for a church, nursery school and child care center, to permit an additional 80 seats in the sanctuary and the construction of a two-story, 13,653-square-foot addition to the existing 11,900-square-foot building to provide space for fellowship activities, administration and education. The application also included the addition of 70 parking spaces to the existing 37 parking spaces. The development proposal also included the provision of several stormwater management facilities and tree plantings and landscaping. No changes were proposed with respect to the number of children enrolled in the nursery school and child care center or hours of operation.

Staff recommended denial of the application. Ms. Stanfield said the traffic associated with the additional seats in combination with the poor circulation pattern for two separate parking areas would have a negative impact on the surrounding community. It would be preferable to either eliminate the parking area to the west of the building where patrons could not turn around if the lot was full or to create a connection between the

two parking areas. The two separate areas would create a situation where cars would be backing out of the western parking area onto the street. She said the play area located in the northeastern portion of the site should not remain 10 feet from the nearest residential property line, within the required 25-foot transitional screening, and one of the stormwater management ponds was located within the minimal transitional screening on the south side of the property. Staff concluded that the application was not in harmony with the Comprehensive Plan and not in conformance with the applicable Zoning Ordinance provisions.

Mr. Beard asked staff if they had been working with the applicant to try to resolve the issues. Ms. Stanfield stated that staff had been discussing the issues through the entire process and they had not been able to come to a resolution.

Mr. Hart asked staff if a turnaround at the end of the lot would alleviate the problem and if that was possible, what difference it would make if the parking lots were connected. Ms. Stanfield replied that the situation would still exist and spaces would be lost if a turnaround was constructed. She noted that the site was very constricted with very little room.

Mr. Fox presented the amendment application as outlined in the statement of justification submitted with the application. He said that because of the irregular shape of the site, there was not much that could be done to address some of the issues raised by staff. The church needed to expand its facilities, and the proposal of the administrative/educational wing would almost eliminate the possibility of connecting the two parking lots. He indicated that the density of the surrounding neighborhoods and proposed commercial centers did not allow for overflow parking on the surrounding streets. Referring to staff's suggestion that the play area be moved, Mr. Fox stated that there were problems with that. With respect to stormwater management, he said the site was flat and felt that staff was imposing a transition yard on the site when in fact the lots across the street were slated to be commercial and that type of yard should be imposed on those lots instead of requiring that the church do it, and the proposed rain gardens would be sufficient to take care of the impervious area and the pond would not be needed. Mr. Fox stated that additional parking on site could be accommodated if a few spaces were eliminated and a modified bulb or Y turnaround was put into place. He stressed that the two lots could not be connected because the site would not allow the requested addition to be built.

Mr. Fox referred to Development Condition 5 and said the applicant would like to retain the opportunity to have the 80-seat balcony which would give them 236 seats. He suggested that the condition be changed to read: "The seating capacity of the main worship area shall not exceed 236 seats." Mr. Fox stated that with the approval of this application, the site would be maxed out and there would be no further opportunities to submit another amendment unless they were able to purchase additional land and that did not seem to be a possibility at this time. He also called attention to Development Condition 15 and stated that moving the play area would not work because it would conflict with overflow parking, the proposed addition and the historical trafficking of the children to the rear facilities of the church rather than through the sanctuary. He stated that staff had not recognized the overall constraints of the site and the neighborhood. Mr. Fox stated that the added seats were important because the church was located in one of the most urban neighborhoods in Fairfax County and the applicant needed to plan for additional members. He indicated that if the applicant was not permitted to add additional seating they would have standing room only. He asked that the Board approve the application with the changes he had suggested.

In response to Mr. Beard's comments, Mr. Fox stated that he did not think that the applicant and staff were very far apart in terms of the overall effect of the requests. Mr. Beard asked how the applicant planned to address the issue raised by staff concerning the children having to walk through the parking lot. Mr. Fox stated that that area would be roped off to prevent cars from passing through.

Chairman DiGiulian called for speakers.

The following persons came forward to speak in support of the application. Chuck Dunlap, Walter L. Forpes, Inc., engineer, Carl Newberg, CEN Architects, architect, and Bill Bailey, no address given.

Mr. Dunlap's main points were stormwater management; the existing storm sewer system in the neighborhood was old, dated, and shallow; the connecting structure that the church drained to was approximately 5-6 feet deep; the available depth was limited to any type of bioretention; stormwater management or quality facility; an analysis of the down stream pipes; the older pipes were small and not adequate enough to carry the existing flows; the facilities shown on the special permit plat were fairly expansive but shallow in depth in order to provide the necessary storage; the capacity of the downstream pipes would essentially over detain the runoff from the site; the engineering that had been done in

conjunction with the site plan showed that his firm had reduced the amount of water from the site so the outfall pipes would be adequate, and additional asphalt would add to the runoff.

At Mr. Ribble's request, Mr. Dunlap addressed the parking issue stating that a modified hammerhead turnaround could be placed at the end of the lot.

Mr. Newberg, the architect, said he had reviewed the existing site conditions and indicated that the existing playground could not be moved from its present location. He said the same thing applied to the smaller parking lot next to it and explained that there had been problems with cut through traffic at the back of the church and that was the reason Church Street had never been used as an entrance. There was an existing parking lot in the lower portion of the site, but it did not cut through to Church Street. A barricade had been erected between the two parking lots at the rear of the church to protect the children when they walked from the church to the existing playground and to prevent any through traffic. He said a landscape buffer had been provided behind the larger parking lot, and there was a stockade fence behind the shopping mall; the applicant was putting up a substantial buffer on its property that would back up to the asphalt parking lot and truck turnaround area of the mall. Mr. Newberg stated that a hammerhead turnaround could be installed at the end of the front parking lot even though parking spaces would be lost. He also indicated that because of the slope of the property towards Church Street, a retention pond had to be placed on that side of the project.

Mr. Bailey said the services provided by the applicant to the County could not be minimized. The expansion would serve the needs of the community, and its potential contributions would assist in relieving some of the requirements that had been placed on the strained resources of the County and aid in the transition of the assimilation of the growing ethnic population.

In response to Ms. Gibb's request, Mr. Bailey described the services provided by the applicant and stressed that the new facility would accommodate cultural and transitional problems that were being experienced by various ethnic groups.

In answer to Ms. Gibb's question, Mr. Fox stated that the request for the 80 additional seats was in anticipation of more parishioners attending services. He described the housing in the neighborhood and pointed out that there was access from two major arterials which would ameliorate any negative impacts that would be added by the additional intensity.

Susan Langdon, Chief, Special Permit and Variance Branch, requested that Ms. Stanfield be allowed to address the issues raised by the speakers and Mr. Fox.

Ms. Stanfield pointed out that early in the process staff had requested that the applicant work with the Department of Public Works and Environmental Services (DPWES) Stormwater Management planning staff and that never happened. She said the purpose of the request was to allow staff and the applicant to look at the pond that was in the transitional screening yard to determine if it could be redesigned, moved or made smaller. She advised that some of the property to the south of the church was zoned commercial and some was still zoned residential and there were two proposed land uses in the Comprehensive Plan, either for commercial office or for townhouse development, in which case transitional screening would be needed in that area. She said the properties would still have to be zoned in order to be developed that way. She pointed out that the Home Depot that had been mentioned earlier by Mr. Newberg was located in the Seven Corners Shopping Center and not in the Bailey's Crossroads Shopping Center that was adjacent to the church site. Ms. Stanfield pointed out that the action pointed out by a previous speaker as being transitional screening, was a bioretention pond.

Mr. Beard asked if scaling down the project would receive the support of staff and where they stood on the seating proposal. Ms. Stanfield indicated that staff thought the redesign would be beneficial and there were ways they could come to agreement on the site.

Mr. Beard then asked if staff meant that the application was not in accordance with the Comprehensive Plan because of the size and not the intended use. Ms. Stanfield said they were not concerned about the addition in and of itself.

Chairman DiGiulian closed the public hearing.

Mr. Pammel expressed concern about placing a parking lot in front of the church because it would destroy the view of a beautiful church. He suggested that staff and the applicant consider the possibility of structured

parking, the acquisition of additional property, or an agreement with the shopping center to utilize their parking for Sunday services.

Mr. Beard moved to defer decision on SPA 98-M-036-02 to May 3, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

Mr. Hart moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Lee case, the West Lewinsville case, the Heisler case, Fisenne and administrative matters or probable litigation pursuant to Virginia Code annotated Section 2.2-3711A7 LNMD, Supplement 2002. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

The meeting recessed at 10:52 a.m. and reconvened at 12:04 p.m.

Mr. Hart moved that the Board of Zoning Appeals certify that to the best of its knowledge only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Hart moved that Mr. McCormick be authorized to take the action described in the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:00 A.M. HOME PROPERTIES VIRGINIA VILLAGE, LLC, SP 2004-MA-060 Appl. under Sect(s) 3-2003 of the Zoning Ordinance to permit a community club and meeting hall. Located at the terminus of Southland Ave. on approx. 1.33 ac. of land zoned R-20 and HC. Mason District. Tax Map 72-3 ((1)) 54 pt. (Admin. moved from 1/25/05 for notices).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeff Nye, Cooley Godward LLP, 11951 Freedom Drive, Reston, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a Group 4 use for a community club and meeting hall consisting of a 3,289-square-foot building to be located on 1.33 acres within an existing 16.54-acre rental apartment complex. The building would provide an exercise room, a meeting/party room, a computer center for five users and rental/business offices. A total of 37 parking spaces would serve the new facility.

Mr. Nye presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was in agreement with the development conditions and requested the Board's approval.

Chairman DiGiulian asked Mr. Nye if he had seen the letter and petition from the Lincoln Mews Homeowners Association. Mr. Nye stated that the applicant had responded in a letter and copies had been sent to the Board and staff. He said he thought the Lincoln Mews HOA may have overstated the situation because there was no direct access between the two properties. He said the applicant would like to provide more parking spaces for the residents if they could; however, there was adequate parking on site now in accordance with the Zoning Ordinance.

In answer to Mr. Beard's question, Mr. Nye said additional parking was necessary, but was not required for the community building as it was for the exclusive use of the residents of Virginia Village who were already parked there. He said they were providing some additional spaces along the street but would prefer to provide additional parking for the residents behind the community building, as shown on the plat. He said the Board of Supervisors would have to authorize an open space waiver to enable them to reduce the amount of required open space on the site in order to implement the parking.

Ms. Stanfield, responding to Ms. Gibb's question, said that if the open space waiver was not granted the applicant would not be able to provide the 31 spaces in the back.

Mr. Hart referred to the applicant's letter to the homeowners association that mentioned a potential parking lot behind the community building. He asked staff if it would be okay for the applicant to remove the parking lot from the application and do everything else. Ms. Stanfield replied that if the applicant obtained the waiver from the Board of Supervisors they could come back to the Board of Zoning Appeals and they would not have a problem with the open space. She agreed with Mr. Hart's statement that the applicant had the option of not putting in a parking lot.

Mr. Beard said he could not come up with 15 homes as suggested in the HOA's letter and asked staff to address the issue. Ms. Stanfield stated that she had not taken a count, but it did appear to be two streets within the townhouse development and asked that Mr. Nye respond to the question. Mr. Nye said there were two clusters of town homes behind Virginia Village with 8 homes on Robert Todd Court and the other 6 on Nancy Haines Court.

Mr. Hart and Mr. Nye discussed the complaint that indicated that there was a possibility that apartment dwellers could enter the playground on the Lincoln Mews property. Mr. Nye said the fence referred to by Mr. Hart belonged to Lincoln Mews and was a 6-foot, board-on-board fence that separated the two properties. He said there was an old playground area on Virginia Village property but it had not been in use for some time. He stated that there was no direct way for anyone to get from one site to the other.

Chairman DiGiulian called for speakers.

Lynn Martin, Vice President, Lincoln Mews HOA, 6335 Robert Todd Court, Alexandria, Virginia, came forward to speak in opposition to the application. He stated that the center would add more activity, noise, and traffic to the area. He displayed photographs on the overhead projector showing a pathway that Village residents were using to go from their property to Lincoln Road. He stated that Lincoln Mews had a privacy fence, but Virginia Village did not. He said the Mews was in the process of extending their fence to discourage trespassing; part of the border dividing the two properties consisted of shrubs that people walked through; and, there was no respect for the Mews property. He also stated that there was litter from Village residents in the area, and the Village did not have adequate parking on site.

Mr. Beard and Mr. Martin discussed the pedestrian problems Lincoln Mews was experiencing and that adding more parking spaces at the Village would help alleviate some of the problems. Mr. Martin said he was not opposed to a community center but to the lack of respect for the Lincoln Mews properties. He said it was his opinion that Virginia Village should erect a privacy fence as well.

In answer to Mr. Beard's question, Mr. Nye stated that he was not aware that the open space area outside the fence was a part of Lincoln Mews.

In his rebuttal statement, Mr. Nye stated that the applicant would be willing to put a fence up at the foot of the Lincoln Mews open space area to preclude that access. He pointed out that with the construction of the community center, their residents would have some place to spend some of their idle time and would spend less time going back and forth over the Lincoln Mews properties.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 2004-MA-060 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOME PROPERTIES VIRGINIA VILLAGE, LLC, SP 2004-MA-060 Appl. under Sect(s) 3-203 of the Zoning Ordinance to permit a community club and meeting hall. Located at the terminus of Southland Ave. on approx. 1.33 ac. of land zoned R-20 and HC. Mason District. Tax Map 72-3 ((1)) 54 pt. (Admin. moved from 1/25/05 for notices) 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 1, 2005; and

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

1. The applicant is the owner of the land.
2. The applicants presented testimony that they do comply with the standards prescribed for special permit uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-2003 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Home Properties Virginia Village, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, the terminus of Southland Avenue, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by KCI Technologies, Inc., dated October 15, 2004, as revised through November 1, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Notwithstanding that which is shown on the plat, the applicant shall reduce the lot coverage on the special permit site so that the entire Virginia Village Apartments site meets the open space requirement that was in effect at the time the apartment complex was constructed. This shall be accomplished by reducing the parking area and/or building size, or the applicant shall make application and obtain approval of a special exception to waive the minimum open space requirement. The applicant shall provide all open space and lot coverage information/calculations as determined necessary by DPWES.
6. The exercise, computer and party/meeting rooms shall only be available to residents and staff of the Virginia Village apartments.
7. All parking shall be on-site.
8. The maximum hours of operation for the new building shall be as follows:
 - Party/Meeting Room: 8:00 a.m. to 10:00 p.m., weekdays
8:00 a.m. to 12 midnight, weekends and holidays
 - Computer Room: 8:00 a.m. to 10:00 p.m., daily
 - Exercise Room: 6:00 a.m. to 12 midnight, daily.
9. Transitional screening and landscaping shall be provided as depicted on the plat, but may be modified with respect to species, location and size, but only with consultation and approval by the

Urban Forest Management Branch of DPWES.

10. Any lighting associated with the proposed use shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. All signs, existing and proposed, shall be in conformance with Article 12 of the Zoning Ordinance.
12. The proposed community club and meeting hall shall be constructed in general conformance with the attached elevations (Attachment 1).
13. The vacation and/or abandonment of the portion of Southland Avenue that extends into the subject property shall occur prior to approval of the site plan for the subject development. Should the abandonment and/or vacation not occur, the approved special permit shall be null and void.
14. The applicant shall construct a board-on-board fence six feet in height along the open space area of Lincoln Mews as a solid barrier to preclude access between 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 1, 2005, Scheduled case of:

- 9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, and 10/26/04 at appl. req.)
- 9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, and 10/26/04 at appl. req.)
- 9:30 A.M. GEGRGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant

nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (Moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, and 10/26/04 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to April 12, 2005, at 9:30 a.m., at the applicants' request.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((8)) 7. (Continued from 11/16/04)

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated February 14, 2005. Staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's finding that the appellants erected a fence in excess of four feet in height located in the front yard of the corner lot property in violation of Par. 6 of Sect. 2-302, Permitted Uses, of the Zoning Ordinance.

The appellant presented the arguments forming the basis for the appeal. He said he agreed with the information contained in the staff report. He stated that Roger Sims, Inspector, Zoning Enforcement Branch, had inspected his property and had informed him that he was in violation of the Zoning Ordinance. Mr. Lane said he was unaware that the area in question was considered to be a front yard and at Mr. Sims' suggestion he contacted his contractor and immediately stopped construction of the fence. He said the contractor met with Anthony Moore, Zoning Permit Review Branch, explained the situation as defined in the affidavit and that Mr. Moore had signed off on it. Mr. Lane said his contractor led him to believe that there were no problems with building a six-foot fence and he went ahead with the project.

In response to Mr. Beard's question, Mr. Lane stated that Mr. Moore had initialed a copy of the plat that the contractor presented to him.

In answer to Mr. Beard's query, Mr. Sims said he had spoken to Mr. Moore who acknowledged that he had had a meeting with the contractor, that the contractor had asked for his card and asked him to initial the back of the cert to show that they had met. However, Mr. Moore stated that he did not initial the plat which was presented to the property owner. Mr. Sims said the plat was not a part of any approval process and a formal stamp of approval would have had to be initialed, which was not done. He said there was a question as to whether the appellant received a valid document from his contractor.

In response to Mr. Beard's question, Mr. Lane said he had a copy of the document and that a copy was also in the staff report.

Mr. Beard asked if a complaint had been filed. Mr. Sims said no. He stated that he had been in the area, saw the fence going up and in an attempt to prevent the appellant from violating the Zoning Ordinance had advised him that he would have a problem if he continued on and upon his advice Mr. Lane contacted his contractor. Mr. Sims said he had not heard anything from the appellant since their initial talk.

In answer to Mr. Beard's question, Mr. Lane said his fence contractor was not present and he had not contacted him to ask that he attend the hearing and explain what had been done.

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

Mr. Hart stated that the Board of Zoning Appeals did not know what the Board of Supervisors would do with respect to amending the Zoning Ordinance, and although there was a violation, there would be an expense

to require the homeowner to tear the fence down if there was a possibility that he would be able to apply for a special permit; therefore, it would be appropriate to defer the appeal again.

Mr. Ribble stated that he wanted the contractor to appear before the Board at the next hearing. Mr. Lane indicated that he would make that request; however, he informed the Board that he was in litigation with the contractor with respect to a deck issue and was not certain that he would become involved. Mr. Ribble asked that Mr. Lane provide the name of the contractor to staff so it would be added to the petition.

Mr. Beard asked if a violation had been posted. Mr. Sims said the only notification concerning the appeal was the sign that was placed in front of the appellant's home.

Ms. Gibb advised that at this time there was no activity on a proposed change to the Zoning Ordinance and suggested that Mr. Lane speak to his Supervisor if he thought that would help him.

Mr. Hart moved to defer decision on A 2004-SP-025 to May 3, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 8-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, Scheduled case of:

9:30 A.M. LANCASTER LANDSCAPES, INC./WALTER G. FITZGERALD, A 2004-PR-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing outdoor storage on the property which exceeds allowable total area and has expanded the use on the property without a valid site plan in violation of Zoning Ordinance provisions. Located at 8515 (Posted as 8505) Lee Hwy. on approx. 4.07 ac. of land zoned I-5, R-1 and HC. Providence District. Tax Map 49-3 ((1)) 50A. (Deferred from 11/18/04 and 2/1/05 at appl. req.)

Chairman DiGiulian recused himself. Vice Chairman Ribble assumed the Chair.

Susan Epstein, Staff Coordinator, Zoning Enforcement Branch, presented staff's position as set forth in a memorandum dated February 18, 2005. She said the violation could be remedied by submitting and obtaining approval of a site plan from the Department of Public Works and Environmental Services to show outdoor storage in excess of 250 square feet, the addition of three accessory storage structures, the trailer and the fertilizer storage tanks.

The agent, Jane Kelsey, Jane Kelsey and Associates, presented the arguments forming the basis for the appeal. She stated that the appeal had been deferred at the request of Mr. Fitzgerald because it was his understanding that all that would be required would be the filing of a minor site plan. She said the appellant was not aware of the zoning laws or the site plan regulations. She said there continued to be some concern and confusion as to whether or not it would be a major or minor site plan; however, either one would be complicated and expensive. She explained that the appellant had informed her that the use of the property was the same as it had been since 1958, prior to the adoption of the 1959 Zoning Ordinance and she thought that a portion of the property might have a grandfathered status. Ms. Kelsey said Mr. Fitzgerald had reviewed the old site plans and based on what he had found, and her review of the 1941 and 1949 Zoning Ordinance with amendments up to the adoption of the 1959 Zoning Ordinance, she believed that the storage on the site and the storage buildings should be grandfathered because the use of this property had remained the same as in 1958. She submitted for the record portions of the 1941 Zoning Ordinance along with the amendments up to 1959, the approved 1941 plan and aerial photographs. She said the appellant had found an approved preliminary site plan for the entire eight-acre site that had notations on it; however, when she met with staff they did not place any significance on the notations. Ms. Kelsey stated that she had indicated to staff that the outside storage had been acknowledged by the County. She stated that Dale Simpson, the son of the former operator of the business, and one of the current owners of the property, had submitted a signed affidavit stating that outside storage had always existed on the property, along with the parking of large trucks, loaders and trailers, and it had been used in this manner since the business had first started operating in January of 1958. Ms. Kelsey also indicated that the company's accountant, Julian Blinko (phonetic), had submitted an affidavit indicating that one company operated from the front portion of the property, and the Simpsons had operated in the rear and that there had always been outside storage on that portion of the property. Ms. Kelsey submitted a copy of Mr. Blinko's (phonetic) affidavit for the record and requested that staff provide copies to the Board. She explained the condition of the structures and what the appellant had done to improve the property. Ms. Kelsey cited the Zoning Ordinance as it pertained to

nonconforming uses. In summary, she stated that the parking of equipment and storage was a legal use when it was established in 1958 and indicated that there was a Non-RUP in the file for both Mr. Simpson's and Mr. Fitzgerald's operations. She requested that the Board overturn the Zoning Administrator's decision.

In response to Ms. Gibb's question, Ms. Kelsey stated that the three hoop buildings she had referred to earlier were temporary and could be moved. Ms. Kelsey agreed with Ms. Gibb's comments that the original buildings had been renovated using some of the original posts. She explained that the buildings were grandfathered because the storage and structures had been on the property since 1958. She noted that the three hoop buildings had also been renovated and indicated that the location had been shifted slightly back from their original location.

Ms. Gibb and Ms. Kelsey discussed Section 15-102 of the Zoning Ordinance and how it pertained to the appeal before the Board. Ms. Kelsey stated that according to aerial photographs there appeared to be buildings on the premises in 1958.

In response to Ms. Kelsey's presentation, Maggie Stehman, Deputy Zoning Administrator for Appeals, said staff did not agree with her statements that the uses were all grandfathered or were nonconforming. She referred to the preliminary plat that showed parking as well as a storage yard and stated that the preliminary plat showed proposed dedication of a 50-foot street which was on the property of Stokley and Simpson. She said it was her position that that was an approval of a street dedication only. She said Attachment 3 of the staff report showed a plat entitled Merrifield Properties that showed the site and two existing buildings, dated October 18, 1957. Ms. Stehman said the Zoning Ordinance in effect at that time did not require site plan approval but it did require approval of a plat for any building that was constructed within 100 feet of a dedicated street or right of way. She contended that that was the approval that was required under the Zoning Ordinance and there had been no indication that there was any storage on the site, just the buildings.

Ms. Gibb and Ms. Stehman discussed Zoning Ordinance requirements with respect to the location of buildings, the requirements for locating buildings within 100 feet of a right-of-way or 500 feet back where submission of a plat was not required, that equipment and storage yards were not permitted in a rural residential area, that the building shown on the October, 1957 plat submitted to the County did not indicate that any storage had existed, and that a reference to storage on a plat that was slated for dedication of right-of-way was not an approval of storage on the site. Ms. Stehman stressed that if someone was claiming a grandfathered or nonconforming use, they had to show that that use was legally established. She said staff did not think that that condition had been met because there did not appear to be a link indicating that the buildings shown were the same. Ms. Stehman said staff also disputed the claim that there was storage on the site which was in excess of 250 square feet. She said staff had determined that the three hoop buildings had been erected in 1995 and were not part of a grandfathered use and staff did not concede that those were rehabilitated structures that had been in existence for 50 years.

In answer to Ms. Gibb's query, Ms. Stehman said storage was not an identified use in the Ordinances prior to 1959; however, that to claim a grandfathered or nonconforming right to that storage, the appellant had to show what the specific storage was and that it had not been expanded or enlarged over the years. In 2004, it was a distinct use and the burden was on the appellant to show that that storage had not been expanded or changed since the original approvals. Ms. Stehman agreed with Ms. Gibb that the appellant had to show that the buildings were the same and had not been expanded illegally and that there were no new buildings on the site. Ms. Stehman stated that with respect to what was "legally established" the County had a series of Non-RUPs for the property with one dating back to 1958 when the Simpson's purchased the property. She said the property was split leased and at the current time Lancaster Landscapes had one half of the property and Penske had the other half. Not all the Non-RUPs indicated that there were offices and equipment storage on that site throughout the period. Ms. Stehman said staff could not be certain that the Non-RUPs applied to the entire site because they could have been assigned in part to the Simpson property or in whole to the Penske property and there were Non-RUPs that suggested that perhaps there were other uses on the property.

Mr. Beard asked staff who would know to what extent storage had been an issue prior to 1959. Ms. Stehman stated that Ms. Kelsey had responded to that question by displaying the aerial photographs for that period and it was incumbent upon her to show how that storage fit with the storage currently on the property. In answer to another question posed by Mr. Beard, Ms. Stehman stated that this case was before the Board as a result of a complaint from a neighbor and it had already been deferred two times. In response to the questions asked by Mr. Beard, Ms. Kelsey submitted a copy of a Certificate of Occupancy dated January 29, 1958 for Bemis (phonetic) Equipment which was located in the building in the front of the property prior to Penske taking over. She noted that on the same page there was a Certificate of Occupancy issued to Guy

Simpson Office and Equipment Yard dated January 22, 1958. Ms. Kelsey advised that at that time the property had been zoned general business and that was the section of the 1941 Ordinance she had submitted to the Board. She said she had not found any reference in that document that pertained to storage or the site plan requirement.

Mr. Hart and Ms. Stehman discussed the 1956 and 1957 plats that pertained to the street dedication and building locations respectively, the 50-foot right-of-way, and why the plats had to show the buildings if they were located 100 or more feet back from the right-of-way. Ms. Stehman indicated that the preliminary plat submitted by Ms. Kelsey showed only the approval of the dedication. She pointed out that the approval of the building in the front was not a part of the lot that was in contention. Ms. Stehman said the 1941 Ordinance required that if a building was to be constructed within 100 feet, the applicant would have had to show in some detail what was going to be built; however, if the development was not within 100 feet it was not required to submit a plan. Mr. Hart stated that he needed clarification with respect to the 1959 Ordinance because it did not regulate outdoor storage until that time and asked why it would be a violation to begin such activity in 1958. Ms. Stehman stated that in 1958 there would not have been a violation and it was staff's contention that while there may have been some storage activities that began on the property in 1958, under the current Ordinance, staff was not dealing with the same buildings or with the same storage. She said that with the exception of the aerial photographs staff did not know where the storage was located or how much there was. She noted that if there was a grandfathered right to some storage, it was a stretch to say the hoop buildings were simply renovations of the buildings on the property 50 years ago when the County did not have that type of building.

In response to Mr. Hart's question concerning when the hoop buildings had been built, Ms. Epstein said that the week prior, staff had had a meeting with Ms. Kelsey and Mr. Fitzgerald. She stated that Mr. Fitzgerald had told them that the hoop buildings had been built in 1995 and were visible on the 1996 aerial maps. Ms. Stehman confirmed that Attachment 1 of the staff report, under "Nature of Appeal", referenced the hoop buildings, construction materials and when they had been built. She said that a determination had been made by the Department of Public Works and Environmental Services (DPWES) that the buildings were structures. In answer to another question from Mr. Hart, Ms. Stehman indicated that building permits were not required; however, since they were structures, site plan approval was required. She said that DPWES had also determined that since the structures had been in place for 10 years, they could not be deemed to be temporary structures.

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

Ms. Gibb moved to uphold the determination of the Zoning Administrator regarding the three storage structures (hoop houses) and overturn the determination of the Zoning Administrator regarding the outside storage, stating that the outside storage had been in existence since 1958 as determined by the affidavits and preliminary plat submitted by the appellant. The Ordinance prior to 1958 did not address outdoor storage; therefore, the storage area in question was grandfathered. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian recused himself from the hearing. Mr. Hammack was absent from the meeting.

//

~ ~ ~ March 1, 2005, After Agenda Item:

Approval of February 15, 2005 Resolutions

Mr. Beard moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Mr. Hammack was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:21 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: May 13, 2008

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 8, 2005. The following Board Members were present: Chairman John DiGiulian; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:09 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. ROBERTON C. WILLIAMS, JR. AND JANE C. HILDER, VC 2004-LE-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. with eave 6.3 ft. from side lot line. Located at 5707 Norton Rd. on approx. 12,192 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((12)) 7. (Decision deferred from 9/14/04)

Chairman DiGiulian noted that the Board had received a request for an indefinite deferral regarding VC 2004-LE-102.

Mr. Hart moved to indefinitely defer VC 2004-LE-102. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Ribble were not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. KEVIN E. DRISCOLL, VC 2004-MA-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. with eave 4.5 ft. from side lot line. Located at 3714 Rose La. on approx. 15,248 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((4)) (E) 18. (Decision deferred from 6/15/04 and 9/21/04)

Chairman DiGiulian noted that the Board had received a request for an indefinite deferral regarding VC 2004-MA-050.

Mr. Pammel moved to indefinitely defer VC 2004-MA-050. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Ribble were not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1885 and 1889 Virginia Ave. on approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44. (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, appl. req. 11/30/04, and 2/15/05 at appl. req.)

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-081). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, 11/30/04, and 2/15/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-081 and SP 2004-DR-027 had been administratively moved to April 19, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. GAYLON L. SMITH AND KAREN L. MARSHALL, VC 2004-MV-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 5.1 ft. from side lot line. Located at 6006 Grove Dr. on approx. 8,640 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 32. (Decision deferred from 5/4/04, 6/15/04, and 9/21/04)

Chairman DiGiulian noted that VC 2004-MV-026 had been withdrawn.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. FABIAN RIVELIS, VC 2004-PR-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. with eave 13.7 ft. from rear lot line. Located at 9314 Christopher St. on approx. 20,066 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 61. (Decision deferred from 6/15/04 and 9/21/04)

Chairman DiGiulian noted that the Board had received a request for an indefinite deferral regarding VC 2004-PR-049.

Mr. Hammack moved to indefinitely defer VC 2004-PR-049. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Ribble were not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at 3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273. (Decision deferred from 6/15/04 and 9/21/04)

Susan Langdon, Chief, Special Permit and Variance Branch, said staff understood from communications the prior day with the applicants that they had planned to attend the meeting.

Based on the traffic issues he said he had experienced on the way to the meeting, Mr. Pammel suggested the matter be taken up later in the meeting. Chairman DiGiulian agreed.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. MAREC CORPORATION, VC 2004-DR-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with SP 2004-DR-041). (Deferral request deferred from 9/14/04) (Deferred from 9/21/04 at appl. req.)

9:00 A.M. MAREC CORPORATION, SP 2004-DR-041 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain in a minimum required front yard. Located at 1000 Towlston Rd. on approx. 1.94 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((4)) 2. (Concurrent with VC 2004-DR-098). (Deferral request deferred from 9/14/04) (Deferred from 9/21/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-098 and SP 2004-DR-041 had been withdrawn.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. BRAD CZIKA, VC 2004-BR-063 Appl. under Sect(s). 13-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30 percent and fence greater than 7.0 ft. in height to remain in rear yard and side yards. Located at 10411 Pearl St. on approx. 10,739 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with SP 2004-BR-020) (Admin. moved from 6/22/04 at appl. req.) (Decision Deferred from 6/29/04 and 10/5/04)

Chairman DiGiulian noted that the Board had received a decision deferral request regarding VC 2004-BR-063.

Mr. Pammel moved to defer decision on VC 2004-BR-063 to July 12, 2005, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Ms. Gibb and Mr. Ribble were not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, modification of development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Laesburg Pl. on approx. 8.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9.

Chairman DiGiulian noted that SPA 93-P-046-02 had been administratively moved to April 12, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:30 A.M. MVC, A 2004-SU-046 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has installed several temporary and portable signs without sign permit and Building Permit approval and has erected a portable light structure that does not conform to lighting standards, all in violation of Zoning Ordinance provisions. Located at 13928 Lee Hwy. on approx. 1.10 ac. of land zoned C-8, SC, WS and HC. Sully District. Tax Map 54-4 ((1)) 57.

Appeal A 2004-SU-046 was previously withdrawn.

//

~ ~ ~ March 6, 2005, 2005, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at 3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273. (Decision deferred from 6/15/04 and 9/21/04)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicants' representative was present.

Joe Market, the applicants' agent, 2104 Elliott Avenue, McLean, Virginia, came forward to speak. He said the application had been tied up for more than a year, and he understood it was because of a pending court case. He said it was a shame that the entire County with several thousand people were being tied up on variances because of the court case. He asked what people should do. Chairman DiGiulian said Mr. Market should talk to the supervisor for the Mason District, Penelope A. Gross. He explained that special permits had been proposed that would allow some of the variance cases to go forward, but because of the Cochran

case, the Board's hands were tied.

Mr. Market asked if everything was being tied up. Chairman DiGiulian said all of the variances were. Mr. Hart said variances could go forward if the applicants desired, but only two variances had been granted since the previous April, and most of the cases would not meet the new standard if they had an existing house. Mr. Hart said the proposed Zoning Ordinance amendment would allow people to apply for a reduction of up to 50 percent of a minimum yard, and he asked whether the subject application would fall into that category. Ms. Langdon said it would. Mr. Hart said the proposed Zoning Ordinance amendment had been indefinitely deferred, but the Board of Supervisors controlled whether it would be readvertised and come back forward. He said Ms. Gross needed to know that there were people in her district that wanted it.

Mr. Market asked what the timeframe would be for being back in front of the Board of Zoning Appeals. Mr. Hart said the timeframe was unknown because it was up to the Board of Supervisors. Mr. Ribble stated that the public was contributing a lot of input regarding the amendments, some of them in favor, some opposed, and it was in the political arena.

Chairman DiGiulian asked Mr. Market if he wanted the Board to defer decision. Mr. Market said he wanted a deferral for two months and wanted to keep the application alive until a decision was made regarding what the applicants needed to do. He said he would have to talk with his daughter and her husband, who was in Iraq. He said the irony of the situation was that they could not stand pat where they were, but to change anything, they would have to spend a lot of money to start over.

Mr. Hammack moved to defer decision on VC 2004-MA-059 to May 10, 2005, at 9:00 a.m., at the applicants' request. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Ann L. Huffman.

Chairman DiGiulian noted that the Consideration of Acceptance for the application filed by Ann Huffman had been administratively moved to March 15, 2005.

//

~ ~ ~ March 8, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Betsy Boyle and Demetra Mills

Margaret Stehman, Deputy Zoning Administrator for Appeals, advised the Board that William Shoup, Zoning Administrator, intended to be present for the item and was on his way to the meeting. She asked that the Board address the item later in the meeting. Chairman DiGiulian agreed.

//

~ ~ ~ March 8, 2005, After Agenda Item:

Approval of March 1, 2005 Resolutions

Mr. Hart referred to Development Condition 14 in the resolution for Home Properties Virginia Village, LLC, SP 2004-MA-060. He said the condition had been added at the time the motion was made by Mr. Pammel to approve the application, but it was vague as to the type and location of the fence. Mr. Hart said he recalled the fence was to be a board-on-board fence six feet in height, and he asked staff whether his recollection was correct. Susan Langdon, Chief, Special Permit and Variance Branch, said there had been discussion with the representative of Home Properties about the type of fence and their willingness to put the fence along that area, but the specifics were not included in the motion, and the condition was written basically as the motion had been made.

Mr. Hart stated that in order for the condition to be enforceable, it had to mean something, and with the current language, anything could be put up, and it would suffice, but would not address what the Board was trying to do. Ms. Langdon said Lincoln Mews had put up a six-foot board fence, and the idea of continuing the fence was to keep people from parking in Lincoln Mews and cutting through to Home Properties or Virginia Village.

Development Condition 14 was modified to read, "The applicant shall construct a board-on-board fence six feet in height along the open space area of Lincoln Mews as a solid barrier to preclude access between properties."

With the above modification, Mr. Hart moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Betsy Boyle and Dometra Mills

William Shoup, Zoning Administrator, recommended that the Board of Zoning Appeals not accept the appeal. He said complaints had been investigated regarding alleged worship activity taking place at the subject property, 8434 Thames Street, and a number of inspections had been done where 28 to 30-plus people had been observed coming to the property each Sunday, arriving by carpool or shuttle or parking on the street. Conversations had been had with the property owner, and a room dedicated for worship activities in the dwelling had been observed.

Mr. Shoup said a place of worship in a residential district would require special permit approval in order to operate. He said the case had been considered long and hard, and one thing at issue was the federal legislation known as the Religious Land Use and Institutionalized Persons Act (RLUIPA), which placed significant constraints on the locality to regulate places of worship. He explained that there had to be a compelling governmental interest in order to regulate a worship activity, and after consideration of the legislation and resulting court cases, it was staff's position that the activity on the property did not rise to the level where staff would consider pursuing it as a Zoning Ordinance violation.

Mr. Shoup reported that at a meeting held at Supervisor Bulova's office, he informed the citizens of his decision not to pursue it as a violation at that point in time and to continue to monitor the property, and if circumstances changed and the level of activity rose substantially, he would reconsider what action to take. He said the appellants had appealed the verbal determination made in the meeting and were in essence asking the Board to order the Zoning Administrator to issue a notice of violation to the property owners or, in other words, asking the Board to issue a mandamus, which was something only the Circuit Court could do. Mr. Shoup said staff believed it was not a proper appeal, and the appellants were asking the Board to do something that was not within the Board's responsibility or authority. He said staff did not believe an appealable determination had been made.

Ms. Gibb asked whether it would require a special permit if it was a place of worship. Mr. Shoup answered it would in that zoning district.

Ms. Gibb asked whether the federal act applied, since it dealt with places of worship, if the determination was made that it was not yet a place of worship and did not need a special permit. Mr. Shoup answered that the act dealt with worship activity, and based on the activity observed, staff believed there were worship services and activity taking place on the property, but the question was whether it rose to the level of significant compelling governmental interest. Mr. Shoup stated that Cynthia Bailey from the County Attorney's Office was present to assist in presenting staff's argument and was well versed in RLUIPA legislation. Ms. Gibb asked whether it was correct that the activity that had not risen to the level where a special permit would be required, and Mr. Shoup said that was correct.

Mr. Pammel said an appeal case that had been accepted for the Buddhist Temple of Meditation on Annandale Road in which there was worship activity involving 30 people was identical to what was alleged by the appellants in the subject case, and he asked what the distinction was. Mr. Shoup responded that the nature of the activity was different, and the Buddhist Temple had obtained special permit approval to conduct the activities on the property, but had let it expire and continued to operate. He said the Buddhist Temple

had already recognized that it was a type of activity on a property that was subject to regulation, and the fact that they had let it expire and continued to operate made it a different situation than the subject appeal.

Mr. Pammel said that since the special permit for the Buddhist Temple had expired, it was basically a clean slate. Meditation was being performed for 30 people, and they were being told it was inconsistent with the provisions of the Zoning Ordinance and they needed a special permit. Mr. Pammel said that was the same thing going on, as alleged by the appellants, on the subject property with 30 to 50 people, and he was concerned about how interpretations were being made and continuity. He said he did not disagree with Mr. Shoup's position that it was not an appealable offense because it was verbal and there was no citation or enforcement action taken.

Ms. Bailey said the distinction between the two cases was one that rested in the RLUIPA case law, and there was case law to suggest that religious exercise can be regulated as long as the government does not impose a substantial burden. She said the contrast between the two cases was that, in the subject matter, they would not ever be able to get a special permit, whereas in the Annandale matter, because they had received a special permit before, the case law was clear that a local government could impose certain conditions as long as the conditions do not impose the substantial burden. She said that given a special permit was available in the Annandale situation, Fairfax County had the authority to impose certain conditions pursuant to a special permit, which was very different from the subject situation where no special permit could be had and the only remedy was to discontinue the use or prohibit the use altogether, and such a prohibition would be deemed a substantial burden under RLUIPA.

Mr. Hart asked whether there was any authority for the proposition that an oral decision or determination was not appealable. Ms. Bailey said the fact that it was verbal was not what was dispositive, but rather that it was a discretionary decision on the part of the Zoning Administrator. She said "place of worship" was not defined in the Zoning Ordinance, and the case law was clear that in the exercise of discretionary types of functions, a mandamus type of relief will not lie. She said this was specifically an area in which the Zoning Administrator had prosecutorial discretion.

Mr. Hart asked how the subject case was different from the Davis Store case where the neighbors said a filling station was opened without a special exception, it was a violation, and the County needed to do something, and the Zoning Administrator said in writing, no, it was fine, and it was appealed. Mr. Shoup said the facts in that case were that there had already been two rulings by the Board of Zoning Appeals. Mr. Hart said he was not asking about the merits, but procedurally why could someone not appeal an oral determination within 30 days of the Zoning Administrator saying he had carefully looked at something, read the case law, and it was not a violation. Mr. Shoup said it was a determination, and a determination from the Zoning Administrator could be appealed within 30 days, but one had to look at what was being asked for in the appeal, and in the subject case, the appellants were asking the Board to order the Zoning Administrator to issue a notice of violation. Mr. Hart said he thought what was being requested was for the Board to make a determination that the Zoning Administrator's conclusion was incorrect. Mr. Shoup said the result of that would be that it should be pursued as a violation. Mr. Hart said he did not know whether the Board had the power to do that, but maybe the Circuit Court would do something.

Mr. Hart said he wanted to see specific cases which overlaid the Zoning Ordinance which created the distinction between determinations as to violations or other types of determinations in cases decided under RLUIPA that told the Board, notwithstanding the provisions regarding appeals in the Zoning Ordinance which were fairly broad or the state statute, that a citizen could not appeal a determination by the Zoning Administrator that something was not a violation. Ms. Bailey said she was not aware of any such cases. Mr. Hart said he understood Ms. Bailey to say there were cases under RLUIPA regarding prosecutorial discretion. Ms. Bailey said she was referring to just Virginia cases, not RLUIPA cases. Mr. Hart said he had never heard of Zoning Ordinance cases about a Zoning Administrator's decision not being appealable because of prosecutorial discretion. He asked whether there were Virginia cases which said the Zoning Administrator could not be appealed because of prosecutorial discretion when he had said there was no violation. Ms. Bailey said the distinction was in a situation in which the decision is purely discretionary, and in the subject case, the term "place of worship" was not defined in the Zoning Ordinance. She said the Zoning Administrator had the ultimate authority to weigh the facts and circumstances of the particular case and to make a determination, and the case law she cited said that when a zoning official was exercising that kind of a discretionary function, mandamus relief will not lie.

Mr. Hart asked whether it was correct that staff was characterizing what the appellants were asking for as mandamus. He said he did not think the appellants had used the word. Ms. Bailey said it was not a question of semantics, the appellants had asked that the Zoning Administrator issue a notice of violation and the

prosecution proceed, and the fact that they had not called it mandamus did not mean that it was not mandamus. Mr. Hart asked whether staff was saying that if someone asked the Zoning Administrator whether a place of worship in an R District was a violation because it had no special permit and the Zoning Administrator reviewed the situation and determined it was not, it was not appealable. Ms. Bailey said that was staff's position. Mr. Hart asked whether that was a new position. Mr. Shoup said he did not know whether that type of situation had previously arisen in an appeal. Mr. Hart said that if the Board's decision was not made today, he would like to see the Virginia cases on that point.

Mr. Hammack said staff was drawing a distinction with the Buddhist Temple appeal because a special permit had been granted, but he thought a notice of violation had been issued because neighbors had complained about the number of vehicles parked on Annandale Road. The appellants obtained a special permit based upon their attorney's advice, which limited the number of vehicles to 13, but they maintained all along that they were not subjected to special permit approval. He asked staff to confirm that it had come in on a notice of violation and to review staff's position on that appeal. Mr. Hammack referenced another appeal regarding an Islamic temple in Springfield in a house and said that consistently over the years, if it involved a level of activity and there was a religious service, he thought staff had said a special permit was required. He said he wanted to know more about how small congregations had been treated in the past.

Mr. Hammack said the Board had been told over the years that verbal determinations by the Zoning Administrator were determinations that were appealable, and the Zoning Administrator's office had taken the position that if the determination was not appealed within 30 days, it was not appealable. He said that it seemed the position was currently being reversed. Mr. Shoup said he did not think the position was being reversed. He said that ideally staff liked to put determinations in writing which showed the basis, but there had been a few appeals of verbal determinations over the years. He said staff was not saying it was not appealable because it was verbal. The determination made was to tell the citizens enforcement action would not be pursued at the time, the property would continue to be monitored, and if the level of activity changed, a decision would be made at that point as to what to do. He said a final determination had not been made, and the case had not been closed out, but what he found troubling was that in midstream the appellants wanted the Board to compel him to issue a notice of violation, which he thought was improper.

Mr. Hammack asked whether it was correct that the Zoning Administrator was saying to the appellants that their rights were not prejudiced under the Code of Virginia that said all determinations had to be appealed within 30 days. Mr. Shoup said that was correct, and if a final determination was made and the case closed out, that would be appealable. Mr. Hammack asked how the appellants would know that. Mr. Shoup said the inspectors were supposed to keep complainants, which the appellants were, informed of actions taken on a case. Mr. Hammack said he could remember a discussion in years past where the Zoning Administrator had said if he made a decision in the shower, the 30 days ran from that point, and there was no mechanism in the Code that required notice to be given. He referred to other discussions about lost mail and notices not being received within 30 days and not appealed, and he said staff had consistently said the appeal rights were lost. Mr. Hammack said there should be some way of delivering the information to the appellants so they had something to rely on.

Mr. Hammack said he wanted to know how the Buddhist Temple appeal came in. Mr. Shoup said he believed a notice of violation had prompted it to initially come in. Mr. Hammack said the level of activity with the Buddhist Temple was a much lower level than the subject case because the Board granted the special permit for a very low number of vehicles to be parked on the property. He said that consistently the Zoning Administrator said that a special permit was required in the Buddhist Temple case. Mr. Shoup said there had been a few past cases where worship activities were taking place on a residential property similar in scale to what was occurring in the subject case, and prior to RLUIPA enforcement had occurred regarding those types of activities, but RLUIPA had caused them to look at the cases differently to consider whether there was a compelling governmental interest and if the action or regulation that would be imposed presented a substantial burden. He said that since RLUIPA it had been much more difficult for staff in dealing with these kinds of cases.

Mr. Hammack asked when RLUIPA had been enacted and become effective. Mr. Shoup said September of 2000. Mr. Hammack asked Mr. Shoup to find out whether RLUIPA was effective before the case regarding the Buddhist Temple on Annandale Road.

Mr. Hart said his recollection regarding the Buddhist Temple on Annandale Road was that there was a notice of violation at some point, but he was not sure when in the sequence of events, the Board approved a special permit. He said the use was started without getting the non-RUP, the applicant had not done what the conditions required, and the time ran out. The applicant came in for the extension of time, the neighbors

complained about the parking, and the Board denied the extension of time.

In regard to the oral decision issue, Mr. Hart said that in *Lilly v. Caroline County*, Justice Compton made it clear that something as innocuous as the Zoning Administrator answering a question in a public hearing counted as a decision or determination for the purpose of starting the 30-day clock ticking and that not only could that be appealed, but you had to, and if you did not appeal within 30 days after the Zoning Administrator answered the question, it was too late. Mr. Hart said the difference between a situation like that where the potential appellant may have no idea what was going on and a situation in which a letter came from the office was that at the bottom of many of the letters it says you have 30 days to file an appeal and gives information regarding the filing process. He said an oral decision to not make a determination at the time did not notify potential appellants, but under the *Lilly* rationale, time might run out without them knowing they had to do something or it would become a thing decided.

Mr. Hart said that in the West Lewinsville case, a vague comment was made orally or in an e-mail, and ultimately the Board did not accept the appeal because the conclusion was that by the time it came to the Board for the appeal acceptance, it was decided that the Zoning Administrator would write a letter that answered all the questions, and everyone had agreed that would start the 30 days running and an appeal from the letter could be filed. He asked why there had not been a letter written and whether a letter would be written in the subject case. Mr. Shoup said the reason there had not been a letter was because a written determination had not been requested, and the only thing he would have been able to put in writing was that enforcement action would not be pursued at that point in time. He said that whether it was in writing or not would not change staff's position.

Mr. Hart asked how it differed from the Davis Store case, in which the Zoning Administrator said there was no violation, and it would not be pursued. Mr. Shoup said that with Davis Store, there was not an ongoing investigation, and the issue of whether a special exception was required had been closed out, and in the subject case, there was an ongoing investigation.

Mr. Hart asked whether it could be ongoing for five years. Mr. Shoup answered that it could be ongoing for quite some time because staff had agreed to continue to monitor the level of activity taking place at the property.

Mr. Hart asked about the burden or hardship on someone that could never obtain a special permit because it was a small property in a residential district and parking requirements could not be met. He asked whether there was a different standard to be applied where a place of worship could be in an R District without a special permit if the property was so constrained that it was impossible to get a special permit, so that although the County was requiring everyone get a special permit, if the site was terrible, a special permit was not needed.

Ms. Bailey responded in the negative. She said it came down to RLUIPA and the framework of the federal act, and the act provided that in the context of land use or zoning law, if a local government imposes a substantial burden on religious exercise, the government had to justify the substantial burden by a compelling governmental interest, and the nature of the regulation had to have a nexus to the compelling governmental interest in the least restrictive way. She said there was case law which provided that merely requiring someone to come in and get a special permit or to make religious exercise a little more expensive did not impose a substantial burden. Ms. Bailey said the anomaly was that someone who had the ability to obtain a special permit because the site was more amenable to the kind of use was required to get a special permit, but for sites where a special permit would not necessarily normally lie, the locality was pretty much constrained from regulating it until such time a compelling governmental interest arose.

Mr. Hart said his recollection of the Bull Run Buddhist Temple was that after the Court heard argument, an opinion was not issued. Both sides were asked to brief it again in light of RLUIPA, and in the end an opinion was written which did not really say anything about RLUIPA. He said it seemed to him to be a situation where there was a place of worship in a little house on a property that probably would never get a special permit, and although some things were taken out regarding no shoe racks outside the shrine and some other minuscule things particularized in the injunction, the Court upheld Fairfax County's ability to require a special permit for a place of worship on an unlikely property. He said it was not on an arterial and had no sanitation capacity to speak of, and given the constraints, he did not think it would have been approved. Mr. Hart asked how that was different from the subject case or whether the BZA and Supreme Court of Virginia were wrong.

Ms. Bailey answered that what had happened procedurally, which was not completely reflected in the

reported opinion, was that RLUIPA was not raised. It was not raised at the trial court level, so the Supreme Court did not address RLUIPA under a procedural rule which barred the Supreme Court from reaching an issue that had not been specifically articulated.

Mr. Hart asked why it had been requested to be briefed again in light of RLUIPA.

Ms. Bailey said she did not know the answer. She said that although the issue was briefed, the merits of RLUIPA were never addressed. The question presented regarding RLUIPA was raised later in the appeal, and the Supreme Court essentially said it was too late. She noted that the dissenting opinion stated that had it been decided under RLUIPA, all bets were off.

Mr. Hammack asked about a revision to the Zoning Ordinance, which he thought had occurred five years prior, and its application to churches to allow certain things as a matter of right and require special permits.

Mr. Shoup said he was not sure what Mr. Hammack was referring to. He said the Ordinance had not been amended or there had been no attempt to define a church.

Mr. Hammack said the County Board had tried to overhaul and allow small churches in certain districts as a matter of right, and he asked whether any small congregations that attracted 30 to 50 cars would be considered exempt from special permits if the level of activity was small.

Mr. Shoup said the whole picture would have to be looked at, how much street parking occurred, the number of people attending, noise generated, and other factors.

Mr. Hammack asked whether it would make any difference what particular religion the members belonged to if a standard was adopted which said 30 or 50 cars on the street was acceptable.

Mr. Shoup said it was immaterial what the religion was. The question was whether it was a place of worship, and if there were 30 to 50 cars, that would create a greater impact. He said that in the subject case, there were 28 to 30 people attending each week, but they did not arrive individually by car. During a recent visit to the site by Zoning Enforcement, there were only three cars parked on the street. People were shuttled in or arrived by carpool, so there was minimal impact regarding cars arriving and parking on the street. Mr. Shoup said there was a court case with a decision rendered under RLUIPA where there were 80 people involved with cars parking on neighbors' lawns which still did not satisfy the test under RLUIPA, and the locality could not regulate the entity.

Mr. Hammack asked whether the number of bathrooms, exits for safety, and the load factor of the residence where the meetings were being held were considered in the position Mr. Shoup was taking. Mr. Shoup said building officials visited the site and indicated that under the building code there were no regulations that would apply to the type of group meeting given the number of people congregating, and it did not put the structure into a different building code class which would require sprinklers or other modifications.

Chairman DiOulian called for speakers to address the question of the acceptance of the appeal.

Demetra Mills, 5232 Capon Hill Place, Burke, Virginia, came forward to speak. She said she and Betsy Boyle were the appellants. She said she believed a decision had been made by the Zoning Administrator not to prosecute the subject property as a place of worship on January 26, 2005, at a meeting in Supervisor Bulova's office, which had been reiterated on page 2 of the memorandum dated March 8, 2005, from the Zoning Administrator. Ms. Mills said it was clearly an appealable decision because the County Ordinance and Virginia Code stated that any decision of the Zoning Administrator may be appealed, and the wording was "any decision," not final decisions only. She referenced *Lilly v. Caroline County*, which stated that the Zoning Administrator's decision did not have to be in writing. She said the appellants were clearly aggrieved by the Zoning Administrator's decision and did not believe a final decision had to be made by the Zoning Administrator, so the fact that there were ongoing investigations at the property was not relevant to the appeal. Ms. Mills said the Zoning Administrator's memo stated that the internet posting and signage no longer existed, and she said that begged the question whether it ever existed and what had it evidenced about the nature and activity that took place at the property. She reported that there had been a metal sign out at the street that said what had been going on at the property, and an internet site had stated that the property was an international spiritual center where worship took place and that similar practices took place at temples. She said the property was clearly being used as a place of worship. Ms. Mills referred to an October 1, 2003, letter from Sharon Bulova to the neighborhood residents which said the regular group of 30 to 40 people who gathered on Sundays had not grown over the 25 years they had been meeting, and the

subject property owner indicated that it must have been the larger gatherings in the past that had caused the neighbors' concern. Ms. Mills said that from that it could be assumed that there had been 50 or more people at the property.

Chairman DiGiulian advised Ms. Mills that only the question of the acceptance of the appeal was to be addressed. He said the question was whether the Board would or would not accept the appeal.

Ms. Mills said there was a question as to whether the Zoning Administrator had discretion and whether or not it was an appealable decision. She said facts were not discretionary, and the facts were that there were more than 50 people on the property. She said that in view of the case law in *Tran v. Quinn*, the discretion of the Zoning Administrator was limited on how a previous decision was cited in the jurisdiction. Ms. Mills said that Mr. Shoup had indicated on several occasions that looking strictly at the Zoning Ordinance regulations, the circumstances of the situation would suggest the subject property was a place of worship, and the operation of such activity without a special permit was a violation, but the federal legislation, RLUIPA, made it not such a clear decision. Ms. Mills said RLUIPA did not preempt local zoning law in any respect, and under the local zoning law, a violation should be issued to the property. She said she had heard nothing said by the County Attorney or Zoning Administrator regarding how RLUIPA was being applied would preempt a zoning violation from being issued. She said the case law limited the way the Zoning Administrator could use his discretion, and the appellants were asking for an appropriate remedy from the Board of Zoning by finding that the Zoning Administrator was incorrect in his determination.

Betsy Boyle, 8437 Thames Street, Springfield, Virginia, came forward to speak. She referenced an e-mail from Mr. Shoup that stated that a violation had occurred on the property. She said she had first filed a complaint regarding religious activities at the subject property in approximately 1986 when she moved into the neighborhood, had filed complaints on three separate occasions, and had called the zoning board. Ms. Boyle said the Zoning Administrator had improperly and not thoroughly investigated the complaints, which had always been dismissed. She said it was wrong that she had to push her elderly father in a wheelchair four houses down the road because that was the nearest place she could find to park. Ms. Boyle said she thought the Zoning Administrator had received lousy advice from the County Attorney's Office not to prosecute the matter, and she wanted the Board to give the Zoning Administrator some good advice and say it was wrong that people in the neighborhood had been aggrieved for over 20 years. She said she should be able to sit on her porch without the chanting interfering with her morning coffee every Sunday for 20 years, and when she gets in her car and drives to her appropriately zoned church, she has nowhere to park in front of her house when she returns. She said all she had been asking from the beginning was that a violation be issued, and if the subject property owner chose to appeal it, she would be happy to come before the Board to discuss it. Ms. Boyle said it was just plain wrong, and finding the other temples where decisions had been upheld and a special permit required made it look even more wrong, and bad advice was being followed.

Mr. Hammack asked what the decision was in the *Cutter v. Wilkinson* case that was referenced in an exhibit from the appellants. Ms. Mills said it was to be heard by the Supreme Court on March 21, 2005. She said it was looking at the prisoners' rights issue under RLUIPA, and it was based on an Ohio case where prisoners were worshipping Satan while in prison. Ms. Mills said the Court had agreed to hear other aspects of RLUIPA, including the zoning aspect. She said that the fact that a decision had not yet been made in the court case should not delay the Board making a decision because the Board's job was to enforce the Zoning Ordinance. Mr. Hammack said that he would be interested in seeing the decision as opposed to a brief in support of one position.

Mr. Hammack said he was prepared to make a motion to defer the decision so the additional information requested from the County could be submitted and the Board could review all the documentation.

Mr. Hart said that in terms of the information to be submitted to the Board, he wanted to more clearly understand the support for the position that notwithstanding the explicit direction in the state statute that any decision may be appealed by any person aggrieved, some determinations were not appealable because there were RLUIPA implications or because of prosecutorial discretion. Ms. Bailey said she would address it in writing. Mr. Hart said both sides could address it if so inclined.

Mr. Hammack moved to defer decision to April 5, 2005. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:30 A.M. CARVILLE J. CROSS, JR., A 2004-PR-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected a structure, which does not comply with the minimum rear yard requirements for the PDH-4 District, without a valid Building Permit in violation of Zoning Ordinance provisions. Located at 9827 Fox Rest La. on approx. 6,361 sq. ft. of land zoned PDH-4. Providence District. Tax Map 48-1((32)) 18. (Decision deferred from 8/3/04, 8/10/04, and 12/7/04)

Mr. Hart indicated that he would recuse himself from the public hearing.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal involved a determination that the latticework constructed on a deck converted the deck to an addition to the house and could not extend into the required rear yard. She said the proposed Zoning Ordinance amendment would not apply to the subject case, and the appellant's attorney had been advised that he needed to get an interpretation of the final development plan and likely an amendment to it. A letter had been received the day prior to the hearing in which the appellant's attorney suggested a 30-day deferral to discuss the final development plan amendment with his client. Ms. Stehman said the appellant was out of town, and his attorney was in Circuit Court, so neither was present.

Chairman DiGiulian called for speakers to address the question of the deferral request; there was no response.

Mr. Hammack moved to defer decision on A 2004-PR-014 to April 5, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Ribble was not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 8, 2005, Scheduled case of:

9:30 A.M. EXPRESS TINT, A 2004-SU-030 Appl. under Sect(s). 13-301 of the Zoning Ordinance. Appeal of a determination that the appellant is occupying the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned appl. req. C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04 at appl. req.)

9:30 A.M. DENNIS O. HOGGE AND J. WILLIAM GILLIAM, A 2004-SU-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a tenant to occupy the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance Provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04, notices not in order)

Mr. Hart indicated that he would recuse himself from the public hearing.

Chairman DiGiulian noted that a 60-day deferral request had been received regarding A 2004-SU-030 and A 2004-SU-031.

Lynne J. Strobel, the appellants' agent, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, came forward to speak. She said the appellant had agreed to no longer tint vehicle windows on the site, so the use was a contractor's office and shops and was no longer a vehicle light service establishment, as determined by the Zoning Administrator. She said a determination was needed as to whether a site plan or site plan waiver was necessary. A non-residential use permit needed to be pursued and the property inspected, and the deferral was being requested to allow the appellants to go through those steps. Ms. Strobel said there were no public health or safety issues involved.

Mr. Hammack moved to defer A 2004-SU-030 and A 2004-SU-031 to May 10, 2005, at 9:30 a.m., at the appellants' request. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mr. Hart recused

himself from the hearing. Mr. Ribble was not present for the vote. Mr. Beard was absent from the meeting.

//

Ms. Gibb asked what staff generally did when requests for time extensions were received.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff looked to see if there had been any changes to the Zoning Ordinance that would affect the approval or require additional standards that were not previously considered, how long the approval had been active, and whether there had been any other additional times requested.

Ms. Gibb asked whether the surrounding area was evaluated to determine if there had been any changes to the area. Ms. Langdon answered affirmatively.

Mr. Hart referenced a past case of Mr. Farrell (phonetic) and said that in the years since it had been approved, a lot of things had happened in Loudoun next to the property. He said he did not know whether it would have any effect on the past approvals or requirements regarding turn lanes, but he thought that kind of situation was one in which some of the neighbors would want the chance to have input. He said some churches repeatedly had gotten extensions, and those situations needed to be carefully looked at and perhaps an opportunity afforded for public input.

//

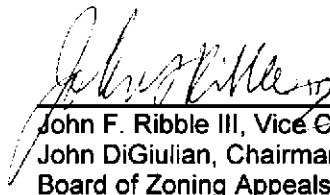
As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: May 5, 2009



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 15, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. HENRY J. MCCLARY AND LILLIE M. MCCLARY, VC 2004-MV-117, in association with RZ 2004-MV-038

Chairman DiGiulian noted that this case was withdrawn.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 of land zoned R-2. Dranesville District. Tax Map 40-1 ((1)) 12. (Admin. moved from 11/2/04 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to 5/17/05 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1. (Admin. moved from 10/5/04 and 11/30/04 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to 5/17/05 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. STEVEN AND BARBARA MINK, VC 2004-BR-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line such that side yards total 18.8 ft. Located at 4902 Loosestrife Ct. on approx. 10,365 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((12)) 60. (Deferred from 8/3/04 for notices.) (Admin. moved from 1/18/05 at appl. req.)

Chairman DiGiulian noted that this case was indefinitely deferred at the applicants' request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, VC 2004-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. and bay window 16.4 ft. from the front lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with SP 2004-MV-056). (Admin. moved from 12/21/04 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to 4/26/05 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, SP 2004-MV-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance To permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 ft., deck 1.8 ft. and roofed deck 5.6 ft. from one side lot line and deck 3.6 ft. from other side lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with VC 2004-MV-118). (Admin. moved from 12/21/04 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to 4/26/05 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. MICHAEL TAPPER, SP 2005-MA-007 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit decks to remain 6.1 ft. and 3.6 ft. from side lot line. Located at 3901 Lavaine Ct. on approx. 15,000 sq. ft. of land zoned R-2. Masen District. Tax Map 59-3 ((14)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Tapper, 3901 Lavaine Court, Annandale, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Varianco Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit a deck of 2.2 feet in height to remain 6.1 feet from the side lot line; and, a deck consisting of an at-grade patio to remain 3.6 feet from the side lot line. A minimum side yard of 15.0 feet is required for the deck and the at-grade patio; however extensions of 5.0 feet are permitted into the minimum side yard; therefore, reductions of 3.1 feet and 6.4 feet respectively were requested.

Mr. Tapper presented the special permit request as outlined in the statement of justification submitted with the application. He explained that, about one year ago, he hired a small contracting firm, Premier Windows, to build a deck, which was completed in March 2004. He was informed that the deck was too close to the property line and that Premier Windows were unable to obtain the required permit. The contractor assured him that attaining a variance would be no problem but after submitting the application, was told that the County was not granting variances. At that time, Mr. Tapper said he took over the paperwork, and reapplied for his special permit. He informed the Board that he had since placed his house on the market, and that he would have to compensate a buyer if the deck were not approved and had to be taken down.

In response to Mr. Hart's questions, Mr. Tapper said he had lived in the house for two years and that the concrete patio was there from the previous owners. At Mr. Hart's request, he submitted a copy of his contract with Premier Windows for the Board's review, and said he never received an answer from the contractor as to why they built the deck without a permit. Mr. Tapper noted that he had solicited three different companies for a bid and only Premier Windows responded, and that he checked their references, which seemed in order.

In response to Mr. Hart's question, Ms. Langdon explained that if a building permit were denied, there would be no record of the application because that information was purged as there was no reason to keep documentation on denied applications.

Mr. Tapper noted that his two adjacent neighbors had no problem with his deck and patio, and he had written documentation of their approval.

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

Mr. Hammack moved to approve SP 2005-MA-007 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL TAPPER, SP 2005-MA-007 Appl. under Sect(s). 6-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit decks to remain 6.1 ft. and 3.6 ft. from side lot line. Located at 3901 Lavaine Ct. on approx. 15,000 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((14)) 28. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the required standards for the Code section to be applied.

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

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

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

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

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

1. This special permit is approved for the location of two decks (one labeled conc. patio), as shown on the plat prepared by Bryant L. Robinson, dated September 16, 2004, submitted with this application and is not transferable to other land.

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

Mr. 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 23, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. WAYNE T. HEINRICHS, VC 2004-DR-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory storage structure 5.8 ft. with eave 5.4 ft. from side lot line and 5.4 ft. with eave 5.0 ft. from rear lot line. Located at 2140 Haycock Rd. on approx. 10,295 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((6)) (E) 2. (Admin. moved from 10/12/04 and 2/1/05 at appl. req.)

Chairman DiGiulian noted that this case was deferred indefinitely.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a subdivision sales office. Located at 12861 Sunny Fields La. on approx. 37,200 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((25)) 1. (Admin. moved from 3/15/05 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to March 22, 2005 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. VIJAY B. BHALALA, VCA 2003-SU-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-SU-106 to permit construction of addition 20.8 ft. from front lot line of a corner lot. Located at 13549 Currey La. on approx. 12,127 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 45-1 ((2)) 666A. (Decision deferred from 5/18/04, 7/6/04, and 3/15/05)

Chairman DiGiulian announced the case.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant had not returned staff's repeated telephonic calls. Staff understood Mr. Bhalala obtained a building permit for his previous addition, which was either under construction or nearly completed, but he had not informed staff of whether he wanted to withdraw this application.

Mr. Pammel moved to dismiss VCA 2003-SU-106. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. SIR VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 Braddock Rd. on approx. 7.34 ac. of land zoned R-C and WS. Springfield District. Tax Map 55-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, and 2/8/05 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to April 5, 2005 at the applicant's request.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. BENNY D. HOCKERSMITH, VC 2004-SP-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. with eave 5.83 ft. from side lot line such that side yards total 21.1 ft. Located at 7210 Reservation Dr. on approx. 14,323 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-3 ((2)) 287. (Concurrent with SP 2004-SP-010). (Decision deferred from 5/25/04, 7/20/04, and 1/25/05)

Chairman DiGiulian noted that there was a request for an indefinite deferral on this case.

Mr. Pammel moved to defer indefinitely the decision on VC 2004-SP-038. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ March 15, 2005, Scheduled case of:

9:00 A.M. AMY LOUISE LA CIVITA, VC 2004-BR-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stairs 3.3 ft. from side lot line. Located at 10212 Glen Chase Ct. on approx. 9,718 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 77-2 ((27)) 8. (Decision deferred from 8/3/04 at appl. req.) (Decision deferred from 2/15/05)

Chairman DiGiulian announced that this case was withdrawn.

//

~ ~ ~ March 15, 2005, Scheduled case

9:30 A.M. MICHAEL AND JOYCE FIELD, A 2004-DR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have conducted land-disturbing activities and have established a quasi-public athletic field on the subject property without an approved special exception, all in violation of Zoning Ordinance provisions. Located at 9030 Leesburg Pi. On approx. 3.49 ac. Of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 25. (Notices not in order, deferred from 11/39/05)

Margaret E. Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that the appellants' representative wanted to request a deferral of the public hearing.

John P. Burns, Esquire, Reston International Center A, 11800 Sunrise Valley Drive, Reston, Virginia, representative for the appellants, requested a one-month deferral stating that he was recently retained for this appeal. He said he was not sufficiently versed on its merits and that in several weeks the case would be heard by the General District Court regarding land disturbance, and he did not want this hearing to prejudice that trial.

Chairman DiGiulian asked if there was anyone present who wished to speak on the issue of deferral.

Kerry Mudd, 8964 Old Tolson Mill Road, McLean, Virginia, said her property abutted the Field's property, and a 538-foot property line was shared between them. She said that her neighbors', and she quoted 'Field of Dreams', was a nightmare for her family. She said that games were ongoing for one year and there was a Website posting the different leagues scheduled to play at the field. She noted that the games had increased to all-day tournaments, that they played in the rain and freezing cold, and had even played after blowing off snow from the field. Ms Mudd submitted that they never had stopped playing.

Chairman DiGiulian interjected and requested that Ms. Mudd only speak to the question of deferral.

Ms. Mudd said she wanted the case to be heard that day. In response to Mr. Hammack's question of why, she said that for over 18 months the problem was ongoing, and that she had had excessive property damage due to water runoff. She said she lost 40 mature forest trees, the noise generated from the almost daily regular soccer matches was excessive, and on occasion there had been public urination.

In response to Ms. Gibb's question to him, Mr. Burns said he intended to move into the house on the property. He said he was a coach for a men's soccer club, and he would utilize the field behind the house for

their practice field. He indicated he was an attorney representing Mr. Field, who had retained him on the prior Thursday. He said he was familiar with the land disturbing part of the case, but not with the zoning part of the case.

Ms. Stehman explained that this case's first deferral was due to the notices not being in order and that Mr. Field's explanation was the notice package was sent to the wrong address, however, after checking the addresses, the notices were sent to the address Mr. Field indicated.

In response to Mr. Hart's question regarding the first deferral, Ms. Stehman said the public hearing was originally scheduled for November 30, 2004, and the appellants had knowledge from that time to today, March 15, 2005, to prepare for their public hearing.

In response to Mr. Hammack's question concerning the General District Court case, Mr. Burns explained that the initial hearing was continued by the County because a necessary witness was unable to be present. He assured Ms. Mudd that all play would cease until the matter was resolved; he offered that promise as a condition for the deferral.

In response to Mr. Hart's question of when it was requested and whether or not staff had a position on the deferral request, Ms. Stehman stated that she received a voice mail message on Friday, March 11th, requesting a deferral, she was unable to reach the Fields, and staff was prepared to go forward with the appeal as the appeal was a land use determination and it related to the use of the field and whether it was properly approved.

Chairman DiGiulian noted that there were no more questions and called for a motion.

Mr. Hart acknowledged that the Board occasionally may continue cases, but he believed the first deferral was for a lengthy amount of time, and there was a citizen present who wished for the case to go forward. He then moved that Appeal 2004-DR-027 be heard that day.

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

Elizabeth Perry, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated March 4th. This was an appeal of a determination that the appellants had established a soccer field, which is a quasi-public athletic field without an approved special exception and the required County approvals in violation of Zoning Ordinance provisions. An inquiry was received by the County in August 2003 for a determination on whether the subject property could be used to host soccer games for an adult team on Sundays and also be available to children's soccer teams on Saturdays. In September 2003, the Zoning Administrator issued its use determination that the proposed use would require an approval of a special exception for a Category 3 quasi-public parks, playgrounds, athletic fields and related facilities in the R-1 District. On May 24, 2004, in response to a complaint, Zoning Enforcement staff inspected the property, and discovered land disturbing activities throughout a major portion of the property to include regulation sized, artificial turf soccer fields complete with goals and boundary markers and a large paved parking lot. A zoning violation was issued to the appellants on August 9, 2004, for establishing an illegal use. The appellants filed the subject appeal September 7, 2004 and the scheduled November 30, 2004 public hearing was deferred to March 15, 2005, due to the appellants' failure to send the required notices.

As Mr. Burns was not prepared to present testimony, he introduced Michael Field, the appellant.

Michael Field, 9030 Leesburg Pike, Vienna, Virginia, explained that, as he understood it, the first deferral was due to the General District Court hearing scheduled for February 4th being continued because a necessary County witness was unavailable for that date, and his intention was to have the BZA hearing after that court hearing. He said he had an approved grading plan, that the property formerly was a Spanish church, and that he cleared the parcel of only approximately 4 to 6 trees. The County informed him that no permit was required for an accessory use to residential, and he contracted an engineering firm who submitted a grading plan, which was approved by the County, the work commenced and was completed. To his surprise, some five months later, a sheriff delivered a summons for not having an approved grading plan. Mr. Field said his first attorney, David Stoner, assured him that he would look into the matter, and after a period of time he learned that his grading plan had been changed from approved to disapproved. He said Zoning Administration informed him to submit a special exception to have his property rezoned for a quasi-public use, but he did not want a quasi-public use; he only wanted his personal team to scrimmage and have pick-up games on Sunday afternoons. Mr. Field refuted that many different teams played throughout the week, stating that his property was used solely for his personal use with friends and his son's teammates.

He submitted that he planted hundreds of trees, had added thousands of dollars worth of fencing and that no league playing occurred. Mr. Field stated that this was not a quasi-public use, that that definition did not fit this use, and that County staff had blocked his efforts to sell the property until the matter was resolved.

Ms. Stehman submitted a copy of Mr. Field's grading plan for the Board's purview.

In response to Ms. Gibb's question concerning a letter from Mr. Burns indicating that he would soon enter into a long-term lease, Mr. Field explained that there was currently a tenant residing on the property and he himself no longer intended to live on the property as he was building a home elsewhere. He said he was currently living with his in-laws, and he would lease the house to Mr. Burns after this matter was resolved.

In response to Mr. Hart's question as to anyone residing on the property, Ms. Perry said that there was no indication that someone currently lived on the property, and Mr. Field's notice packet was sent to that address but was never picked up.

To clarify the circumstances concerning the grading plan, Ms. Stehman said, as she understood it, Mr. Field had submitted a grading plan, which was approved with two major conditions, that he submit a conservation escrow deposit and that he obtain a land disturbing permit, which were required before construction activity could commence. She noted that neither condition was fulfilled. Ms. Stehman pointed out that Mr. Field had a plan that was initially marked approved, but the subsequent activity on the land was not consistent with what was approved and the plan was rescinded. She added that if the parcel was to be a soccer field, it was appropriate to indicate so on the grading plan.

Ms. Gibb pointed out that the grading plan had not indicated it was for a soccer field, and asked staff what they thought Mr. Field proposed to do.

Lynne Snyder, Code Enforcement Branch, Department of Public Works and Environmental Services (DPWES), explained that when a grading plan is submitted, staff expects that all relevant information be indicated; however, the Field's plan simply requested some clearing and grading, and the DPWES reviewer determined that that was compatible with the Code. She said that at no time, based on the information that was provided on Mr. Field's submission, was it evident a soccer field was proposed. Ms. Snyder concurred with Mr. Hart's observation that the actual area of the grading and fill was larger than what was reflected on the plan, and that in itself required a different approval.

In response to Mr. Hart's question of why he had not posted the conservation deposit, Mr. Field said no one instructed him to do so, and he was unaware that it was required. He pointed out that he only cleared a small grouping of trees in the center of the parcel.

Mr. Ribble asked Ms. Perry if it was the Zoning Administrator's contention that the field was being used by leagues and not for private use. She said that was correct and explained that the September 8, 2003 Use Determination letter, Attachment 3 of the Staff Report, described league play on private property as a quasi-public use that required a special exception, and noted that a soccer field did not meet the definition of an accessory use.

In response to Mr. Beard's questions concerning leagues playing on his field, Mr. Field explained that there were no leagues as he understood the definition of a league, that he only invited other men's teams to play, and he believed the play on his field was strictly private and for his personal enjoyment.

To clarify the special permit use for Mr. Hammack, Ms. Langdon explained that the original owners of the property obtained it for their church, and assuming the church was legally established and the property sold, the special permit would have to change permittee to remain as a church, otherwise, the use can die for lack of use.

Discussion followed between Board members and Ms. Perry concerning what constituted an accessory use; how a use can be considered subordinate; that there must be someone residing on the property to establish an accessory use; the requirement of necessary approvals to use the land for a specific use; and, the requirement of a use determination to establish an accessory use category.

Chairman DiGiulian pointed out that the rough grading plan just distributed to the Board did not evidence an approval stamp but only a disapproval stamp that was signed in January 2004. He asked if there was a copy of an approved grading plan.

Ms. Perry pointed out that there was only that one plan which initially had been approved but later marked disapproved.

In response to Mr. Hart's question concerning the dimensions of a retaining wall as shown in Attachment 10, of the staff report, Ed Tobin, Senior Zoning Inspector, Zoning Enforcement Division, explained that the picture was of the southeast portion of the lot which had a depth of 18 to 20 feet, and at the base of the fill an approximate four-foot wooden retaining wall. He said he believed an engineer would have to sign off on the retaining wall to assure its safety, and that he personally could not attest to the safety of the slope as the wall was in the process of failing due to the pressure.

In response to Mr. Pammel's question concerning dirt removal, Mr. Field claimed he had removed no soil. He responded to a question from Mr. Beard, stating he had not put in a parking lot, that it was a circular driveway, and he actually had reduced the impervious surface when he repaved it. He conceded that the parking area could park close to 30 vehicles because he wanted to assure none of his players/invitees parked on the street or in front of the neighbors' homes. He pointed out that the original parking lot was for a church, and had been quite a bit larger than the area he recently repaved.

Chairman DiGiulian asked if there was anyone else present who wished to speak to the appeal.

Ms. Mudd said that Mr. Field's project had been a nightmare for her and her neighbors and it began with the initial clearing of the property, which resulted in significant destruction of her property because of the loss of over a dozen mature hardwood forest trees over 50 feet in height. She pointed out that at different times there was not just Mr. Field's rented bobcat on the site, but several construction vehicles. She said they had spent over \$21,000 for more landscaping, which a professional landscape architect and arborist advised would also be lost if the runoff continued from the next door property. Ms. Mudd said that when it rained there was a river of muddy water that ran under her fence off of the applicants' property and that the slope and fill that was missing was actually two feet above her 8-foot fence. She said she spoke with many County personnel after learning that there was no grading plan for the excavations, but it appeared as if nothing could be done to stop the illegal work. Ms. Mudd said that although advised by her attorney to file a temporary restraining order, she remained convinced that the County could and would take care of this blatant disregard of its zoning and environmental regulations. She expressed her worry over significant loss of property value, stating that their tax assessment doubled over the years. She again reminded the Board that they planted 21 thousand dollars worth of trees to replace those lost, to buffer her property from Route 7 traffic, and the view and noise of the soccer games. She noted that the continuous use of the fields for professionally refereed soccer games had cost her family's privacy and peaceful enjoyment of their property. She stated that the Web had a roster of the upcoming league games and that there were large galleries of spectators attending, many of whom dangerously parked along either side of Route 7. Ms. Mudd said that there were games every Thursday, Friday, Saturday and Sunday, and all holidays, and the whistle blowing, the spectator noise and the public urination had to cease, and that the use of Mr. Field's property for a soccer field was not a residential use. She noted that there had been continual appeals, violations and deferrals, and she wanted to know the final determination of this case that day. Ms. Mudd concluded her testimony by requesting the Board deny Mr. Field the use of his property as a soccer play field, that he restore the land to its original grading, and that he be required to plant a large buffer of trees along their shared property line.

Irwin Auerbach, 8633 Overlook Road, McLean, Virginia, came forward to speak in opposition to Mr. Field's appeal and to support the Zoning Administrator's position. He said that he was a neighbor of the Mudds, he lived in Woodside Estates, he was representing the Woodside Estates Citizens Association, and his association also opposed the quasi-public use of the Field's property. After doing their own research of the project, they concluded that Mr. Field violated environmental and zoning regulations of Fairfax County. Mr. Auerbach urged the Board to put an immediate stop to Mr. Field's activities.

In her closing staff comments, Ms. Perry summarized staff's position, stating that the use established on the subject property was done in violation of Zoning Ordinance provisions; the appellant had not sought County approval for construction of a soccer field; and, the plans submitted for clearing and grading did not reflect the work performed on the site, which included the installation of AstroTurf and a parking lot. She stated that the use required a special exception in an R-1 District, which was determined earlier in a Use Determination that was issued by the Zoning Administrator.

In rebuttal, Mr. Field again pointed out that his plan was initially approved. He cited another case involving Marymount College utilizing Lewinsville Park, which was a private use on public property, and he believed the Board made the right determination in that case. He submitted that the opposite was happening in his

case, that his private property was to be categorized as a quasi-public use and not used strictly for his private enjoyment. He refuted Ms. Mudd's statement that his activities caused the loss of trees on her property suggesting that it was a hurricane that destroyed trees on both their properties. He said he knew of no instances where there was public urination, that there was a bathroom in the house, that he never rented a portable toilet nor had as many as 60 spectators attend his games, and that he was not environmentally reckless as he had planted hundreds of trees and shrubs. Mr. Field stated that the simple fact remained that he was cited for doing land disturbing activities without approval, but maintained that his plan was initially approved. He said the Board heard many inaccuracies. He responded to questions from Mr. Beard concerning public urination stating that the restroom in the house was available, and it was on a septic system. He clarified for Mr. Hammack that he did not reside on the subject property, that he currently resided in McLean with his parents-in-law.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator in A 2004-DR-027. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

Mr. Burns stated for the record that he wished to preserve Mr. Field's appeal rights to the Board's decision.

//

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Lee case, the Heisler (Sant Nirankari) case, the West Lewinsville Heights case, and administrative matters or probable litigation pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:30 a.m. and reconvened at 12:42 p.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Mr. Hart moved that Brian McCormack, Esquire, be authorized to take the action discussed in the Closed Session. Mr. Hammack seconded the motion which carried by a vote of 7-0.

//

~ ~ ~ March 15, 2005, Scheduled case

9:30 A.M. MCLEAN BIBLE CHURCH, A 2004-DR-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the establishment of a Christian Bible Seminary and the placement of storage containers are not in conformance with the conditions and plats of Special Exception Amendment SEA 78-D-098-2 in violation of Zoning Ordinance provisions. Located at 8925 and 9001 Leesburg Pi. on approx. 42.8 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 10, 11 and 18.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant requested a deferral of its public hearing.

Jerry K. Emrich, Esquire, Walsh, Colucci, et al, agent for the appellant, said he was prepared to proceed but the staff report had issues which he hoped to resolve before the public hearing, and he requested the opportunity to try.

Ms. Gibb pointed out that there were a number of citizens present who wanted the hearing to go forward. She asked Mr. Emrich what issues he hoped could be resolved with a deferral.

Mr. Emrich said there was nothing specific, he only wanted the opportunity to sit and review with staff their assumptions some of which, he believed, were incorrect. At Ms. Gibb's request, he addressed the issue of the storage containers placed in the parking lot, pointing out that there was plenty of parking, he did not

believe they were a big issue, the church hoped to retain them, and he believed they were not in violation. Mr. Emrich noted that staff's characterization of the Memorandum of Agreement in the staff report was incorrect. Responding to Chairman DiGiulian's question of the amount of time needed, Mr. Emrich said 60 days would allow the opportunity to resolve the issues.

Chairman DiGiulian asked if there was anyone present who wanted to speak to the issue of deferral.

Jack Crosby, 1509 Snughill Court, Vienna, Virginia, came forward voicing his opposition to an extension. He noted that the church had several years to resolve the issues and now was the time to go forward.

Marcolla Jansen, 1444 Laurel Hill Road, Vienna, Virginia, President of Wolf Trap Woods Homes Association, spoke against a deferral. She said there had been sufficient time to have worked things out and concurred with Mr. Crosby that it was time to move ahead. In response to Mr. Beard's question, she said 225 homes comprised her Association, they surrounded the McLean Bible Church (MBC) along three sides, and that she represented all 225 homes all of whom were in agreement.

J. Jay Volkert, 1426 Trapline Court, Vienna, Virginia, said there had been plenty of opportunity for discussion between the homeowners and MBC, but it was not exercised by the church, and after reviewing the staff report, it appeared as if nothing had changed and the same longstanding issues remained. He said now was the time to move forward.

Irwin L. Auerbach, 8633 Overlook Road, McLean, Virginia, said he was the President of the Woodside Estates Citizens Association, of whom he represented as well as the Lewinsville Coalition, an organization of 12 homeowners associations in the Lewinsville and Springhill Roads corridor. In response to Mr. Beard's question, he said that the Woodside Estates Citizens Association had 214 homes and its Board of Directors was unanimous with its position on the MBC.

James Robertson, 7209 Evans Mill Road, McLean, Virginia, said he was a board member of the McLean Citizens Association and the Co-Chairman of its Planning and Zoning Committee. He said he was representing the Association and, in his opinion, the case should not be deferred.

Mr. Hart pointed out that there were a number of citizens interested in the case and questioned Mr. Emrich if there was any reason why the hearing could not go forward and he could meet with staff afterwards.

Mr. Emrich said there appeared to be several technical issues to clarify with staff, and he preferred to discuss the matter before the public hearing and the Board had made its determination. He said there had been discussions with several of the citizen associations who advised MBC that they were not interested in discussing the issues; however, this was not an attempt to work out a zoning issue; it was an attempt to address and deal with the technical issues which only recently were cited. In response to Mr. Beard's question, Mr. Emrich said he could give no example of even one of the technical issues as they were ready to address them that day, and he simply sought to avoid an adversarial process. He explained that staff had erroneously construed MBC's statements contained in their Memorandum of Agreement to indicate that the church intended to offer additional bible college courses and bring in additional theological facilities. He maintained that those issues were to be discussed in the future and were subject to mutual agreement among the parties. He explained that the primary purpose of the agreement was to continue, with its own staff, the church's previous activities, and noted that County staff had not taken a position that any of the past educational program activities were inconsistent with the approval.

Chairman DiGiulian asked if there was anyone else who wanted to speak on the issue of deferral, and receiving no response, called for a motion.

Mr. Hammack moved to go forward with the public hearing on Appeal 2004-DR-047. Mr. Hart seconded the motion, which carried by a vote of 7-0.

Jayne Collins, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the March 7, 2005 staff report. On January 11, 1999, the Board of Supervisors (BOS) approved Special Exemption Amendment SEA 78-D-098-2 to retain a then existing public benefit association, National Wildlife Federation, and recycling center approvals and to add McLean Bible Church, with a 3,500-seat sanctuary and a 450-seat chapel and related facilities, and its associated uses of a child care center and a youth recreation center. The issues of this appeal relate to whether the clothing collection bins located within the parking structure, and the conducting of graduate degree level classes by the Capital Bible Seminary on-site were in conformance with the approved SEA. This appeal was of the determination that the establishment of

the Capital Bible Seminary and the placement of outside storage containers was not in conformance with the conditions and plats of Special Exception Amendment SEA 78-D-098-2 and were in violation of the Zoning Ordinance.

Mr. Emrich, the appellant's agent, presented the arguments forming the basis for the appeal. He introduced Denny R. Harris, MBC's Director of Ministry Operations, who would address certain elements and similarities of the on-going MBC's program before the church's recent association with the seminary. He stated that the case involved the review and determination of the Zoning Ordinance and the special exception conditions as they applied to the McLean Bible Church property, and he reminded the Board to keep in mind that these were land use regulations. He pointed out that the Zoning Administrator's position on the prior MBC courses was that they were not in violation of the Zoning Ordinance. He stated that staff's position was that this was a university within a zoning context that was not approved, and the relationship between the church and the seminary was a partnership. He interpreted that clause to mean that the partnership was to carry out the mission of the church. Mr. Emrich noted that the BOS approved, without limitation, a special permit for those things that related to the mission of the church and these activities were not only consistent with the church's mission, but were the very core of its mission. He noted that there was a termination clause if the church did not like what was going on at the seminary. He addressed the matter of the containers and staff's issue that they took up parking spaces. He pointed out that MBC had ample parking spaces, at least 400 in addition to what was required, and the containers served a church mission to provide for the poor. Mr. Emrich concluded his presentation and introduced the church's director to explain the courses and their relation to the church's mission.

Denny Harris, Director of Ministry Operations for the McLean Bible Church, said the church's mission was to impact the secular of the Washington, D.C. area with the message of Jesus Christ, and a core value was the goal to transfer its congregation into fully devoted followers of Christ. The principle of that concept was the process of Christian education, and since MBC's founding in 1964, classes for adults, college and high school aged youths, and children had been offered. To encourage attendees, the adult classes were labeled 'McLean University', although it was not an accredited university. In 1987, MBC offered more intense courses and labeled the schooling the Log College, which was taught by MBC's pastoral staff, an Elder on the Board, and several visiting seminary professors, all of whom had Masters or Doctorates of Divinity. By late 1999 and 2000, all the classes were transitioned to be taught by members of MBC's ministry staff or the Board of Elders, and the ability to staff the college became a concern because of the intensity of the level of work involved. It was discussed in 2000 with Capital Bible Seminary (CBS) to have it teach the courses, and a partnership was developed. In exchange for the space MBC provided CBS to teach classes, CBS would offer significant discounts for MBC's staff and church members. Mr. Harris submitted that it never occurred to MBC that the education they provided over the years, because of the transition in who was now providing the education, required a special exception. He concluded by stating that Christian education was at the church's very core, and not only was it consistent and essential, but was integral to the mission of McLean Bible Church. He then asked for the Board's approval.

Mr. Emrich responded to questions from Mr. Hart concerning the sea cargo containers, a Web site printout submitted as part of the appeal application that advertised the Summer 2004 Class Schedule, and the number of church members and Sunday church attendees. He again affirmed that it was his understanding that the BOS had approved all things that were integral to the church, which would include the program of education.

In response to Mr. Beard's question concerning the similarities and differences between groups or activities sponsored by the church and a structured seminary, Mr. Emrich stated that one must look at the entire issue as a land use issue and nothing was different from when the Log College first was initiated to the current activities of the Seminary School.

Mr. Beard said that as he saw the issue, MBC brought in a professional organization, which effectually took the activities out from being an in-house operation, secured a partnership with a structured seminary, gave it certain rights, and allowed it to advertise itself as a higher learning facility.

Responding to Mr. Board's question of whether the MBC foresaw potential growth, Mr. Harris pointed out that their facility did not allow for much growth, and the rigors of a higher education in Divinity Studies was extremely difficult with only a few students willing to sacrifice the time and energy at that intensity to complete the four-year program.

In response to Ms. Gibb's question of how the seminary issue was first raised, Ms. Collins noted that a letter from Elizabeth Baker, a land use planner with Walsh, Colucci, et al, to Barbara Byron, the Director of Zoning

Evaluation Division, had asked for an interpretation.

Mr. Harris explained that he and Ms. Baker attended a meeting with County staff and Michael Congleton, Deputy Zoning Administrator for the Zoning Enforcement Branch, regarding a concern raised by the public, which subsequently generated several letters requesting interpretations.

Chairman DiGiulian called for speakers.

Jack W. Crosby, 1509 SnugHill Court, Vienna, Virginia, said he and his neighborhood were the most effected by the church's proposal. He reminded the Board that in 1975 a comprehensive plan was devised and the area of land where the church was located was designated low density residential. In 1999, the BOS approved the McLean Bible Church to take over the property and there was a well defined plan with a clear set of activities; however, what actually happened was very different, which was the reason for their concern. He listed several of the surprises: a one-lane road that mushroomed to three-lanes; the removal of hundreds of 50-year old oak trees; and, the hugeness of the parking area. Mr. Crosby voiced his concern that what the church may request would not be exactly what they ended up doing, and the impact would be detrimental to its residential surroundings. Utilizing the overhead projector, he showed a printout of MBC's upcoming schedule of events, which was extensive and scheduled during both day and evening hours. He clarified that from the agreement and actions, the MBC and Capital Bible Seminary had entered into a partnership in 2001 and now proposed to operate a full-blown institution of higher learning that grants degrees. Mr. Crosby affirmed that what MBC was proposing was totally outside the activities approved and allowed. He requested the BZA uphold staff's recommendation and deny the application, have the storage containers removed within 30 days, and assure that there were no further seminary classes.

Marcella Jansen, President of Wolf Trap Woods Homes Association, said she represented the 220 homes surrounding the church and they were the ones most impacted by the church's activities. She voiced their support of staff's position that MBC file a special exception amendment (SEA) and go through the public hearing process if it planned to conduct seminary classes. She also suggested that until MBC went through the SEA process, it cease seminary classes and remove the industrial trailers. Ms. Jansen pointed out that the seminary classes and industrial trailers were already a fact; MBC had moved forward with those activities without notifying the County or its adjacent neighbors. She noted that since the church took over the National Wildlife Federation property the neighborhood had difficulty receiving a straight answer on the magnitude and character of MBC and, therefore, because of the lack of trust, a condition of the SEA was that a communication committee be established between the church and the neighborhood. She noted that Jack Crosby was the head of the committee. Ms. Jansen stated that the church had not informed the committee of its plans to develop an extension campus even though its agreement with the Capital Bible Seminary dated back to 2001. Ms. Jansen submitted that the church, in pursuit of its mission, showed no regard for the impact on its neighbors and urged that the Board support staff's position that MBC abide by the rules and go through the public hearing process. She responded to two of Mr. Emrich's comments. The first concerned his mention of the SEA's Condition #10 regarding only activities consistent with the church would be done, pointing out that that was intended to be a limiting factor, not a justification. Another condition of the SEA was that the church would not increase traffic during the week. She stated that that would certainly occur with the establishment of the seminary. The last issue, Ms. Jansen stated, was Mr. Emrich's conception that this proposal was not a land use matter, pointing out that it ignored the impact that the growth of the church's activities had on the surrounding neighbors, including the visual impact of the construction trailers and the traffic.

Irwin L. Auerbach, President of the Woodside Estates Citizens Association, which he represented as well as the Lewinsville Coalition, said he concurred and endorsed the statements of Mr. Crosby and Ms. Jansen. He noted the citizens' difficulty in trusting the church because of its pattern of saying one thing but doing another, and their undertaking activities without informing the neighborhood. Mr. Auerbach said that the church had not been abiding by the rules and it should be required to. He also voiced his skepticism over the potential growth of the classes and implementation of signage. Mr. Auerbach stated that it was time that the rules were implemented.

James A. Robertson, representing the McLean Citizens Association, said that their resolution, which already had been distributed to the Board, defined the Association's opinion and recommendations. He suggested that MBC submit an SEA and go through the public hearing process, which would be welcomed by the citizenry. He said that they believed the church's proposal was an addition to what was done before, and that it was a commercial activity that the Capital Bible represented which was selling its services. Mr. Robertson said that if the church was to do its proposal, limits should be set, issues of traffic and growth addressed, and all involved should understand the rules established through a special exception process.

Chairman DiGiulian called upon Ms. Collins for closing staff comments.

Ms. Collins said that a college and a university was a separate and distinct use under the Zoning Ordinance, a Category 3 Special Exception Use, and the college/university uses were not shown on the plat, as required. She noted that the specific uses granted to MBC were for a church use, a child care center, and a youth recreation center, and a college/university use must meet those same criteria. Ms. Collins pointed out that staff was not denying the appellant the right to hold courses at the McLean Bible Church, only that its approved SEA must be amended to allow those classes.

In rebuttal and referencing a citizen's comment, Mr. Emrich said he was unable to find any condition or stipulation that indicated there would be no increased traffic. He pointed out that there were no notices of violation to date, with the exception of the complaint currently before the Board, and that the church had operated within the parameters set by the Board of Supervisors. Mr. Emrich respectfully requested that the Board of Zoning Appeals reverse the Zoning Administrator's determination in this matter.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to uphold the determination of the Zoning Administrator for the following reasons. He believed the church should undergo the special exception amendment process and have defined parameters. He noted that the neighbors had clearly voiced their issues and concerns, and he acknowledged that there were times when churches had adverse impacts on neighborhoods, which apparently was the case. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ March 15, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Ann L. Huffman

Mr. Hammack and Mr. Hart recused themselves from participating in this matter.

Margaret Stehman, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that there were two issues involved with this appeal. The first issue was the November 29, 2004 zoning approval of a building permit to allow the construction of a single family dwelling of which the appellant contended that the building permit was issued in error since the setbacks were incorrect. The second decision being challenged was made on January 19, 2004 to allow construction to continue under a revised ruling. In order to comply with the filing criteria of the Virginia Code and the Zoning Ordinance, the appeal must be filed within 30 days of the date of each decision cited in the appeal application. The first appeal was filed too late, having been received January 28, 2005, which was significantly beyond the 30-day file date of December 29, 2004. Relative to the second decision, the January 28, 2005 filing date was well within the 30-day filing date of February 18, 2005 to file an appeal. Ms. Stehman recommended that the Board of Zoning Appeals (BZA) not accept the part of the appeal relative to the first decision of November 29, 2004 because it was not timely filed and did not satisfy the applicable requirements of the Code and Zoning Ordinance; she recommended the BZA accept for public hearing the part of the appeal application relative to the second decision of January 19, 2005 which was timely filed.

Mr. Pammel moved to accept Ann L. Huffman's appeal application only with respect to the decision of January 19, 2005 to allow construction to continue under a revised ruling. Ms. Gibb seconded the motion, which carried by a 5-0 vote. Mr. Hammack and Mr. Hart recused themselves.

//

~ ~ ~ March 15, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Batal Corbin, LLC

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

William E. Shoup, Zoning Administrator, Zoning Administration Division (ZAD) explained that this appeal related to a Notice of Violation citing the appellant for a violation of several rezoning proffers with the predominant issue being that the appellant failed to maintain the proffered required tree preservation. The appellant was challenging the remedy provided in the Notice of Violation requiring that all construction activity cease. Staff's position was that the appeal related to the proffers and should be taken to the Board of Supervisors (BOS) as it was not a proper appeal before the Board of Zoning Appeals (BZA).

In response to Mr. Hammack's question regarding the Zoning Administrator's authorization to require a zoning violator to cease construction and the applicable Ordinance language, Mr. Shoup noted that there was no specific Ordinance language, but the Zoning Administrator does have the ability to seek injunctive relief to cause construction activity to cease, and he believed it was appropriate to put that language in a Notice of Violation as a remedy.

Mr. Hammack pointed out that the gist of the violation was the removal of some trees and now that they were razed, he questioned how stopping the property's development would effectively replace those trees.

Mr. Shoup stated that the tree removal was a part of the violation as well as some land disturbance and encroachment into tree save areas. He said that the Notice of Violation, with the remedy to seek legislative action to correct the violation, required a proffer condition amendment (PCA). Without prior knowledge of the particulars of the PCA, staff included the cease construction activity in the Notice of Violation to prohibit continued activity on the site.

Mr. Hammack pointed out that the appellant's position was that the Zoning Administrator's determination was appealable to the BZA under the Code; that the issue was a severable action and the BZA had jurisdiction even though the appellant also filed an appeal with the BOS on the special exception conditions. He questioned what authority it was of Mr. Shoup's that would back up staff's position that it was not a severable determination.

Mr. Shoup pointed to Sect. 18-301 of the Ordinance that said an appeal related to a proffered condition must go to the BOS. He maintained that the notice definitely related to a proffered condition, and questioned how one could determine that this appeal did not relate to a proffered condition.

Mr. Beard submitted that the Zoning Administrator's action was not punitive but a protective action.

Mr. Shoup noted that there were environmental concerns with the land disturbing activity during the on-going construction. ZAD coordinated with the Department of Public Works and Environmental Services (DPWES) on what the appellant would have to do to assure the land was stabilized and the area was environmentally protected while they pursued the legislative action that the notice required. He said that protective action was a consideration when citing the remedies.

In response to Mr. Hart's question of why the appellant could not appeal the proffer question to the BOS, and appeal the procedural issue regarding the stop work order to the BZA, Mr. Shoup explained that the remedy emanated from the proffer violation. He said staff took a position on a case and made its recommendation but it was the BZA who ultimately makes the determination.

Discussion followed between Mr. Hart and Mr. Shoup concerning the issues contained in the two appeals filed by the appellant and to whom, the BOS or the BZA, which issue was filed.

Frank McDermott, Esquire, attorney for the appellant, presented the arguments forming the basis for the appeal, stating that it was procedural, they were challenging the right and the authority of the Zoning Administrator to administratively shut them down under the circumstances of this case. He explained that the alleged violation was the taking down of a single tree, which had been approved by DPWES for removal, adding that there was even a question as to whether that status had been changed in the field. He concurred with Mr. Shoup's statement that the appellant had intruded into certain non-disturb areas, which was the appeal filed with the BOS, however, he maintained everything that was done was consistent with the proffers. The issue not appealed to the BOS but before the BZA was did the Zoning Administrator have the authority to shut them down. Mr. McDermott utilized the overhead to cite specific enabling statute language of VA Code Ann. 15-2 2299 concerning the ordering in writing of the remedy of any non-compliance, and the bringing of legal action to ensure compliance with the conditions. He noted that there was no allegation of an on-going violation, and the intrusion into the non-disturbance area that occurred was the subject of an inspector's Notice of Violation with the directed remedy to put mulch down, which was immediately done. There was no on-going activity, and there was \$70,000 to \$80,000 worth of fencing to protect the area. The

work continued in the allowable area where they were installing the infrastructure, stormwater management ponds and preparing foundations. He said he believed the County would not prevail in court if the County sought an injunction to shut them down, and, in his opinion, the action was punitive. He pointed out that the answer lay in the statutory language and quoted, '... the failure to meet all conditions shall constitute cause to deny the issuance of any of the required use or occupancy building permits.' He conceded that there was an authority judicially to shut them down, but not administratively, and he disagreed with Mr. Shoup's remedy to shut them down because the directed remedy was to go back to the BOS to seek legislative action. Mr. McDermott stated that the Zoning Administrator had the power to refuse issuance of necessary permits, not to administratively cease construction.

In response to Mr. Beard's question, Mr. Shoup explained that the usual time-frame to determine an appellant's intent before staff would take legal action was 10 to 15 days after the issuance of a Notice of Violation. He noted that in this case staff knew an appeal would be filed and staff did not initiate legal action right away in the hopes that the issue would be resolved.

Mr. McDermott said that he indicated immediately to Mr. Shoup that he would challenge staff's action because the appellant could not afford to have his job site shut down. He stated that the BZA did not have the purview to determine whether or not there was a proffer violation. He said the issue remained that of the procedural authority of the Zoning Administrator to shut them down.

Chairman DiGiulian asked if there was anyone present who wished to speak on the acceptance of this appeal and receiving no response, asked Mr. Shoup for any additional staff comments.

Mr. Shoup pointed out that if the development continued to the point of the lots being ready for building permits, that that was not the appropriate place to stop activity especially if the legislative action that may take place could change the configuration of the subdivision. He stated that staff was correct in its determination to cite the remedy when it did, and also noted that the appellant filing the appeal effectively prevented staff from seeking an injunction.

In response to Mr. Beard's question, Mr. McDermott clarified that if the Board were to accept the appeal, it would be to decide whether or not the Zoning Administrator had the authority and power to shut them down under the enabling legislation contained in the State Code. He reminded the Board to consider the fact that there was nothing specific under the Zoning Ordinance, as Mr. Shoup had conceded, that specifically authorized staff's action to shut them down. He said that he was simply asking the Board to reverse that part of the determination and nothing with respect to the proffers, and he believed the Board had that authority, as indicated in the determination of the powers of the Zoning Administrator under the Zoning Ordinance. He stated that at the first stage of the development before the clearing began, 40 trees had been transplanted into one of the buffer areas; therefore, what was deemed to be saved from internal to the site was already moved before any clearing commenced and this was done under the guidance of the Urban Forester. Mr. McDermott again noted that the site itself was cleared, other than the limits of clearing and grading, and the work continued in only the non-disturbed areas of which there were no trees or vegetation to preserve. The site would be substantially landscaped after the development was completed.

As there were no further questions, Chairman DiGiulian called for a motion.

Mr. Pammel moved to accept the appeal filed by Batal Corbin, LLD, as filed.

Mr. Hammack seconded the motion.

Mr. Hart said he would support the motion but commented that he believed the issue was difficult in that the way the appeal was framed, it was limited to a procedural issue which was not within the exception under 18-301 regarding the procedural question of whether the Zoning Administrator could order stop work, or mandate one to come back for legislative action. In his opinion, it was a severable issue from the question of whether or not there was a violation. Mr. Hart said he thought that as long as the issue remained that of a procedural one, the appeal was within the BZA's purview, and he would hope the matter could be resolved quickly so that things were not held up.

The motion carried by a vote of 7-0.

In response to Mr. Shoup's request for clarification that the scope of the matter was limited to the ability of the Zoning Administrator to order construction to cease, Mr. Pammel stated that the basis on which the appeal was being accepted was by Mr. Shoup's own admission that there was no specific enabling

legislation and as such, an interpretation of the Zoning Administrator is appealable to the BZA. Mr. Pammel said that that was the basis of his motion to accept the appeal and it was solely the matter of ordering the construction to cease. He said the proffer issue was not involved as it was a separate appeal to the BOS.

The motion carried by a vote of 7-0.

//

~ ~ ~ March 15, 2005, After Agenda Item:

Approval of March 9, 2004 Minutes.

Mr. Pammel moved to approve the March 9, 2004 minutes. Mr. Ribble seconded the motion, which carried by a vote of 6-0-1. Mr. Beard abstained from the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 2:30 p.m.

Minutes by: Paula A. McFarland

Approved on: June 26, 2007

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 22, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Nancy E. Gibb and John F. Ribble III were absent from the meeting.

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

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. MARY A. PETTIT, TR., VC 2004-SP-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. with eave 18.8 ft. from rear lot line. Located at 6658 Old Blacksmith Dr. on approx. 9,069 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 46. (Decision deferred from 10/12/04).

Chairman DiGiulian noted that there was a request for an indefinite deferral.

Mr. Hart moved to defer indefinitely VC 2004-SP-105. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were absent from the meeting.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. CLARI LIMITED, SP 2005-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.3 ft. from side lot line and 2.9 ft. from rear lot line. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22C. (Admin. moved from 3/29/05).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Esquire, Sack, Harris & Martin, P.C., agent for the applicant, replied that it was.

St. Clair Williams, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, a pool house, to remain 3.3 feet from the side lot line and 2.9 feet from the rear lot line. A minimum side yard of 20 feet and a minimum rear yard of 14 feet for an accessory structure are required; therefore, a reduction for the minimum required side and rear yards of 16.7 and 11.1 feet respectively, were requested, not what was shown in the staff report. He also noted that the applicant's agent had informed staff that two entrance gates on the subject site, which exceeded the allowable height requirements of the Zoning Ordinance, had been replaced with gates that met the height requirement. In order to be in compliance with the 30 percent maximum coverage requirement for a minimum rear yard, the pool deck located in the rear yard would be removed. This issue had been addressed in the proposed development conditions dated March 15, 2005.

Mr. Martin said the applicant was a French citizen who resided either in France or the United States and was employed by a French construction company, Clari Limited, the property owner. The addition of a deck and pool were contracted to Town and Country Pools, a building permit issued in 2002, and the work completed. When the applicant later requested an expansion of the deck and the addition of a cabana, the quoted price was considered too expensive, and Town and Country Pools advised him that he could do the improvements himself and that no additional permits were required. Mr. Van Themsche performed the work and two years later received a Notice of Violation. Mr. Martin stated that Mr. Van Themsche had cooperated completely with the County; had reduced the gates, and removed a portion of the deck to bring the property into compliance, and was surprised that there were several complaints from adjoining property owners. He submitted that the noncompliance was done in good faith as Mr. Van Themsche had received bad advice from the pool contractor, and the additional expense to bring the property into compliance would cause undue hardship for Mr. Van Themsche.

Responding to questions from Mr. Hammack, Mr. Hart, Mr. Beard and Mr. Pammel, Mr. Martin acknowledged that his client, Didier Van Themsche, was by profession, a builder in France; that he had not obtained the

required permits; that several of his workmen, who were visiting from Franco, had performed the construction; that although it looked somewhat unfinished and more work should be done, the structure was actually complete; and, the house was on a septic field.

Chairman DiGiulian called for speakers.

T. David Stoner, Esquire, representing Edward M. and Marian L. O'Brien, the neighbors to the rear of the subject property, referenced his March 18, 2005 letter, stating that he would make several remarks in addition to the facts in his letter. The requested special permit was akin to a variance, and the Ordinance standards were mandatory. If any of the standards were not met, the Board did not have the authority to grant it. Mr. Stoner stated that the structure was not harmonious with the Comprehensive Plan, that the parcel was considered an in-fill use which was not compatible with the neighborhood, and that the structure was too tall and too close to the property lines. Mr. Stoner maintained that the applicant had not justified his request and there was no basis on which to approve the request. He responded to Mr. Hart's question concerning a discrepancy in the height of the structure.

Edward M. Tobin, Senior Zoning Inspector, Zoning Enforcement Division, said that when he inspected the property he had estimated the structure's height from the natural grade, which was the standard measurement procedure. He distributed an approved house location plat that evidenced the septic field.

Joseph Gibson, 966 Towlston Road, McLean, Virginia, said he opposed the special permit request. He stated that there was no evidence that the mistake in the building location was done in error, but rather the owner showed total disregard of County requirements as well as his neighbors' sensibilities. Mr. Gibson said the structure was an eyesore, and requested that the Board deny the request.

Jecelyn Brittin, 916 Peacock Station Road, McLean, Virginia, stated that she strongly opposed the variance request, stating that the County had zoning laws and she questioned how the structure received permission to be built three feet from the property line.

Responding to Ms. Brittin's question, Chairman DiGiulian stated that the applicant had not received a building permit.

Michael Brittin, 928 Peacock Station Road, McLean, Virginia, quoted language from several of the requirements for special permits and listed how each was not met by the applicant. He noted that the error in building location was not a small one but a very large one; that the error could not have been in good faith as no building permit had been sought; and, although French by nationality, the applicant/resident was a builder by trade. He said the adjacent neighbors' use and enjoyment of their property was adversely affected by the structure, and he refuted Mr. Martin's statement that the structure was not visible from the road, pointing out that it was clearly visible from his home. Mr. Brittin stated that the hardship argument was not persuasive and, in his opinion, the sole hardship was probably financial but it was of Mr. Van Themsche's own making.

In rebuttal, Mr. Martin said he appreciated the neighbors' concern, but maintained that Mr. Van Themsche had not known he was breaking the law, that he understood the structure had not required permits as he had added only decking and a structure that was not enclosed. Mr. Martin submitted that there was no evidence to support the contention that the structure adversely affected property values as his research found that the area only increased in its assessments.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny SP 2005-DR-006 for the reasons stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CLARI LIMITED, SP 2005-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.3 ft. from side lot line and 2.9 ft. from rear lot line. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22C. (Admin. moved from 3/29/05). 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 22, 2005; and

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

1. The applicant is the owner of the land.
2. Under Sect. 8-914, of the Zoning Ordinance, it cannot be accepted that the non-compliance was done in good faith or that the error was done through no fault of the property owner as the applicant is a builder and should know that there are building and setback requirements to be met and permits to be obtained.
3. The structure is the size of a two-car garage and three feet off the lot line; the reduction would impair the purpose or intent of the Ordinance.
4. Neighboring property owners have testified that it would be detrimental to the use and enjoyment of their property.
5. It does not meet the requirements of Sub. Sect. 2 or 3 of Standard 8-006.
6. The granting of this special permit would create an unsafe condition with respect to both the subject property and the public street.
7. To force compliance with required setbacks would not cause unreasonable hardship on the owner.

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).8-914 of the Zoning Ordinance.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb 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 March 30, 2005.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. ROMULO AND BIANCA B. CASTRO, VC 2004-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.5 ff. from front lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providencia District. Tax Map 50-2 ((9)) 106. (Concurrent with SP 2004-PR-034). (Moved from 7/27/04 for noticas) (Decision deferred from 10/12/04).

Chairman DiGiulian asked if the applicants were present.

Bill Sherman, Staff Coordinator, said several attempts to contact the Castros had received no response, and staff did not expect them to be present. In response to Mr. Hart, he concurred that the Board approved the special permit for a shed as well as a trellis, a roofed deck, an accessory storage structure, and the dwelling itself. He said he could not recall whether or not the Castros were present for the first deferral.

Mr. Pammel moved to defer VC 2004-PR-087 to May 24, 2005, and to dismiss the variance application on May 24th, if staff was unable to reach Mr. Castro.

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

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. RONALD E. JERRO, SP 2005-DR-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure in the minimum required front yard of a corner lot. Located at 1111 Robindale Dr. on approx. 36,292 sq. ft. of land zoned R-1. Dranesville District. Tax Map 13-3 ((11)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronald Jerro, 1111 Robindale Drive, Great Falls, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a Special Permit to permit modification to the minimum yard requirements based on an error in building location to permit an accessory storage structure, specifically a shed, to remain in the minimum required front yard of a corner lot. He noted that per Section 10-104 of the Zoning Ordinance, accessory storage structures were not permitted in any minimum required front yard of a lot less than 36,000 square feet in size.

Discussion followed between Mr. Hart and Mr. Sherman concerning the location of a drain field, and the Ordinance language that restricted accessory storage structures from being located in a front yard of a lot 36,000 square feet or less.

Mr. Jerro requested that the Board approve his application as submitted. He stated that he could not comply with staff's request to move the shed because it was impossible without destroying it. He had no idea his lot was considered to have two front yards, and pointed out that his neighbors had no objections when told of his plans regarding the shed. Mr. Jerro said he planted numerous cypress trees; that he intended to do more screening with additional trees; if requested, he would paint the shed any color; and, his in-ground sprinkler system restricted the shed's placement. He stated that the shed's two-foot extension from his property line was slight and did not interfere with any utility easements.

Responding to questions from Mr. Beard and Mr. Hammack, Mr. Jerro acknowledged two letters of opposition, clarified that the shed had no electrical hookup, and that it sat on five skids, not cinder blocks.

Mr. Hart pointed out that the encroachment into Virginia Department of Transportation's easement was 7.4 feet not two feet as calculated by Mr. Jerro.

Edward M. Tobin, Senior Zoning Inspector, Zoning Enforcement Division, clarified that the shed was off from the edge of the pavement by 10 to 12 feet, and in his opinion, the plat accurately reflected the shed's location.

Mr. Jerro told Mr. Hart he did not know what easements were located in the vicinity.

Chairman DiGiulian called for speakers.

Christopher Earl Kennemer, 9701 Mill Run Drive, Great Falls, Virginia, said he opposed the shed's location because it was clearly visible when driving by and was not harmonious with the neighborhood. He stated that the shed's foundation blocks were little more than rubble and the cinder blocks under it were not in contact with the foundation. Mr. Kennemer acknowledged that the shed had been screened on one side but remained visible from Phoenix Drive. He asked the Board to deny the special permit and stated that the neighborhood was quite affluent and he believed it was not a hardship to relocate the shed.

In rebuttal, Mr. Jerro explained that the cinder block rubble was left by a previous owner and that he would clean it up. He stated he would do additional screening. He suggested several relocation sites, but pointed out each site's possible negative impact or its particular consideration.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny SP 2005-DR-001 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD E. JERRO, SP 2005-DR-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure in the minimum required front yard of a corner lot. Located at 1111 Robindale Dr. on approx. 36,292 sq. ft. of land zoned R-1. Dranesville District. Tax Map 13-3 ((11)) 7. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 2005; and

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

1. The applicant is the owner of the land.
2. It is understandable how the interpretation was made that the shed's location was permissible in that area because the plat clearly does not show the front yard setback for the corner lot.
3. The application does not meet the requirements of Par. 1, 2, and 3 of Sect. 8-006 General Standards nor does it meet the requirements as set forth in Sect. 8-914 of the Zoning Ordinance specifically that the reduction will not impair the purpose or intent of the Ordinance.
4. The storage shed is on skids and can be moved.
5. The Board is not empowered to permit structures that are on another owner's property and the Virginia Department of Transportation owns the right-of-way in which approximately one-third of the storage shed is located, as well as the fact that it is located in a utility easement.

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. 6-006 and the additional standards for this use as contained in Sect(s). 6-914 of the Zoning Ordinance.

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

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb 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 March 30, 2005.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 13.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.) (Continued from 2/1/05). (Decision deferred from 2/15/05).

Chairman DiGiulian noted that the case's decision was deferred for additional information.

Jane Kelsey, Jane Kelsey & Associates, Inc., the agent for the applicant, requested a further deferral and stated that the plats were recently distributed and the Board had not had time to adequately review them. She pointed out that they did not show a reserve septic field, which was one of the numerous justifications for the variance.

Mr. Pammel commented that he believed this situation was a demonstrable hardship, and moved to approve

VC 2004-MV-112 with the revised March 17, 2005, development conditions. Mr. Beard seconded the motion.

Responding to Mr. Hammack's question on staff's opinion of the recent plat submission, Susan Langdon, Chief, Special Permit and Variance Branch, said with only a cursory overview, staff had not seen any problems with it. She stated that there were cases of marine clay in the area but was unsure if it was located on the subject lot.

Mr. Hart stated that he could not support the motion to approve but would support a further deferral. He was sympathetic to the applicant's predicament and agreed there was a hardship concerning the 50-foot setback requirement, which was caused by the Ordinance. His problem with the situation involved both time and geometry and was that the Board was constrained by the Supreme Court directives regarding reasonable use. He quoted one of the standards regarding the premise of "all reasonable use of a property." He said the problem constraining the Board was that the BZA did not have the authority to grant a variance unless the effect of the Zoning Ordinance, as applied to the subject property, would, in the absence of a variance, interfere with all reasonable beneficial use of the property taken as a whole. He acknowledged that the language was severe, but was unable to distinguish whether Ms. Weigel was denied all beneficial use of her property because the courts also considered a property's past use. He also had difficulty with the conclusion that the variance was the minimum that would afford relief and his concern was the reconstruction would be larger than the original. Mr. Hart said he believed this case required a legislative solution.

Mr. Beard said he believed this case warranted both reasonableness and relief. He said the BZA was charged with practical decision making for the citizens of Fairfax County and he supported the motion to approve.

Mr. Pammel stated that Ms. Weigel's home did not comply with current Zoning requirements, and if it were considered that Ms. Weigel had beneficial use of her property, she would be unable to obtain the necessary permits to rebuild on her property. He noted the deterioration of her house, and if one followed Mr. Hart's determination, the house would soon collapse and the property be condemned. He said he did not believe that the intent of the Courts was to deny property owners the use of their property after it fell into disrepair because at one time they had had reasonable use.

Chairman DiGiulian called for a vote on the motion to approve. The motion failed by a lack of four votes, with Mr. Pammel, Mr. Beard, and Chairman DiGiulian voting for approval, and Mr. Hart and Mr. Hammack voting against the motion. Therefore, the application was denied. Mr. Ribble and Ms. Gibb were absent from the meeting.

At a later point in the meeting, Mr. Hart noted that Ms. Kelsey was still present, and he asked for the floor to make a motion regarding VC 2004-MV-112.

Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

Ms. Kelsey said she had intended to request reconsideration because she believed the Board's decision may have been flawed due to the incorrect plat that had not reflected the reserved septic field. She said she also wanted to consider Mr. Hart's comments about moving the garage. Ms. Kelsey said she would consult an attorney for advice on how the case differed from the Hickerson case, which the Board had referenced, because she did not believe the Hickerson case said that because you had reasonable use of your land up until 2005, from 2005 until eternity you can have no more use of your land that would be reasonable other than to set a lawn chair on it.

Mr. Pammel said he did not think the intent of the Supreme Court's decision regarding the Cochran case was to say that once a house had collapsed, the property could not be used if it did not meet the requirements of the Zoning Ordinance. He said that, in addition, the zoning of the property in the subject case was flawed because a two-acre requirement was being applied to a quarter acre lot.

Mr. Hammack moved to reconsider the Board's decision to deny VC 2004-MV-112. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

A new public hearing was scheduled for May 24, 2005, at 9:00 a.m.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05 and 3/1/05 at appl. req.)

Chairman DiGiulian noted that this case was administratively moved to April 19, 2005, at the applicant's request.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. FRANKLIN P. & MARGARET S. GIBSON, VC 2004-DR-120 (Admin. moved from 2/15/05 at appl. req.)

Chairman DiGiulian noted that this case was deferred indefinitely at the applicant's request.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a subdivision sales office. Located at 12861 Sunny Fields La. on approx. 37,200 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((25)) 1. (Admin. moved from 3/15/05 at appl. req.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael E. Kinney, Esquire, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, agent for the applicant, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of a special permit to allow a subdivision sales office within a single family detached model home, to continue business until all the subdivision lots/houses were sold, or for two additional years, whichever occurred first. Staff recommended approval, subject to the March 15, 2005, proposed development conditions contained in Appendix 1 of the staff report.

Mr. Kinney said he appreciated staff's recommendation of approval, and accepted staff's proposed development conditions.

In response to Mr. Hart's question, Susan Langdon, Chief, Special Permit and Variance Branch, explained that this special permit would allow homes from all of the subdivision, Oak Hill Reserve, to be sold, and was not restricted to certain sections. She noted that the use standards within each subdivision were stipulated in the Ordinance.

Chairman DiGiulian called for speakers.

Kenneth Bartec, 12807 Rose Grove Drive, Herndon, Virginia, submitted an affidavit from himself and four contiguous or adjacent lot owners who opposed the application because they believed the sales office violated their homeowners' covenant of quiet use and enjoyment of their property. He said when they purchased their homes, they understood that the sales office would operate for only three years. He refuted the applicant's statement that there was sufficient on-site parking pointing out that people parked on the street within a fire lane, and that the hours of operation effectively forced prospective buyers to sleep in their cars to be available when lots were released. Mr. Bartec said the suggestions they submitted to Winchester Homes which might help to ameliorate or correct the problems had been ignored and it was apparent that the applicant showed no inclination to address the matters. He said safety issues for their children, the increased traffic, the large number of strangers camping out in their cars, the public urination, break-ins, and incidents of arguments that escalated into fist fights that required the police to be called were all serious

problems.

In response to Mr. Hart's question of staff's knowledge of those problems, Ms. Stanfield said that that was the first she heard of them and that she saw no evidence of those occurrences during her site visit but that her visit was during the middle of the day.

In response to Mr. Hart's question of whether or not staff had an issue with Mr. Bartee's allegations, Susan Langdon, Chief, Special Permit and Variance Branch, said that parking within a fire lane was an issue the Fire Marshall could address, but she was unsure how staff could address the matter of people sleeping in their cars or the public urination. She suggested that with regard to the parking problem on the street, perhaps a condition be proposed mandating that all parking be on-site. Ms. Langdon said staff would consult Zoning Enforcement to determine if the issues were enforceable, and she concurred with Mr. Hart that the impact was substantially different if the sales office closed at 8:00 p.m. and people were not sleeping in their cars around the clock.

Mr. Kinney said he had not heard about the matters until that morning nor had his client informed him of any complaints from or discussions with homeowners. He told Mr. Hart that he did not know when the next release cycle was scheduled.

Mr. Hart asked how much time staff would require to investigate if the Board deferred decision.

Ms. Langdon replied that a month should allow staff the time to visit the site and talk to Zoning Enforcement.

Mr. Hammack stated that he thought the situation in the neighborhood was unacceptable, citing that prospective homebuyers were forced to queue in their cars for hours, the insufficient parking and parking in fire lanes, and the incidents of public urination. He suggested Winchester Homes deal with its homeowners and resolve the issues.

Mr. Kinney acknowledged Mr. Hammack's concern but said he was not positive the circumstances were as Mr. Bartee described, but he would take them at face value because there was no other information with which to evaluate. He explained that the model home/sales office was situated in the most advantageous place as it was immediately inside the development entrance and generated the least amount of traffic through the neighborhood. Mr. Kinney said he would relay Mr. Hammack's concerns to his client.

Mr. Hart said although he initially thought he understood what the application was about, now he wanted to learn more about the development's other sections, how big the subdivision was, how many more lots were available, and he would like staff to investigate the 'sleep-overs' and outside urination allegations. He suggested that development conditions be proposed that would address the issues and mitigate the problems.

Mr. Beard moved to defer decision on SP 2005-SU-002 to May 17, 2005. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

Mr. Hart suggested that Mr. Kinney contact the Sully District Land Use and Transportation Committee and discuss the case. He informed him that the committee met the first Monday night of each month.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-003 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 13534 Lavender Mist La. on approx. 2,546 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 128.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael E. Kinney, Esquire, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. This was an application for a special permit to allow a subdivision sales office in a townhouse, within a partially constructed subdivision, to continue to operate until all the homes in the subdivision were sold or for a period of two years, whichever occurred first. The sales office would be open between the hours of 11:00 a.m. and

6:00 p.m. daily with two employees during the week and three on the weekend. There were ten parking spaces provided for visitors to the sales office. Staff recommended approval of SP 2005-SU-003, subject to the proposed development conditions contained in Appendix 1 of the Staff Report.

Ms. Stanfield responded to Mr. Hart's question concerning a parking issue with one of the sales offices. She explained that the four temporary parking spaces adjacent to that sales office would be removed after all units were sold.

Mr. Kinney said he appreciated staff's recommendation of approval and his client accepted the proposed development conditions.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2005-SU-003 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES INC., SP 2005-SU-003 Appl. under Sect(s) 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 13534 Lavender Mist La. on approx. 2,546 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 128. 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 22, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the applicable sections of the Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 6-104 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Winchester Homes, only and is not transferable without further action of this Board, and is for the location indicated on the application, 13534 Lavender Mist Lane, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Eugene A. Kiernan, Jr., dated September 15, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation for the subdivision sales office shall be limited to a maximum of 11:00 a.m. to 6:00 p.m., daily.

5. The number of employees associated with the subdivision sales offices shall be limited to two employees on the weekdays and three employees on the weekend on site at any one time.
6. This Special Permit shall expire automatically, without notice, on March 30, 2007.
7. The area currently being used for sales offices shall be converted back to garage space upon cessation of the sales office use, or no later than March 30, 2007, whichever occurs first.
8. All signs shall comply with the requirements of Article 12 of the Zoning Ordinance. No temporary signs, including "Popsicle" style paper or cardboard signs, shall be placed on or off-site to assist in the sale of homes in the subdivision. All agents and employees involved in the marketing and sale of the residential units in the subdivision shall be directed to adhere to this condition.
9. The parking spaces associated with the subdivision sales office located in the side yard of the application property shall be scarified and reseeded, or landscaped, upon cessation of the sales office use, or no later than March 30, 2007, whichever occurs first.

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

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb 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 March 22, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-004 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 13539 Lavender Mist La. on approx. 1,938 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 65.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael E. Kinney, Esquire, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The application for a special permit was to allow a subdivision sales office, located across the street from the townhouse sales office that was the subject of the previous application, SP 2005-SU-003, to operate until all the homes in the subdivision were sold or for a period of two years, whichever occurred first. She noted that the features associated with the previous application were similar in the hours of operation, the number of sales associates and the availability of parking spaces for customers. Staff recommended approval of SP 2005-SU-004, subject to the proposed development conditions.

Mr. Kinney thanked staff for its recommendation of approval and requested the Board's approval.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2005-SU-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES INC., SP 2005-SU-004 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a subdivision sales office. Located at 13539 Lavender Mist La. on approx. 1,938 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 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 March 22, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the applicable sections of the Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 6-104 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Winchester Homes, only and is not transferable without further action of this Board, and is for the location indicated on the application, 13539 Lavender Mist Lane, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Eugene A. Kiernan, Jr., dated April 28, 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation for the subdivision sales office shall be limited to a maximum of 11:00 a.m. to 6:00 p.m., daily.
5. The number of employees associated with the subdivision sales offices shall be limited to two employees on the weekdays and three employees on the weekend on site at any one time.
6. This Special Permit shall expire automatically, without notice, on March 30, 2007.
7. The area being used for sales offices shall be converted back to garage space upon cessation of the sales office use, or no later than March 30, 2007, whichever occurs first.
8. All signs shall comply with the requirements of Article 12 of the Zoning Ordinance. No temporary signs, including "Popsicle" style paper or cardboard signs, shall be placed on or off-site to assist in the sale of homes in the subdivision. All agents and employees involved in the marketing and sale of the residential units in the subdivision shall be directed to adhere to this condition.

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

special permit shall not be valid until this has been accomplished.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb 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 March 22, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, VCA 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 99-P-101 to permit a change in development conditions. Located at 10408 Marbury Rd. and 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17H and 17I. (Reconsideration granted on 12/21/04). (Admin. moved from 2/15/05 at appl. req.)

Chairman DiGiulian noted that this case was deferred indefinitely, at the applicant's request.

//

~ ~ ~ March 22, 2005, Scheduled case of:

9:30 A.M. FERNANDO M. APAESTEGUI, A 2004-BR-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has established and allowed the occupancy of two separate dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4761 Farndon Ct. on approx. 9,942 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-2 ((5)) 1644.

Chairman DiGiulian noted that this appeal was withdrawn.

//

~ ~ ~ March 22, 2005, After Agenda Item:

Approval of April 6, 2004, and July 27, 2004 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

//

~ ~ ~ March 22, 2005, After Agenda Item:

Request for Additional Time
Salameh Brothers Construction Co., VC 01-V-187

Mr. Pammel moved to approve 12 months of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting. The new expiration date was January 31, 2006.

//

~ ~ ~ March 22, 2005, After Agenda Item:

Request for Additional Time
Trustees of Shiloh Baptist Church of Odriok's Corner, SP 00-D-069

Mr. Pammel moved to approve 6 months of Additional Time. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting. The new expiration date was

September 7, 2005.

//

~ ~ ~ March 22, 2005, Affer Agenda Item:

Approval of the March 15, 2005 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

//

Mr. Hammack moved that the Bcard recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

The meeting recessed at 11:08 a.m. and reconvened at 11:52 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

//

There were no applications scheduled to go forward the following Tuesday; however, Mr. Hammack moved that the Board members meet in the Board Auditorium on Tuesday, March 29, 2005, at 9:00 a.m., and staff appropriately advertise the proceedings. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Ms. Gibb were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Paula A. McFarland

Approved on: May 20, 2008

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 29, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:06 a.m.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal issues pursuant to Virginia Code Ann. Sec. 2.2-8711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:07 a.m. and reconvened at 10:29 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board direct its attorney, Brian McCormack, to teke the action which was discussed in closed session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ March 29, 2005, Scheduled case of:

9:00 A.M. GEORGE C. VAN DYKE, TRUDI C. VAN DYKE, VC 2004-BR-104 (Admin. moved from 10/5/04 and 2/8/05 at appl. req.)

Variance application VC 2004-BR-104 had been indefinitely deferred prior to the hearing.

//

~ ~ ~ March 29, 2005, Scheduled case of:

9:00 A.M. ANDREW H. ARNOLD AND LESLIE K. OVERSTREET, VC 2004-MV-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 24.9 ft. with eave 23.5 ft. from the front lot line . Located at 7735 Tauxemont Rd. on approx. 20,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((8)) 5. (Deferred from 7/27/04 at appl. req.) (Admin. moved from 2/8/05 at appl. req.)

Variance application VC 2004-MV-084 had been indefinitely deferred prior to the hearing.

//

~ ~ ~ March 29, 2005, Scheduled case of:

9:00 A.M. CLARI LIMITED, SP 2005-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.3 ft. from side lot line and 2.9 ft. from rear lot line. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville Distriot. Tax Map 19-2 ((1)) 22C.

Special permit application SP 2005-DR-006 had been administratively moved to March 22, 2005, prior to the hearing.

//

~ ~ ~ March 29, 2005, After Agenda Item:

Request for Reconsideration
Ronald E. Jerro, SP 2005-DR-001

No motion was made; therefore, the request for reconsideration was denied.

//

~ ~ ~ March 29, 2005, After Agenda Item:

Approval of March 22, 2005 Resolutions

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

//

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

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: September 12, 2006

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 5, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. JAMES NAPIER, SP 2004-LE-051, CONCURRENT WITH VC 2004-LE-114 (Admin. moved from 10/26/04 at appl. req.)

Chairman DiGiulian noted that SP 2004-LE-051 and VC 2004-LE-114 had been indefinitely deferred.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. LANSING W. HINRICHS, VC 2004-MA-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. with eave 11.7 ft. from side lot line. Located at 3023 Cedar wood La. on approx. 23,869 sq. ft. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((23)) 61. (Concurrent with SP 2004-MA-040) (Deferred from 9/14/04 at appl. req.)

Mr. Hart moved to indefinitely defer VC 2004-MA-097. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Pammel, Mr. Hammack, and Ms. Gibb were not present for the vote.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. JAMES P. & CECILIA BANHOLZER, VC 2004-BR-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. with eave 15.7 ft. from rear lot line. Located at 10434 Stallworth Ct. on approx. 9,489 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 68. (Decision deferred from 6/15/04 and 9/21/04)

Mr. Hart moved to indefinitely defer VC 2004-MA-097. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Pammel and Mr. Hammack were not present for the vote.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. CONSTANCE G. CANTIN, SP 2005-MV-008 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8096 Steeple Chase Ct. on approx. 1,500 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((4)) 1074.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Constance G. Cantin, 8096 Steeple Chase Court, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a modification to the limitation on the keeping of animals to permit the keeping of three dogs. The subject property was 1,500 square feet. Two dogs would be permitted by right.

Ms. Cantin stated that she took a third dog for a friend and was not aware of the County's Zoning Ordinance regarding pets.

Mr. Hart asked Ms. Cantin if she had reviewed the development conditions in the staff report.

Ms. Cantin answered that she had and was in agreement with them.

Chairman DiGiulian called for speakers.

Paula Thomas, 8101 Steeple Chase Court, Springfield, Virginia, came forward to speak in support of the application. The violation was not brought against Ms. Cantin by any of the homeowners, but by a renter in their community. She was in support of Ms. Cantin acquiring a special permit to care for the animals.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2005-MV-008 for the reasons stated in the Resolution.

//

COUITY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARB OP ZONING APPEALS

CONSTANCE G. CANTIN, SP 2005-MV-008 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8096 Steeple Chase Ct. on approx. 1,500 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-1 ((4)) 1074. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony showing compliance with the required standards for a special permit with the implementation of the proposed development conditions.
3. The potential impacts on the neighbors have been minimized.
4. The property will be cleaned daily.
5. There will not be odors reaching adjacent properties.
6. The dcgs will not be outside unattended for more then 30 minutes.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Constance G. Cantin, and is not transferable without further action of this Board, and is for the location indicated on the application, 8096 Steeple Chase Court (1,500 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing three (3) dogs. If any of these specific animals die or are given away, the dogs shall not be replaced, except that two (2) dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health

Department.

5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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

Mr. Beard seconded the motion, which carried by a vote of 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 April 13, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. BRUCE AND BARBARA STALCUP, VC 2004-BR-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 14.3 ft. from front lot line of a corner lot. Located at 5620 Heming Ave. on approx. 13,772 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (70) 1A. (Continued from 6/29/04 and 12/7/04)

Bill Sherman, Staff Coordinator, said Ms. Stalcup wanted to withdraw the matter.

Mr. Ribble moved to continue VC 2004-BR-064 to April 12, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. NORA C. STAMPER, SP 2005-MA-005 Appl. under Sect(s). 8-906 of the Zoning Ordinance to permit a beauty parlor. Located at 4013 Annandale Rd. on approx. 15,600 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2A3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nora Stamper, 4013 Annandale Road, Annandale, Virginia, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a beauty parlor as a home occupation. The area of the house used for the beauty parlor would consist of 330 square feet located inside the existing house. No new exterior construction was proposed. The proposed hours of operation were 9:00 a.m. to 5:00 p.m., Monday through Saturday. No more than three clients would be seen per day. The existing garage and driveway provided a minimum of three parking spaces. Staff concluded that the proposal for a beauty parlor as a home profession was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval subject to the proposed development conditions dated March 29, 2005.

Ms. Stamper presented the special permit request as outlined in the statement of justification submitted with the application. She said she had converted the garage into a beauty parlor.

Mr. Ribble asked Ms. Stamper if she had read the development conditions in the staff report.

Ms. Stamper answered that she had and agreed with them.

Chairman DiGiulian called for speakers.

Bridgot Khoo, 7210 Quiet Cove, Annandale, Virginia, came forward to speak in support of the application. She said she represented the Quiet Cove Homeowners' Association, which approved of the proposed development conditions outlined in the staff report. Their one concern was about parking. School buses and two-way traffic could not get through the street with parked cars there. They wanted a no parking zone sign

placed on Quiet Cove. The problem was not because of the beauty parlor.

Chairman DiGiulian stated that would need to be taken up with the Board of Supervisors. The BZA did not have the authority to do that.

Mr. Hart referenced the plat and asked who owned Outlot A. Mr. Sherman answered that it was not the applicant's and that the road came in after Ms. Stamper's house was built.

Mr. Beard asked where the entrance was for the beauty parlor. Ms. Stamper answered that it was the door next to the garage.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 2005-MA-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRPAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORA C. STAMPER, SP 2005-MA-005 Appl. under Sect(s). 8-905 of the Zoning Ordinance to permit a beauty parlor. Located at 4013 Annandale Rd. on approx. 15,600 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2A3. 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 5, 2005; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-905 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Nora Stamper, and is not transferable without further action of this Board, and is for the location indicated on the application, 4013 Annandale Road, 15,600 square feet, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bryant L. Robinson, dated December 8, 2004, revised December 28, 2004, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The hours of operation of the barber shop/ beauty parlor shall be limited to a maximum of 9:00 a.m. to 5:00 p.m., Monday through Saturday.
6. The applicant shall be the owner/operator and the only employee.
7. The area in the dwelling utilized for the special permit use shall not exceed 336 square feet.
6. The dwelling that contains the special permit use (barber shop/ beauty parlor) shall also be the primary residence of the applicant.
9. Parking shall be limited to two (2) spaces for the dwelling and one (1) space for the special permit use. All parking shall be on-site.
10. There shall be only one client at any one time on site and the maximum number of clients per day shall be limited to three (3).
11. There shall be no signage associated with the special permit use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0. 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 April 13, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. EKKLESIA USA, SPA 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-Y-050 previously approved for a church to permit a change in permittee. Located at the S.W. quadrant of the intersection of Pleasant Valley Rd. and Blue Spring Dr. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) 12A. (Decision deferred from 3/1/05)

Chairman DiGiulian noted that SPA 00-Y-050 had been deferred for decision only.

Bill Sherman, Staff Coordinator, said there was no additional information.

Ms. Gibb moved to approve SPA 00-Y-050 for the reasons stated in the Resolution. Mr. Ribble seconded the motion.

Mr. Beard said he could not support the motion. He said he thought it could be taken care of through the enforcement provisions granted to the County.

Ms. Gibb said that with the special permit cases, the development conditions were getting longer and longer.

Mr. Hart said he supported the motion. He said the question of whether special permits should run with the land was an issue for the Board of Supervisors. It was a question of the wording of the Ordinance. It was in the public interest to have citizens participate in the process of a public hearing.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EKKLESIA USA, SPA 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-Y-050 previously approved for a church to permit a change in pormittee. Located at the S.W. quadrant of the intersection of Pleasant Valley Rd. and Blue Spring Dr. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) 12A. (Decision deferred from 3/1/05) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 2005; and

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

1. The applicants are the owners of the land.
2. The development conditions should remain as they are.
3. The special permit should run to the applicant.
4. Section 8-007 allows the Board to impose conditions and restrictions upon the proposed use as it may deem necessary in the public interest to secure compliance with provisions of the ordinance.

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

THAT the applicant has presented tostimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this uso as contained in Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Ekklesia USA, and is not transferable without further aotion of this Board, and is for the location indicated on the application, 4300 Block of Pleasant Valley Road (8.64 acres) and is not transferable to other land.
2. This Special Permit is granted only for the church and related facilities as indicated on the special permit plat prepared by Burgess & Niple, dated April, 2000 as revised through March 2001, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be detormined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifoations te the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the church shall be 600 at completion of Phase I and 800 at the completion of Phase II.
6. A maximum of two hundred and seventy-six (276) parking spaoes shall be provided. All parking for the use shall be on site as shown on the Special Permit Plat.
7. The open space around the pionio pavilion shall be landscaped as shown on the special permit plat. At least fifty percent (50%) of this area shall be landsoaped contemporaneously with the first phase of development; a minimum of fifty (50%) of the troes to be planted in this area during this phase shall be large deciduous trees. The remainder of this area shall be landscaped contemporaneously with the construction of the picnic pavilion or within five (5) years of the first site plan approval,

whichever occurs first. A management plan shall be developed and submitted with the site plan for this area that will provide for the long-term viability of the landscaping in this area while allowing for the use of the picnic pavilion and the passive use of the surrounding area. The management plan shall incorporate an approach that minimizes applications of fertilizers, pesticides, and herbicides and shall be subject to the review and approval of the Department of Public Works and Environmental Services (DPWES) in coordination with the Urban Forest Management Branch prior to site plan approval.

8. The stormwater management pond shown on the special permit plat shall be designed as a best management practice facility in accordance with the Fairfax County Public Facilities Manual. Drainage from the impervious surfaces on the property shall be conveyed to this facility to the maximum extent practicable, as determined by the Department of Public Works and Environmental Services (DPWES) of DPWES. The applicant may design this facility as a wet BMP pond or as a dry BMP pond.
 - a) If the pond is developed as a dry BMP facility, the applicant shall plant trees and shrubs in the area SWM/BMP ponds, using the species that are shown on the special permit plat and such other species that are well-suited to soil, hydrologic, and microclimatic conditions of the area(s) being planted, subject to approval of DPWES in coordination with the Urban Forest Management Branch. If determined to be practicable by DPWES in coordination with the Urban Forest Management Branch, the density of plantings shall be greater than that shown on the special permit plat; additional plantings of trees at least two (2) inches in caliper or equivalent plantings of smaller trees and/or shrubs shall be provided to maximize plantings consistent with aforementioned DPWES policy.
 - b) If the pond is designed as a wet BMP facility, the applicant shall provide a shallow bench of emergent wetland vegetation around at least half the perimeter of the pond. This wetland bench shall be at least five feet in width, shall be located between zero (0) and twelve (12) inches below the normal pool surface elevation of the pond (the applicant shall have the discretion to determine precise depths within this range), and shall be planted with a minimum of four (4) emergent wetland plant species selected from Table 13 of the Metropolitan Washington Council of Governments (MWCOG) "Design of Stormwater Wetland Systems" (October, 1992) or other equivalent reference approved by DPWES. All species provided shall be native to the area and shall have a high value for wildlife, as set forth in the MWCOG document or as otherwise determined by DPWES. A wetland construction and planting plan shall be shown on the first site plan and shall be subject to the approval of DPWES in coordination with the Urban Forest Management Branch.
9. In order to minimize disturbance to existing tree cover in the EQC, no clearing or grading shall occur within the existing tree line of the EQC as shown on the special permit plat except to provide for the conveyance of drainage from the SWM facility, to provide a sanitary sewer line crossing of the EQC. No portion of the SWM pond structure or associated clearance area pursuant to Sect. 6-1605.3A of the Public Facilities Manual (excepting measures for the conveyance of drainage from the pond) shall be located within the EQC. Any area of encroachment into the EQC for clearing and/or grading associated with the SWM pond shall be restored to a natural wooded condition to the maximum extent practical as determined by DPWES in coordination with the Urban Forest Management Branch. Notwithstanding the size and location of the proposed spillway area shown on the special permit plat, the conveyance of drainage from the SWM pond shall occur in a manner that will provide for adequate drainage while minimizing disturbance to the EQC, as determined by the Department of Public Works and Environmental Services (DPWES), with the goal that the extent of disturbance for the spillway shall be reduced from that shown on the special permit plat, if practical. The sanitary sewer line shall be located, designed, and constructed such that disturbance to the EQC will be minimized to the extent practical, as determined by DPWES.
10. The EQC shown on the special permit plat shall remain as perpetually undisturbed open space. There shall be no clearing or grading of any vegetation within the EQC except for dead or dying trees shrubs and clearing and/or grading associated with the SWM pond (as set forth in Condition 9), and clearing and/or grading associated with a sanitary sewer line crossing, (also set forth in Condition 9). There shall be no structures or fences located within the EQC.
11. The tree preservation and restoration plan shown on the sheet 3 of the Special Permit plat shall be implemented as part of the construction of the church.

12. All areas identified as "preservation areas or restoration areas" on sheet 3 of the Special Permit plat (the "tree preservation/restoration Plan") and any other area within the EQC that is not needed for the conveyance of drainage from the SWM pond or a sanitary sewer line pursuant to development condition #9 shall remain as perpetually undisturbed open space. After the installation of the vegetation shown on the tree preservation and restoration plan, maintenance of the perpetually undisturbed open space, shall consist only of removal of undesirable vegetation such as brambles and vines with the intention of maintaining the planted tree cover until such time as natural succession takes over. There shall be no mowing of grasses in the perpetually undisturbed open space.
13. Existing vegetation shall be preserved and maintained along the western lot line and shall be supplemented with landscaping to the extent possible. The applicant shall minimize grading work in the area near the western boundary to the extent practical in order to maximize the preservation of trees in this area, as determined by DPWES. A minimum width of 25 feet of transitional screening shall be maintained along the western lot line.

The existing vegetation within the EQC shall satisfy the transitional screening requirement along the southeastern and central portion of the eastern lot lines. Full Transitional Screening I shall be provided as depicted on the approved special permit plat along the eastern lot line, outside of the EQC.

The barrier requirement shall be waived along all lot lines.

14. Prior to site plan approval, the applicant shall record a conservation easement among the land records of Loudoun County to the benefit of Fairfax County to ensure that the portion of the property in Loudoun County will remain undisturbed in perpetuity, allowing for the landscaping efforts shown on the SP Plat or other planting and/or management efforts that may be determined to be appropriate by the Urban Forest Management Branch.
15. At the applicant's option, the applicant shall construct half of a four lane divided facility along the site's Pleasant Valley Road frontage. If full frontage improvements are not provided, the applicant shall dedicate 56 feet from centerline to property line with ancillary easements.

The applicant shall dedicate 26 feet from centerline to property along the site's Blue Spring Drive frontage.

At the intersection of Blue Spring Drive and Pleasant Valley Road, the applicant shall dedicate 35 feet from centerline to property line. The additional pavement at the intersection shall be striped for use as turn lanes, subject to VDOT approval.

All dedication shall be conveyed to the Board of Supervisors in fee simple and be dedicated upon demand by Fairfax County or VDOT or at the time of site plan approval, whichever occurs first.

Sidewalks and/or trails shall be provided along the site's frontage, to be determined at the time of site plan approval by DPWES.

16. Approval of this special permit in no way obligates DPWES to determine that the proposed site entrances on Blue Spring Drive, are consistent with Chapter 118 of the Fairfax County Code (the Chesapeake Bay Preservation Ordinance), either as an allowed use pursuant to Article 2 of that Ordinance or as a use allowed by an exception pursuant to Article 6 of that Ordinance. Approval of the special permit in no way obligates DPWES to determine that the proposed entrances are consistent with the Ordinance or that an exception to allow for these entrances should necessarily be granted. If DPWES determines that the proposed entrances are not consistent with Chapter 118 and that an exception to allow for these entrances would not be appropriate, and that determination is upheld after all appeals that are pursued by the applicant are exhausted, a modification to the Special Permit plat pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance or an amendment to this special permit may be necessary.
17. Any proposed lighting of the parking areas shall be in accordance with the following:
- The combined height of the light standards and fixture shall not exceed 12 feet.

- The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
 - There shall be no up-lighting of any of the proposed building additions.
18. A sign permit shall be obtained and all signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
19. In the event blasting is necessary, before any blasting occurs on the Property the Applicant shall: (i) ensure that the Fairfax County Fire Marshal has reviewed the blasting plans; (ii) follow all safety recommendations made by the Fire Marshal; and (iii) provide independent qualified inspectors approved by DPWES to inspect wells and dwellings located within 500 feet of the blasting site (the "Inspected Wells"). The inspector shall check the flow rate for each of the Inspected Wells before and after blasting and the foundation of dwellings. If allowed by County or State regulations, the Applicant shall [either (i)] repair any damage to the dwellings, or at its sole discretion, may replace the Inspected Well(s) determined by the inspector to have been damaged as a result of blasting on the Property, or the Applicant shall [(ii)] pay for hook-up of public water to serve any house whose well has been damaged by blasting on the Property.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion, and 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 April 13, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. RICHARD G. WARGOWSKY, TRUSTEE, VC 2004-MA-103 Appl. under Sect(s). 13-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. with eave 2.5 ft. from side lot line and 12.5 ft. with eave 11.5 ft. from rear lot line. Located at 4503 Highland Green Ct. on approx. 5,741 sq. ft. of land zoned PDH-8. Mason District. Tax Map 72-1 ((26)) (2) 38. (Admin. moved from 10/5/04 at appl. req.)

Chairman DiGiulian noted that VC 2004-MA-103 had been withdrawn.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 7.62 ac. of land zoned R-C and WS. Springfield District.

Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.)

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

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit construction of a place of worship, with a maximum seating capacity of 350 and a total of 114 parking spaces. The application included 50 percent of undisturbed open space, an underground stormwater detention facility, and an eight-foot wide asphalt trail along the property's Pleasant Valley Road frontage. The church building would consist of 15,600 square feet. No other uses or structures were proposed.

Mr. Hart asked about the impervious surface. Ms. Stanfield answered that it would be deleted from the plat since the house was being torn down.

Mr. Matin said the maximum height would be 60 feet. He said it was not a massive building. The existing house along with the parking would be removed.

Mr. Hart asked about Development Condition Number 23 on page 5 regarding the house being removed prior to the construction of the access road. Mr. Matin answered that it would be.

Mr. Beard asked about the adjacent Lot 25. Mr. Matin answered that the trustees of the temple purchased it, but did not have any plans to develop it.

Ms. Gibb asked staff if they were satisfied with the location of the building with respect to Lot 25 and the transitional screening. Ms. Stanfield answered that it would be more desirable if the temple were moved over so there would be less impervious surface. She noted the deceleration lane and the median break on the plat that was important to staff to have. The requests made by transportation were met with that arrangement.

Mr. Matin said that whether they move the building to Parcel 24 or 25, the access would remain where it was.

Ms. Stanfield said they could provide inter-parcel access through Parcel 23.

Mr. Beard asked about the parcel on other side that the trustees were negotiating to buy, Parcel 24, and confirmed that they had no plans for the adjacent lot. Mr. Matin answered that it was being purchased for future expansion, but there was no time table.

Chairman DiGiulian gave two opposition letters to Mr. Matin to review.

Mr. Matin responded to Ms. Aquino's letter and said that the building had been proposed to be located much closer to the road, but was now moved 50 feet further back from the road. He also said trees would be planted that were six feet tall that would grow up to 45 feet that would provide a barrier. He said he did not think a four-foot barrier would be effective in the front, and that was why a buffer with the trees was provided.

Mr. Matin commented on the building height being equal to a two-story residential building with a dome. He said the maximum amount of seating for the temple was 364 seats per the development conditions. He said there was much less activity during the week than on Sunday. He estimated about 150 cars on Sunday.

Chairman DiGiulian called for speakers.

Venkata Mulpuri, 9705 Thorn Bush Drive, Fairfax Station, Virginia, came forward to speak in support of the application. He said it was going to be built in the western tradition in the Hindu faith. He said it would be architecturally beautiful for the Braddeok Road area. In their faith they do not necessarily attend weekly, but some monthly and mainly three to four times per year. The remaining time would be a small group of people, coming in and going out, so parking should not be a problem.

Ravi Aharam, 4228 Scarlet Sage Court, Ellicott City, Maryland, came forward to speak in support of the application. Mr. Aharam identified himself as one of the trustees for the temple board. He said it was important to preserve the values, traditions, and culture of their religion to pass on to future generations, and

they would like to serve the community by having the temple.

Mr. Hart asked Mr. Aharam about having the building on Lot 25 and using Lot 24 for future expansion because it would shorten the driveway and minimize the impervious surface so the entrance was closer to the median break. Mr. Hart asked what the reason was that they did not want the building on Lot 25. Mr. Aharam answered that their guru gave his approval of Lot 24 for the building rather than Lot 25, and it was important to follow the advice of the guru.

Mr. Hart asked if he was asked to look at the other lot. Mr. Aharam answered that he thought the guru had an attachment to Lot 24, but as Mr. Matin explained earlier, there would not be any development opportunities on Lot 24, so as a growing congregation, they thought it provided the best avenue for expansion through Lots 23 and 25.

Mr. Hart asked about inter-parcel access. Ms. Stanfield responded that she thought Lot 23 was closer to an existing access easement, and she said Mr. Matin told her the applicant had gained an access easement which connected Lot 23 to the median break; however, the lot on the other side to the west had no way of reaching a median break.

Mark Wiseman, 12512 Braddock Road, Fairfax, Virginia, came forward to speak in opposition to the application. Mr. Wiseman identified himself as the owner of Lot 15, which was directly across from Lot 24. He said that to get to his lot, he had to go to the school and make a U-turn because of the median breaks being some distance away. A median break closer to his property would be a benefit to him.

Dr. Ravi Veluri, 2617 Loganwood Drive, Herndon, Virginia, came forward to speak in support of the application. He said other temples were too far to attend. The architecture was unique to Fairfax County. It was a place of worship in which individuals come and go, as was the practice in India, which would not affect the inflow or outflow of the temple. It also was a center for the community where individuals could exchange views as well as worship.

Wajdi Najjar, 5848 Bridgetown Court, Burke, Virginia, came forward to speak in support of the application. Mr. Najjar said he was a member of the congregation. It was a very strong professional community that attended.

Elizabeth Prosl, 12683 Heron Ridge Drive, Fairfax, Virginia, came forward to speak in opposition to the application. She said she did not think they were good stewards of the land. There were tarps and trash all over the ground and lights that were never taken down. They had many large parties. She said it would be a monstrosity on a grand scale. Ms. Prosl said the architecture did not fit in with the general area. She disagreed with Mr. Matin's statement that it was not a massive building. She said a building that size in a residential area would be massive, and a 20,000-square-foot building could not be hidden by a couple trees on either side of it. She understood it was a watershed area, and that was the reason why the house was on a septic system. She was concerned about the house being torn down. Ms. Prosl said 300 cars on a daily basis had a significant impact on the area. The increased traffic was a huge concern for those in the area. She understood that they met throughout the week, not just Sundays, which meant a lot of cars on a small road.

In his rebuttal, Mr. Matin explained that Parcel 25 was purchased to relieve some of the restrictions they faced. When the house was purchased, it had a lot of junk on it, which would be moved away once construction started. In regard to the massiveness of the building, Mr. Matin said the floor area ratio (FAR) allowed was 0.1 on the parcel, and they were building .06 FAR, which was about 50 percent of the allowable FAR. The residential house could sit back 50 feet from the property line, but the house was actually sitting 200 feet back. Mr. Matin said it was a watershed district in which they planned to provide a stormwater management and best management practices (BMP) facility. The BMP facility would be a rain garden which would collect all the surface water and allow it to go back and recharge the underground water.

Mr. Matin said the Health Department had a requirement that a well cannot be less than 100 feet from a holding tank or septic tank. The closest tank from the well was over 200 feet away, so it would not affect the well at all. He said the tank had a pump, and there was no way anything could seep out of it. The pump system put it into the public sewer along the street site. There was no septic on the site. He showed the tank's location on the plat.

Ms. Gibb asked about the portion of Lot 25 being conveyed with another parcel. Mr. Matin responded that it would provide a buffer area between the building and Parcel 25, and there would be a lot line adjustment of

30 to 40 feet. Mr. Matin said the area was included in the application.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said she was not comfortable with a long driveway in an R-C District and asked if there was another option that the applicant could come up with.

Mr. Beard moved to defer decision on SP 2004-SP-052 to April 26, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, and 1/18/05 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to June 14, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Decision Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, 11/9/04, and 12/14/04)

Elizabeth Perry, Staff Coordinator, Zoning Administration Division, summarized what had previously transpired in the appeal. Ms. Perry said the appeal had been deferred five times, the last one granted on December 14, 2004, at the request of the appellants in consideration of health issues and to allow for the appellants to conduct additional research. Ms. Perry said the appellants contended that the storage of tractor-trailers commenced at the subject property in 1955, which made the use subject to the 1941 Zoning Ordinance. The subject property was zoned agricultural district, and the storage of tractor-trailer trucks was not permitted in the district as an accessory to a residential use. Additionally, none of the uses permitted in the agricultural district by right or a special permit were as intensive as tractor-trailer trucks storage. Ms. Perry said the use could only be legally non-conforming if it was established prior to the enactment of the 1941 Ordinance. There was no documentation in support that the use was ever legally established, which was a requirement for a non-conforming use. She said the use of the property was not in harmony with the character of the neighborhood in 1955, which was residential as supported by the building permits for the residential subdivision directly adjacent to the subject property which dated back to 1949. Staff maintained that the appellants were allowing tractor-trailer trucks to be stored on the subject property in violation of Par. 6 of Sect. 10-102 of the Zoning Ordinance.

Jerry Phillips, the appellants' agent, said that staff was reinterpreting the 1941 Ordinance. He stated that the 1941 Ordinance said that all uses commonly classified as agriculture and forestry and uses which are in harmony with the character of the neighborhood, with no restrictions. He said staff criticized the appellants because they claimed the appellants did not produce documents, but he contended that there had been live testimony from individuals who said that at the time prior to the Ordinance adoption of 1959 there was a sawmill operation there, construction by Clifton Construction Company. There had been uncontradicted evidence from others. He asked what more did they need to produce for an appellant proceeding, subjecting every one of these persons to questionings by seven members of the Board, asking questions of what was going on, which were all uncontradicted. Yet the County's position was they had found no evidence in their records that supported that there was a non-conforming use. He said evidence was produced by means of

aerial photographs along with the testimony. He said he thought the standard was preponderance, not by reasonable doubt.

Mr. Phillips said the appellants had shown a non-conforming or grandfathered use by Mr. and Mrs. Crabtree. The County was asking the Board to misinterpret or misread the words, "uses" which were in harmony with the neighborhood. There was nothing to show contrary to that other than the County's inability to rebut it. Mr. Phillips explained that the Crabtrees were not in good health, and Pennington Trucking would end when the Crabtrees passed on. He asked that the determination be not a violation for two of the trucks. He asked that it be deferred for a year to see what the status was on the Crabtrees' health. He asked the Board to consider the uncontradicted evidence of the case and that there had been a grandfathering of the storage of at least two of the tractor-trailers.

Chairman DiGiulian asked if there was anyone else to speak to the appeal.

The eldest Crabtree son came up to speak. Mr. Crabtree said he and his brother talked about not continuing the trucking business once their parents passed on. He explained that both of his parents were in very poor health and had a number of emergency, life-threatening close calls, so they were very dependent on the trucking business.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said it was a difficult case in many respects. He said it should be deferred for six months and reviewed then.

Mr. Hammack moved to defer decision on A 2004-SP-004 to October 11, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 5, 2005, Scheduled case of:

9:30 A.M. CARVILLE J. CROSS, JR., A 2004-PR-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected a structure, which does not comply with the minimum rear yard requirements for the PDH-4 District, without a valid Building Permit in violation of Zoning Ordinance provisions. Located at 9827 Fox Rest La. on approx. 6,361 sq. ft. of land zoned PDH-4. Providence District. Tax Map 48-1 ((32)) 18. (Decision deferred from 8/3/04, 8/10/04, 12/7/04, and 3/8/05)

Chairman DiGiulian noted that A 2004-PR-014 had been withdrawn.

//

~ ~ ~ April 5, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Betsy Boyle and Demetra Mills

Chairman DiGiulian noted that the consideration of acceptance on the appeal application had been deferred from March 8, 2005.

Mr. Pammel said he had reviewed the information provided by the Zoning Administrator and the County Attorney. Mr. Pammel concluded that the Zoning Administrator's decision was perfectly adequate; where he would conduct continued reviews and that there was not sufficient activity that warranted an enforcement action.

Mr. Pammel moved to not accept the appeal. Mr. Beard seconded the motion, which carried by a vote of 3-4. Mr. Hammack, Mr. Hart, Ms. Gibb, and Mr. Ribble voted against the motion. The motion failed for a lack of four votes.

Mr. Hammack expressed concerns over the 30-day rule that must be followed or it could not be appealable. He said there were inconsistencies in that in some cases the 30 days commenced when the Zoning Administrator made his decision, and in other cases it did not. Mr. Hammack said perhaps the Zoning

Administrator needed more time, but he could not support the motion.

Mr. Hart said he would not support the motion by Mr. Pammel. He agreed with Mr. Hammack in large part. Mr. Hart added that he concluded that under the statute and present Zoning Ordinance, a decision by the Zoning Administrator to be found with no violation was an appealable determination whether it was correct or not. He agreed with the staff's analysis; if the case were taken, it was somewhat of an empty exercise because mandamus could not be ordered. Although there was disagreement as to whether mandamus was requested, it was not the type relief the Board could provide.

Mr. Hammaok said the case was very difficult to reconcile compared to other cases where lesser uses received violations and the subject one did not.

Ms. Gibb moved to accept the appeal. Mr. Ribble seconded the motion, which carried by a vote of 4-3. Mr. Pammel, Mr. Beard, and Chairman DiGiulian voted against the motion.

//

~ ~ ~ April 5, 2005, After Agenda Item:

Request for Additional Time
Trustees of All Saints Church, SP 2002-LE-041

Ms. Gibb moved to approve 24 months of Additional Time. Mr. Hart seconded the motion, which carried by a vote of 7-0. The new expiration date was April 30, 2007.

//

~ ~ ~ April 5, 2005, After Agenda Item:

Approval of June 29, 2003; November 16, 2004; and December 21, 2004 Minutes

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

//

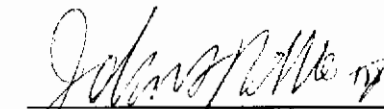
As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Vanessa A. Bergh

Approved on: October 11, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 12, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; James Pammel; and Paul Hammack.

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

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. CLARENCE F. SWANSON, III AND JANIS K. SWANSON, VC 2004-SU-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.96 ft. with eave 3.96 ft. from the side lot line such that side yards total 17.16 ft. Located at 14100 Roamer Ct. on approx. 13,682 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((8)) (11) 15. (Decision deferred from 9/28/04)

Chairman DiGiulian noted that VC 2004-SU-100 had been withdrawn.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. ARMANDO AND ELENA MESCHIERI, VC 2004-DR-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.8 ft. with eave 2.6 ft. from side lot line such that side yards total 20.0 ft. Located at 1311 Titania La. on approx. 16,452 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 29-2 ((3)) 139. (Deferred from 8/3/04 at appl. req.) (Admin. moved from 2/15/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-085 had been withdrawn.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. VINCENT ACCARDI AND PAULA R. LYON-ACCARDI, SP 2005-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.8 ft. with eave 4.6 ft. from rear lot line and 7.5 ft. with eave 6.1 ft. from side lot line of a corner lot. Located at 1119 Collingwood Rd. on approx. 18,533 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 72B.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vincent Accardi, 1119 Collingwood Road, Alexandria, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on error in building location to permit an accessory structure, specifically a workshop/shed, to remain 4.8 feet with eave 4.6 feet from the rear lot line and 7.5 feet with eave 6.1 feet from a side lot line of a corner lot. A minimum rear yard of 11.7 feet and minimum side yard of 12 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum rear and side yards; therefore, modifications of 6.9 feet, 4.1 feet, 4.5 feet, and 2.9 feet, respectively, were requested.

Mr. Accardi presented the special permit request as outlined in the statement of justification submitted with the application. He stated that his contractor had made an error in building the shed on its current site. He said that because of its size it would be difficult to move the shed. Mr. Accardi stated that he had approached his neighbors and they had no objection to the shed remaining in its present location if he did some landscaping around it.

In response to Mr. Hart's questions, Mr. Accardi stated that he planned to put a brick face on the shed and paint the sides and explained that the shed was not on a foundation and could not be shifted because it was

too heavy.

In answer to Mr. Hammack's question, Mr. Accardi stated that he did not have a copy of the contract he had signed with his contractor. He said the contractor was from Maryland and had told him that he did not require a building permit to erect the shed. He stated that the contractor's office was located in St. Mary's County, Maryland, and he assumed that he had a Virginia license.

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

Mr. Hammack moved to defer decision on SP 2005-MV-011 to April 26, 2005, at 9:00 a.m. He requested that the applicants bring copies of their contract and a statement from the contractor stating that he had contacted the County and reflecting the information he had been given. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. HARCO I, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 92-L-047-02 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-047 previously approved for a billiard and pool hall to permit expansion of the use. Located at 7255 Commerce St. in approx. 7,410 sq. ft. of 7.39 ac. of land zoned C-6, CRD, HC and SC. Lee District. Tax Map 80-3 ((1)) 4B and 11B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dean Crowhurst, McOuire Woods, LLP, 1750 Tysons Boulevard, McLean, Virginia, the applicant's agent, replied that it was.

Bill Sherman, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 92-L-047 to permit the addition of 1,390 square feet to the billiard and pool hall use. The additional space was formerly occupied by US Electronics/Metro Run and Walk and was directly adjacent to the existing billiard and pool hall. Staff recommended approval of SPA 92-L-047-2, subject to the proposed development conditions in Appendix 1 of the staff report.

Mr. Pammel asked if the current 28-space parking area met the requirements of the expanded area. Mr. Sherman replied that it did.

Mr. Crowhurst presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the existing establishment would be expanded into a store, and, therefore, there would be no need for more parking spaces.

In answer to Mr. Beard's question, Mr. Crowhurst explained that the additional space would be used to enable the applicant to have more room between tables and to allow for social gatherings if requested. He said that the applicant did not intend to make any changes to the limit of the current occupancy.

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

Mr. Pammel moved to approve SPA 92-L-047-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARCO I, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 92-L-047-02 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-047 previously approved for a billiard and pool hall to permit expansion of the use. Located at 7255 Commerce St. in approx. 7,410 sq. ft. of 7.89 ac. of land zoned C-6, CRD, HC and SC. Lee District. Tax Map 80-3 ((1)) 4B and 11B. 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 12, 2005; and

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

1. The applicant is the owner of the land.
2. This is an application to increase gross floor area by 1,390 square feet with no change in the number of restaurant seats or pool tables.
3. The application meets the requirements as set forth by the Zoning Ordinance.
4. The staff report recommends approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 4-603 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, HARCO I, Inc. d/b/a Fast Eddie's Billiard Café, 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 TPS, The Plan Sourco, dated June 2, 2004, signed June 8, 2004, and approved with this application, as qualified by these development conditions. This approval shall only serve to limit the use of the 7,410 square foot area to be occupied by the approved billiard and pool hall at 7255 Commerce Street.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. A minimum of 26 parking spaces shall be allocated for this use. At the time of site plan review a parking tabulation shall be submitted to and approved by DPWES (Department of Public Works and Environmental Services) which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.
6. Landscaping in the existing parking lot islands and in the area along Commerce Street in the vicinity of the approved billiard parlor and pool hall shall be maintained in accordance with the approved site plan for the Springfield Plaza shopping center. If any of the existing vegetation in the parking area in the vicinity of the billiard parlor dies or is removed, it shall be replaced with plantings of a similar size and species as determined by Urban Forest Management, DPWES.
7. Any signage erected on the building shall be of a size and material which is compatible with existing signage in the shopping center and shall be subject to the issuance of appropriate sign permits under Article 12 of the Zoning Ordinance.
8. Harco I, Inc. will allow no one under the age of eighteen (18) on the premises unless accompanied by a parent or guardian at all times or unless the person under eighteen is participating in a recognized activity sponsored by the Billiard Café such as billiard instruction or league play. All instruction and league play shall be strictly supervised by café management and strict adherence to all conditions of the special use permit and the laws and ordinances of Fairfax County and the State

of Virginia shall be observed, including the laws of the Alcohol Beverage Control Board.

9. Proper attire shall be required and appropriate signage shall be posted at the entrance to the premises and this dress code shall also be strictly enforced. A neat, clean appearance shall be necessary for admittance. Specific prohibitions shall include, but not be limited to, cut-off pants or jeans, tank tops or other sleeveless shirts, work clothing other than basic business attire, and clothing signifying membership in a gang or such activity.
10. The hours of operation shall not exceed 11:00 a.m. to 2:00 a.m. daily.
11. The maximum number of pool/billiard tables within the use shall not exceed 15. The maximum number of seats at restaurant tables or at the bar shall not be increased.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 20, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. BRUCE AND BARBARA STALCUP, VC 2004-BR-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 14.3 ft. from front lot line of a corner lot. Located at 5620 Heming Ave. on approx. 13,772 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((2)) (70) 1A. (Continued from 6/29/04, 12/7/04, and 4/5/05).

Bill Sherman, Staff Coordinator, advised the Board that the applicant did not intend to pursue this application, and that the applicant indicated that they would not provide any comments in writing.

Mr. Pammel moved to dismiss VC 2004-BR-064. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., VC 2004-MA-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling 6.7 ft. with eave 6.3 ft. from the side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74. (Deferred from 11/2/04 at appl. req.)

Chairman DiGiulian noted that a deferral request to July 19, 2005, had been received.

Mr. Hammack moved to defer VC 2004-MA-113 to July 19, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. SHAWN AND CATHLEEN BASSETT, VC 2004-MV-108 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of second story addition 22.6 ft. with eave 21.5 ft., roofed deck 20.9 ft. with eave 19.8 ft. and a two-story addition 23.4 ft. from rear lot line. Located at 1606 Old Stage Road on approx. 12,136 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((12)) (1) 5. (Admin. moved from 10/12/04 and 2/1/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-MV-108 had been indefinitely deferred at the applicants' request.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. DR. PAUL HARRIS, DDS, SP 2005-MA-009 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 4816 Backlick Rd. on approx. 1.10 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((10)) 1.

Chairman DiGiulian recused himself from this case.

Vice Chairman Ribble assumed the Chair, called the applicant to the podium, and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Shumate, Roeder and Associates, PC, 8280 Greensboro Drive, McLean, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a home professional office for a dentist, with three additional employees. The request was for a maximum of four patients on-site per hour and operation between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday. Staff concluded that the application was not in harmony with the Comprehensive Plan and was not in conformance with the applicable Zoning Ordinance provisions; that the proposed use with four employees and four clients entering and leaving the site per hour was a use that was too intensive in a residential district; that the proposed use should be located in a non-residential area; that the home professional office was not accessory to the principal use of the dwelling; and, that the lot could not accommodate adequate screening to protect adjacent residential uses. Staff recommended denial of SP 2005-MA-009.

Mr. Shumate presented the special permit request as outlined in the statement of justification submitted with the application. He called attention to the first paragraph on page 10 of the staff report that referenced sharing kitchen space with a dentist's office and claimed that was an elitist and exclusionary remark. He explained that Dr. Harris and his wife lived in the dwelling, and had no children. Dr. Harris was a disabled veteran, had given many volunteer hours to the community, was trying to start his own practice and could not afford to rent commercial space at this time. He said Dr. Harris wanted to practice family dentistry in the community in which he lived and noted that it was not a high volume practice. He discussed the intensity of the use, with no more than four people working within the home and a maximum of four patients per hour. He stated that if it became necessary, that number could be reduced. He stated that County Zoning Ordinances had permitted home professional offices for over 45 years and this application was a prime example of where that should be applied. Mr. Shumate said that if County staff did not desire to perpetuate home professional offices, the resolution was to get rid of home offices or change the requirements in the Ordinance. He said he disagreed with staff that this was an overly intensive use. Referring to page 4 of the staff report, Mr. Shumate said there was no requirement in the Zoning Ordinance that stated that a home professional office should be an accessory use. He explained the plan for transitional screening and stated that there was no better place to put the requested parking spaces than the one they had chosen that abutted the Meadows Farm Nursery property. Mr. Shumate said he had letters of support from adjacent property owners. He also called attention to staff's comments on page 5 concerning deceleration lanes and referenced the information provided by Phil Yates of Dewberry & Davis concerning the impropriety of that issue. He stated that the entire site had been reworked with respect to entry and exit from the property. Mr. Shumate said the applicant had no problem with the dedication of right-of-way, and it was his suggestion that in lieu of a bioretention facility, a conservation easement be done. He said the issues that had been raised by staff were site plan issues, that there was a sidewalk across the front of the property and that when and if the County put in a trail, the applicant would accommodate that. He also referred to staff's comments on page 3 concerning signage. Mr. Shumate urged the Board to read the information prepared by Dewberry & Davis, which was included in the staff report. He requested favorable action by the Board.

Mr. Pammel and Mr. Shumate discussed the square footage of the dwelling and the proposed occupancy of the dental office and home.

In answer to Mr. Pammel's question, Dr. Harris said he had no intention of hiring a hygienist.

Mr. Hammack, referring to the applicant's Exhibit 3, said he had reservations about the way the office use was overlaid into the residential use. He noted that the lab was in the corner of the kitchen and he found it to be an inappropriate place for a medical lab. He indicated that the location of the master bedroom, three fourths of the kitchen, the washer and dryer unit and the AV unit were the only dedicated residential uses and he did not understand how the calculations had been determined.

In response, Mr. Shumate stated that the calculations were referenced at the top of the exhibit indicating the square footage for each area. Mr. Shumate said that the applicant had met with a dental interior designer who had come up with an alternative design that would take the lab out of the kitchen area and place it where the washer and dryer were. He said there could be other refinements that could be made and he would have no problem if the Board were to exclude the lab from the kitchen. He said it was his understanding that County staff had not visited the interior of the site; however, he and Mr. Yates had. He said it was their opinion that the site plan, as submitted, would work; however, should a decision be made to defer this case to allow the Board to inspect the site he and his client had no objections.

In answer to Mr. Hart's questions Mr. Shumate said Dr. and Mrs. Harris were the only people living in the house. He said they took their meals in the waiting room which was equipped with a coffee table, television, etc., that Mrs. Harris did not work in the home, that the office would be closed during lunch time, and that the staff would not eat there.

Mr. Hart noted that a few home/professional offices had been approved over the past few years but there was a clear division between the home and the office.

In response to Mr. Hart's query, Susan Langdon, Chief, Special Permit and Variance Branch, said she was not aware of any approvals for mixed dual spaces.

Mr. Hart referenced a case in the Braddock District where the office space had been subordinate to the house and asked staff where that concept had come from. Ms. Langdon stated that the referenced case had been a big issue; however, unlike the allowance to rent out a portion of a home which could not be over 35 percent, there was no specific number for a home professional office. She said that at that time it had been determined by the Zoning Administrator that when the words "home professional" were used in a residential area, the intent was that the home use would occupy at least 50 percent of the use and the office no more than 49.9 percent. She explained the reasons for the special permit referenced by Mr. Hart and said it was for a dental office that had been in place for many years before the current requirement was put into place. Ms. Langdon said the Zoning Ordinance determined that the ratio had to be a 50/50 split and she was not aware of any discussion at that time concerning square footage. Ms. Langdon said that the Braddock case was the only special permit that had been approved with a home professional office and residence in such close proximity, and that she was not aware of any approved residential offices that used the same door. She said most of them had separate entrances and used a separate part of the building.

Discussion ensued between Board members, staff, and the applicant's agent concerning a proposed trail, the status of the property to the north owned by Meadows Farm, a gravel drive, and another dwelling on the property.

Mr. Shumate stated that Dr. Harris had no intention of adding another dentist to his practice, and he did not know how the reference to two dentists appeared twice in the staff report. He said that two chairs were required to enable the doctor to move smoothly from one patient to another.

Mr. Beard and Mr. Shumate discussed the impact that four patients per hour would have on the roadway as well as a proposed one-story addition to the dwelling. Mr. Shumate stated that at some time in the future, Dr. Harris planned to submit an application for an addition. He said if the doctor decided to expand it would be for residential use and that anything that ran with the application before the Board today would not change unless he returned for an amendment.

Mr. Beard stated that the residence appeared to be subordinate to the office and that it would be a commercial operation. He referenced the square footage and said he did not think it was practical.

Mr. Shumate said he agreed that this application required some scrutiny and he was going to request a deferral.

Vice Chairman Ribble called for speakers.

The following speakers came forward in opposition to the application. Ian Maynard, 7111 Galesville Place, Annandale, Virginia; Judy Lynne Smith Maynard, 7105 Byrneley Lane, Annandale, Virginia; Madeline Clark, 7102 Byrneley Lane, Annandale, Virginia; Susan Kriss, 7104 Byrneley Lane, Annandale, Virginia. Their main points were: making a left-hand turn from the subject property would be unsafe, and within the last year there had been a traffic fatality in the area; there would be an adverse increase in traffic; parking on the site would be an eyesore; the applicant's written proposal was different from his verbal statements to his neighbors; there would be too many patients and vehicle traffic per day; there was a possibility that the number of hours, addition of parking spaces, and days of operation could be revised which would be unacceptable; adequate screening to shield the neighbors' yards from the view of the parking lot would be difficult; and, cost of the proposed deceleration (taper) lane should be done at the expense of the applicant, not the taxpayers.

Mr. Hart referred to the tax map and asked why there was a dashed line on the lot line. Dr. Harris explained that there had been a grandfathered clause prior to 1941 when the lots had been subdivided. He said the lot would not have qualified as a buildable lot had it been done post 1941, and at that time all the lots had been 1.1 to 1.2 acres and had subsequently been cut in half.

In answer to Mr. Beard's question, Dr. Harris said he still owned the rear lot where the house was going to be burned down and he did not intend to sell the property.

Mr. Hart asked about the statement in the staff report that said there would be no signage on the property. He said that would be dangerous because patients would be slowing down and looking for the address. Ms. Langdon said that went to the crux of the problem in that it was a residential district, and a home professional office should be clearly subordinate and low intensity. She said staff believed that a sign would make the area look nonresidential. Ms. Langdon said there were a few home professional offices that had existing signs, and they had been in existence for many years prior to the special permit use requirement. She said that although staff had not asked that those signs be removed, they did not support new signs.

In his rebuttal, Mr. Shumate submitted four letters of support of the application and a letter from Judith A. Oakley, Natural Resource Specialist, Commonwealth of Virginia Department of Forestry, commending the applicant on the proposed landscaping of the property. He said the applicant had submitted appropriate responses that satisfied all the requisite standards under the Ordinance, and the application was in conformance with the Comprehensive Plan. He said that if staff had problems with the application they could rectify their objections by submitting a change to the Zoning Ordinance. He requested that the Board approve the application; however, if they had doubts about an approval he asked that the application be deferred to allow the applicant to work through the issues raised by the community and staff.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision SP 2005-MA-009 for 60 days with the record remaining open for written comment. Mr. Pammel seconded the motion which failed by a vote of 3-3. Mr. Beard, Mr. Hammack, and Ms. Gibb voted against the motion. Chairman DiGiulian recused himself from the hearing.

Mr. Hammack moved to deny SP 2005-MA-009 for the reasons stated in the Resolution. Ms. Gibb seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Pammel moved to waive the 12-month waiting period for refileing an application. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian recused himself from the hearing.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DR. PAUL HARRIS, DDS, SP 2005-MA-009 Appl. under Sect(s) 8-907 of the Zoning Ordinance to permit a home professional office. Located at 4816 Backlick Rd. on approx. 1.10 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((10)) 1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following

resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 12, 2005; and

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

1. The applicant is the owner of the land.
2. Based on the way the office use is configured and integrated with the residential use and the size of the space being 1,340 square feet, the office use is not subordinate to the residential use.
3. Things like the washer, dryer, heating, and air conditioning are shown as residential area, but support the office use as well.
4. The layout is not appropriate for a home professional office.
5. The space is very small for an office and a home.
6. The Board has not previously approved anything with joint office/residential use, and although that might be an acceptable idea at some point, the subject configuration is not satisfactory.
7. Until the issue of the office use not being subordinate to the residential use is resolved, the application is not viable.
8. There are other issues, but the primary issue is the actual configuration in the residence itself.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-907 of the Zoning Ordinance.

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

Ms. Gibb seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Pammel voted against the motion. Chairman DiGiulian recused himself from the hearing.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 20, 2005.

//

Chairman DiGiulian assumed the Chair.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. BECKY MARTIN, VC 2004-PR-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 2512 Swift Run St. on approx. 10,684 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((11)) 19. (Decision deferred from 7/27/04 and 2/8/05 at appl. req.)

Chairman DiGiulian noted that the applicant had requested that the decision on VC 2004-PR-083 be indefinitely deferred.

Mr. Hart moved to indefinitely defer decision on VC 2004-PR-083. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. EDWARD AND GINA BAKER, VCA 74-S-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 74-S-143 to permit construction of addition 3.4 ft. with eave 2.8 ft.

from side lot line such that side yards total 13.9 ft.. Located at 7010 Spaniel Rd. on approx. 14,856 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-4 ((2)) 135. (Concurrent with SP 2004-SP-029). (Decision deferred from 7/27/04) (Decision deferred from 2/8/05 at appl. req.)

Chairman DiGiulian noted that the applicants had requested that the decision on VCA-74-S-143 be indefinitely deferred.

Mr. Ribble moved to indefinitely defer VCA 74-S-143. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, change in development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Leesburg Pi. on approx. 8.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9. (Admin. moved from 3/8/05 at appl. req.)

Chairman DiGiulian noted that SPA 93-P-046-02 had been administratively moved to May 3, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 12, 2005, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 0401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, and 3/1/05 at appl. req)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, and 3/1/05 at appl. req)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 73-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, and 3/1/05 at appl. req)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been

administratively moved to July 26, 2005, at 9:30 a.m., at the appellants' request.

In answer to Mr. Hart's question, Maggie Stehman, Deputy Zoning Administrator for Appeals, acknowledged that there had been many deferrals of these cases and that staff had intended to go forward with the appeals today; however, Peter Murphy, Chairman of the Planning Commission, had requested that the appellants and staff meet together to establish a schedule and discuss the appeals. She said the meeting had taken place three weeks prior and the appellants had agreed to a schedule to meet certain milestones by the early part of June. Ms. Stehman said she had stated to the appellants that she would support the requested deferrals but nothing further and she expected that the cases would go forward on July 26, 2005.

//

~ ~ ~ April 12, 2005, After Agenda Item:

Approval of December 7, 2004; January 11, 2005; and February 1, 2005 Minutes

Mr. Pammel moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 12, 2005, After Agenda Item:

Request to Schedule Public Hearing Date
Betsy Boyle and Demetra Mills, A 2005-BR-005

Chairman DiGiulian requested that Maggie Stehman, Deputy Zoning Administrator for Appeals, comment on appeal A 2005-BR-005, as contained in her memorandum dated April 11, 2005. Ms. Stehman stated that if the public hearing were to go forward on May 10, 2005, staff would be able to accommodate the requirements for notice and posting of the property, which would be one week outside of the 90-day limit. She noted that staff would prefer to go beyond that; however, it was difficult to justify anything beyond the 90 days.

Mr. Hart said that if the Board was required to hear the appeal within 90 days from the time of the filing it would be helpful if they were informed as to whether a motion should be entertained to accept or deny the appeal. He stated that information would have sped up the timeline on this appeal. Mr. Hart said that since two of the cases scheduled for May 10th were going to be withdrawn and pending agreement by the appellants to move the other two cases to another date, he would support hearing this appeal on May 10th.

Mr. Ribble moved to schedule the public hearing for A 2005-BR-005 on May 10, 2005, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ April 12, 2005, After Agenda Item:

Approval of April 5, 2005 Resolutions

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

//

Ms. Stehman announced that this would be her last appearance before the Board of Zoning Appeals because she was retiring from the Department of Planning and Zoning. The members of the Board thanked her for her service to the Board and the County and wished her the best in her retirement.

//


Ms. Stehman stated that Mr. Pammel would be leaving the Board of Zoning Appeals soon and presented him with a copy of the 1970 Zoning Ordinance she had borrowed from him many years ago.

//

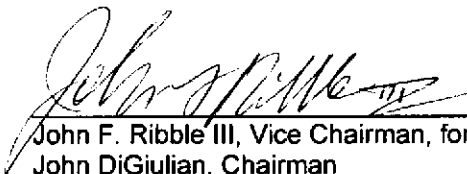
As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: April 15, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 19, 2005. The following Board Members were present: V. Max Beard; Nancy Gibb; Vica Chairman John Ribble; James Hart; James Pammel; and Paul Hammack. Chairman John DiGiulian was absent from the meeting.

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

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. ROBERT L. HARLOW, JR., VCA 01-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 01-P-014 to permit construction of roofed deck 17.5 ft. with eave 16.5 ft., stoop 14.5 ft. and second story addition 24.5 ft. with eave 23.6 ft. and 25.5 ft. from front lot lines of a corner lot. Located at 2843 Summerfield Rd. on approx. 7,711 sq. ft. of land zoned R-4. Providencia District. Tax Map 50-4 ((5)) 375. (Concurrent with SPA 01-P-002). (Decision deferred from 10/19/04)

Vice Chairman Ribble noted that VCA 01-P-014 had been withdrawn.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. ERIN SHAFFER, TRUSTEE, VC 2004-DR-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 2 lots with proposed Lot 42A having a lot width of 70.0 ft. and to permit construction of addition on proposed Lot 44A 9.5 ft. with eave 8.7 ft. from side lot line. Located at 1885 and 1889 Virginia Ave. on approx. 38,901 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 42 and 44. (Concurrent with SP 2004-DR-027). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, 11/30/04, 2/15/05, and 3/8/05 at appl. req.)

Vice Chairman Ribble noted that VC 2004-DR-081 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44. (Concurrent with VC 2004-DR-081). (Admin. moved from 8/3/04, 7/27/04, 9/28/04, 11/30/04, 2/15/05, and 3/8/05 at appl. req.)

Vice Chairman Ribble noted that VC 2004-DR-027 had been indefinitely deferred at the applicants' request.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. ROBERT AND CYNTHIA MCELROY, VC 2004-MA-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.6 ft. with eave 17.1 ft. from the rear lot line, fence greater than 7.0 ft. in height to remain in the side and rear yards and to permit minimum rear yard coverage greater than 30 percent. Located at 3911 Sandalwood Ct. on approx. 15,893 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 59-3 ((18)) 26. (Admin. moved from 6/15/04, 9/28/04, and 3/1/05 at appl. req.)

Vice Chairman Ribble noted that VC 2004-MA-053 had been indefinitely deferred at the applicants' request.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. at Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, and 3/22/05 at appl. req.)

Vice Chairman Ribble noted that SPA 75-S-177 had been administratively moved to June 7, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-05 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 previously approved for a church and child care center to permit an increase in enrollment and modification to development conditions. Located at 10550 Georgetown Pke. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 1B.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Janet Lutz, 912 Constellation Drive, Great Falls, Virginia, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The special permit request consisted of an amendment to SP 83-D-075, previously approved for a church and child care center, to permit a gradual increase in enrollment for the child care center from 40 to 99 children and to increase the current hours of operation of 9:30 a.m. to 1:30 p.m. to 9:00 a.m. to 3:30 p.m. No other changes were proposed with the application. The 17,448-square-foot church building located on the subject 4.97-acre site seated 300 and was developed with 93 parking spaces. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval of SPA 83-D-075-05 subject to the proposed development conditions.

Ms. Lutz presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that she was before the board to request an enlargement of the church's child care center gradually over a period of years.

Mr. Hammack asked whether Ms. Lutz had read the proposed development conditions and they were acceptable as written. Ms. Lutz responded affirmatively to both questions.

Mr. Beard commented that it was commendable that the applicant came forward and addressed the issue in a proper way rather than just going ahead and gradually increasing the enrollment without an amendment.

Mr. Hart asked what would happen if a child could not be picked up by the 3:30 deadline reflected in Development Condition 13. Ms. Lutz answered that nothing more would occur than what happened when a child had been left at the church. She said people went in and out all the time, and it would be older children in a fewer number and should not make any difference or have any impact. Ms. Lutz said the church preferred it be a later hour, but the County people involved suggested the earlier time to avoid an impact regarding traffic on Georgetown Pike, and the church agreed to lessen the time. She said there may occasionally be an exception, but it would be no different than the activities of the church for the past 20 years.

Mr. Hart asked when the classes would end and whether there would be a pick-up time afterwards. Ms. Lutz said the church was flexible on that issue, but anticipated the classes would end at 3:30 p.m. and the parents would take the children immediately thereafter so that everyone would be gone before 4:00 p.m.

Mr. Hart said he understood the church would not have to provide for a turn lane if the activities were cut off at 3:30 p.m. Ms. Stanfield said the request was just for a warrant, and the tradeoff was that the church would

not have to do a warrant for a turn lane, but it was not necessarily going to end up being that the turn lane would have to be constructed.

Vice Chairman Ribble stated that there was a problem because Ms. Lutz's name was not reflected on the affidavit. He said the hearing would proceed, but a deferral to the following week would be necessary in order to have the affidavit amended. Ms. Lutz said the person listed on the affidavit was called out of town, but the handwriting on the affidavit was hers because she had actually filled out the information.

Mr. Hammack asked whether Ms. Lutz was a trustee of the church, and she answered that she was not.

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

Mr. Hammack said that Ms. Lutz's name was required on the affidavit in order for her to speak on the application, and staff would explain to her what was needed to be done. He moved to defer decision on SPA 83-D-075-05 to April 26, 2005, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s) 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.) (Moved from 3/1/05 for notices)

Vice Chairman Ribble noted that VCA 2002-MA-176 had been administratively moved to May 24, 2005, at 9:00 a.m.

//

~ ~ ~ April 19, 2005, After Agenda Item:

Approval of April 12, 2005 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

The meeting recessed at 9:17 a.m. and reconvened at 9:33 a.m.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-037 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7381 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((53)) 4.

Vice Chairman Ribble noted that a deferral request had been received regarding A 2004-MA-037.

Mary Ann Tsai, Staff Coordinator, stated that a memorandum regarding the deferral request and a corrected copy of the staff report had been distributed to the Board members to replace the previously distributed one which had been incorrectly copied and had pages missing. Ms. Tsai stated that staff supported the deferral.

David Moretti, the appellants' agent, no address given, came forward to speak and explained that Mr. Khoury had been serving as a contractor with the Defense Department in Iraq and had asked for a four- to six-week continuance.

Vice Chairman Ribble called for speakers to address the question of the deferral request; there was no response.

Mr. Hammack moved to defer A 2004-MA-037 to June 7, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:30 A.M. MARC SEGUINOT, A 2004-PR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 59-3 ((7)) 45 is in violation of Zoning Ordinance provisions. Located at 3807 Prosperity Ave. on approx. 29,164 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((7)) 45. (Notices not in order - Deferred from 1/11/05)

Vice Chairman Ribble called the appellant to the podium. Marc Seguinot, 3807 Prosperity Avenue, Fairfax, Virginia, came forward.

Diane Johnson-Quinn, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the appeal was of a determination that the appellant had erected a fence in excess of four feet in height in the front yard of the property in violation of Zoning Ordinance provisions. Ms. Johnson-Quinn said a wooden fence enclosed the appellant's backyard and extended to the Leroy Place frontage of the property, ran along the frontage to the driveway, and up the driveway to the garage. She reported that in the appellant's filing he said the fence was needed for safety reasons to restrict children and pets from gaining access to the pool area, but did not dispute the location or the height of the fence. A building permit for the pool was issued in 2001, and it was accompanied by a plat which showed the house and pool locations and a dotted line labeled fence to code by property owner running parallel to the Leroy Place property line. She said the permit had been signed off by the Zoning Permit Review Branch as well as the building department. Ms. Johnson-Quinn said the fence in the front yard was six feet in height, which exceeded the maximum four-foot height limitation. In response to Mr. Beard's question regarding which part of the fence was at issue, Ms. Johnson-Quinn said it was the portion located between the garage and the road that was taller than four feet.

Mr. Hammack asked whether the planned Zoning Ordinance amendment would resolve the problem if it was enacted. Ms. Johnson-Quinn answered that the appeal had been previously scheduled in January and subsequently administratively moved to the April 19th date to allow time for the proposed variance or special permit amendment to go forward, but the Zoning Ordinance amendment had been indefinitely deferred by the Planning Commission and Board of Supervisors. She said the amendment would have provided an opportunity for a special permit to allow a fence in the front yard up to six feet in height, which would have helped the appellant.

In response to Mr. Hammack's question regarding the possible reactivation of the proposed Zoning Ordinance amendment, Bill Shoup, Zoning Administrator, confirmed that the proposed amendment had been indefinitely deferred. He said the Board of Supervisors had asked staff to take the recent state code change into consideration and provide a list of options. He said staff would likely respond in late May of 2005, and the Board would then give staff direction as to how to proceed.

Mr. Hammack said he was unaware of the changes in the state code. Mr. Shoup stated that the main change was to allow the locality the opportunity to grant the Zoning Administrator authority to do modifications to certain Ordinance provisions.

Mr. Hammack asked whether the Zoning Administrator would be able to grant a six-foot fence in a front yard even though the Ordinance said a height of four feet could not be exceeded. Mr. Shoup said yes, it was a possibility, as it was one of the modifications under the state code that the Zoning Administrator could approve.

Mr. Hammack asked whether the County had adopted or implemented the state code. Mr. Shoup said it had not, but it was being considered.

Mr. Hart asked whether a fence existed where it was shown on the plat coming out from the corner of the

garage and whether a fence could be located there by right. Ms. Johnson-Quinn indicated it could be located by right, and although that was where it was shown on the plat, the fence had instead been located parallel along the property line.

Mr. Hart asked whether there was any other plat besides the one included in the staff report. Ms. Johnson-Quinn said the plat in the staff report was the only one on record.

Mr. Hart asked whether there was any record of an inspector's approval. Ms. Johnson-Quinn said there was no record, but the Zoning Permit Review Branch signed off on the plat for the initial building permit, so she was sure inspectors had inspected the pool. She said that because the building code required a fence around the pool with a minimum of 48 inches in height, she suspected it was a building code inspector who had determined that the fence was at least 48 inches tall, but she did not know the extent of any conversation that had taken place.

Marc Sequinot, the appellant, presented the arguments forming the basis for the appeal. He said the fence was erected to provide protection. He stated that there had been several instances of people coming up the driveway and cutting across to get to Prosperity Avenue from Leroy Place. He explained that repairs were required after experiencing a fire in 2003, and he had been away from the property in a hotel for ten months. Once a decision to put up the fence had been reached, it was deliberately located behind large bushes so that the fence could not be seen from the road, but after having lost a tree during a storm, a small section of the bushes had to be removed and would be replaced. Mr. Sequinot said he had discussed the fence with his neighbors, many of which had children, prior to erecting it. He said he had been told by the inspectors that a fence could be put around the pool, but it could not be higher than four feet. Mr. Sequinot said that children would be able to come onto the property, climb over the chain-link fence, and get into the pool, so he felt something had to be done that was more effective.

Mr. Sequinot said the erected fence did not cause any obstruction, and he did not see it as being a problem, rather the problem was with the Ordinance. He said there were exceptions to the Ordinance dealing with traffic, and because Prosperity Avenue and Leroy Place had become such a high traffic area, it was becoming impossible to keep cars from coming onto his property, and if he had not taken the zoning into consideration, he would have put the fence across the front with a gate to enter the driveway. Mr. Sequinot said that cutting down the height of the fence would defeat the purpose of the fence, and since his entire back yard was a front yard, it would be a hardship to designate sections which would be okay or not and move or remove the fence. He said he had spoken with a building inspector about the plans for the fence before it was built, and the inspector had approved it and said it was a perfect plan.

Mr. Pammel stated that the function of the Board of Zoning Appeals was to hear appeals based on the language of the Ordinance, and the language was clear as to what was permitted in a front yard. He asked whether the appellant was willing to accept an indefinite deferral of the appeal until the Board of Supervisors resolved the issue of the proposed Zoning Ordinance amendment, which would allow the appellant to keep the fence until there was a resolution regarding the language in the Ordinance. Mr. Sequinot responded that he would.

Mr. Beard asked how long the fence had existed and whether the fence became an issue because the tree came down and the bushes were lost. Mr. Sequinot indicated the fence had been up for approximately two years, and when the pine tree came down, it fell across one section of the fence. He said the tree was cut and removed, and the section of the fence was replaced.

Mr. Hammack asked how the complaint came in to the County. Ms. Johnson-Quinn said the complainant met with Zoning Enforcement and identified a number of locations that had fences that exceeded four feet in height in front yards.

Mr. Hammack asked whether the other fences were being followed up on by the County and whether the name of the complainant was available. Ms. Johnson-Quinn said the other fences were being addressed, and the name of the complainant was protected information.

In response to Mr. Hart's question regarding who had installed the fence, Mr. Sequinot said he put the fence up himself and had been careful in speaking with the building inspection office regarding how far back from the road it had to be. He said the inspector told him it would be okay to put the fence in front of the huge kumquat bushes, but they had decided to put the fence behind the bushes so it could not be seen from the street.

Mr. Hart asked whether the line of the fence for front yard/rear yard purposes was the corner of the garage or the corner of the house. Ms. Johnson-Quinn said it would be the house, but if the garage was attached, it became part of the principal structure, and the line of the fence was based on the location of the principal structure. She said that on the plat the garage appeared to be detached, but in the photographs, it looked like it was attached by a breezeway or rockline structure.

Mr. Hart asked the appellant whether there was a roof that connected the garage and the house. Mr. Seguinot replied affirmatively and explained that there was a small breezeway. He said the garage had separate doors. He asked whether he should remove the breezeway, and several of the Board members indicated he should not.

Ms. Johnson-Quinn said although staff was sympathetic to the appellant's concerns regarding safety and the appearance of the fence, there was a limitation of the fence height not exceeding four feet in the front yard. She said that in the event any County inspector had indicated it was appropriate, an inspector could not override the Zoning Ordinance requirements.

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

Mr. Hammack moved to defer decision on A 2004-PR-035 to October 25, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 19, 2005, Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (Deferred from 4/15/03, 10/14/03, and 1/6/04). (Deferred from 4/13/04, 9/28/04, and 1/25/05 at appl. req.)

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/03, 10/14/03, and 1/6/04)(Deferred from 4/13/04, 9/28/04, and 1/25/05 at appl. req.)

Jayne Collins, Staff Coordinator, Zoning Administration Division, advised the Board that the appellants had agreed to enter into a consent decree and had requested a 30-day deferral in order to get the process underway. She said staff supported the deferral request.

Lynn Strobel, representing the appellants in both appeals, stated that notices of violations had been issued, appealed concurrently, and the applicant had been attempting to process three special exception applications whereby the uses could be brought into compliance. She said one of the outstanding issues was that until recently, the applicant did not have staff proposed development conditions, which had since been received, but there were three specific conditions that the applicant felt would set him up for a failure. One condition required that all site plans and building and occupancy permits would have to be issued within 180 days of the special exception approval, without the opportunity to go back to the Board, as could be done with all special permits and exceptions, to request additional time that would be discretionary with the Board, and as a result the applicants had made a hard and unfortunate decision to leave the County. Ms. Strobel said American Stone wanted to complete their existing contracts, phase out their employees, and close up shop, and it was the applicants' intent to meet with representative of the County Attorney's Office and Zoning Enforcement within the next 30 days to set up an appropriate timeframe to do so. She said the requested 30-day deferral would allow time for the negotiation process. Notices of violations and site plans had to be issued within 180 days of the special exception approval.

There were no speakers to speak on the deferral, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to defer A 2002-LE-031 and A 2003-LE-001 to May 24, 2005, at 9:30 a.m. Mr.

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

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation or probable litigation related to the McCarthy and Lee cases pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 10:06 a.m. and reconvened at 10:38 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//


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

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: October 6, 2009



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 26, 2005. The following Board Members were present; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

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

~ ~ ~ April 28, 2005, Scheduled case of:

9:00 A.M. VINCENT ACCARDI AND PAULA R. LYON-ACCARDI, SP 2005-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.8 ft. with eave 4.6 ft. from rear lot line and 7.5 ft. with eave 6.1 ft. from side lot line of a corner lot. Located at 1119 Collingwood Rd. on approx. 16,533 sq. ft. of land zoned R-3. Mt. Vernon Distriot. Tax Map 102-4 ((10)) 72B. (Deoision deferred from 4/12/05).

Vice Chairman Ribble noted that this case was deferred for decision so that the applicant could provide the Board with a copy of the contract agreement with his contractor.

The applicant, Vincent Accardi, 1119 Collingwood Road, Alexandria, Virginia, said that, besides the contract, he also had his contractor's written statement that the County informed him that a permit was not needed. He submitted each to the Board for their review. In response to Mr. Hart's question, he said the shed was not on a foundation. He pointed out that all his neighbors supported his shed, with only one requesting additional landsoaping, which he planned to do. Mr. Accardi assured he would stain the shed and do oonsiderable plantings for screening.

Mr. Pammel pointed out that there was a typographical error in the contractor's letter of the year's date, August of 2005 versus August of 2004.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2005-MV-011 for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Mr. Hart made an amended motion to include a fourfh development oondition to specify that the shed be painted, bricked or sided, and that it be architecturally compatible with the house; Mr. Hammack accepted the amendment. The amended motion was seconded by Ms. Gibb and carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OP ZONINO APPEALS

VINCENT ACCARDI AND PAULA R. LYON-ACCARDI, SP 2005-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.8 ft. with eave 4.6 ft. from rear lot line and 7.5 ft. with eave 6.1 ft. from side lot line of a corner lot. Located at 1119 Collingwood Rd. on approx. 16,533 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 72B. (Deoision deferred from 4/12/05). 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 Appoals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 26, 2005; and

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

1. The applicants are the owners of the land.
2. Based on what the applicants stated they were told, that a building permit was not required, as referenced in the April 24, 2005, letter from the contractor, Mr. Ricky Taylor, the applicants have satisfied the required standards for special permits based on an error in building location.
3. In making this motion, it is acknowledged that there was no opposition to it by the neighbors.
4. Looking at the photographs and plat, the shed is 4.8 feet with the eave 4.6 feet at the closest point, and the bulk of the structure is farther out from the lot line in the back yard than that.

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

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

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

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

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

1. This Special Permit is approved for the location of the accessory structure (workshop / shed), as shown on the plat prepared by Alexandria Survey International, LLC, dated November 4, 2004, submitted with this application and is not transferable to other land.
2. A building permit and final inspections shall be obtained within 30 days of final approval of this application for the accessory structure or this Special Permit shall be null and void.
3. Screening shall be provided as determined by the Urban Forester.
4. The exterior of the structure is to be completed in a manner that is architecturally compatible with the house to include bricks and/or siding, or paint, as described by the applicant.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 4,

2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. WILMORITE PROPERTIES MANAGEMENT, LLC, SPA 89-P-034 Appl. under Sect(s) 8-912 of the Zoning Ordinance to amend SP 89-P-034 previously approved for additional sign area in a regional shopping center to permit an increase in sign area. Located at 7950 and 7966 Tysons's Comer Center and 8043, 8038 and 8042 Leesburg Pi. on approx. 78.65 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-4 ((1)) 35A and 35C; 39-2 ((1)) 2, 4 and 5.

Vice Chairman Ribble noted that this case had a deferral request.

Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that staff had received a request from the applicant for a one-week deferral. She concurred that the affidavit was incorrect due to a change in ownership.

There were no speakers to speak to the issue of deferral.

Mr. Pammel moved to defer SPA 89-P-034 to May 3, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 25, 2005, Scheduled case of:

9:00 A.M. DONG S. SHIM AND JENNIFER K. SHIM, VC 2004-PR-027 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. with eave 23.5 ft. and stoop 21.0 ft. from front lot line and 8.4 ft. with eave 6.9 ft. from side lot line. Located at 2913 Cedarest Rd. on approx. 10,077 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((2)) 2A. (Decision deferred from 5/11/04, 6/15/04, 9/21/04, 10/26/04, and 1/11/05).

Vice Chairman Ribble noted that there was a request for an indefinite deferral of this case.

Mr. Pammel moved to defer indefinitely VC 2004-PR-027. Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. CARL J. UNTERKOFER, SP 2004-SU-012 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.9 ft. with eave 5.4 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with VC 2004-SU-041). (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 and 3/1/05 at appl. req.)

Vice Chairman Ribble noted that this case was indefinitely deferred, at the applicant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. CARL J. UNTERKOFER, VC 2004-SU-041 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. with eave 3.1 ft. from side lot line. Located at 14817 Hickory Post Ct. on approx. 25,027 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((4)) (2) 34. (Concurrent with SP 2004-SU-012). (Deferred from 6/1/04 at appl. req.) (Admin. moved from 10/12/04 and 3/1/05 at appl. req.)

Vice Chairman Ribble noted that this case was indefinitely deferred, at the applicant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. NEW HOPE CHURCH, INC., SP 2005-MV-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and child care center. Located at 8905 Ox Rd. on approx. 8.88 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 7.

Vice Chairman Ribble noted that this case was administratively moved to May 24, 2005, at the applicant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, VC 2004-MV-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. and bay window 16.4 ft. from the front lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with SP 2004-MV-056) (Admin. moved from 12/21/04 and 3/15/05 at appl. req.)

Vice Chairman Ribble noted that this case was indefinitely deferred, at the applicant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. BARBARA L. BATTEN, SP 2004-MV-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance To permit a reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.2 ft., deck 1.8 ft. and roofed deck 5.6 ft. from one side lot line and deck 3.6 ft. from other side lot line. Located at 2417 Fairhaven Ave. on approx. 7,790 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 23. (Concurrent with VC 2004-MV-118). (Admin. moved from 12/21/04 and 3/15/05 at appl. req.)

Vice Chairman Ribble noted that this case was indefinitely deferred, at the applicant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. BROOKFIELD SWIMMING CLUB, INC., SPA 81-C-027-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-C-027 previously approved for community swimming club to permit building additions and site modifications. Located at 13615 Pennsboro Dr. on approx. 2.89 ac. of land zoned R-3 and WS. Sully District. Tax Map 44-2 ((1)) 15 and 16.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Stoner, Esquire, the applicant's agent, no address given, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to their special permit previously approved for a community swimming pool to permit an expansion of the existing club house from 1,136 square feet to 4,021 square feet, the construction of a 400 square-foot pavilion, and an expansion of the fenced area west of the existing wading pool. No change in membership or employees was proposed. The proposed floor area ratio on the site would be 0.03, where 0.25 was permitted in the R-3 district for non-residential uses. Fifty-six (56) parking spaces were the minimum required number of spaces and 100 spaces would be provided. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, and recommended approval of SPA 81-C-027-2, subject to

the approval of the proposed development conditions dated April 19, 2005. Ms. Stanfield noted that staff had received a request to change several of the development conditions and had not had time to adequately review them. She said that at this time, she could not support the changes because staff needed to work with the applicant to better understand what the changes were that were requested.

Mr. Stoner apologized for the lateness of their submission as he had been out of town. He said he believed most of the differences were semantic. He explained that the facility was in existence for 40 years without any renovations or upgrading, that it had become inadequate to handle events and daily members and, that it was showing its age. He noted that there was limited bathing and restroom facilities, and no indoor meeting space where a board meeting could be held. He said the club's membership had declined the last few years and a new facility was necessary. Mr. Stoner stated that many nearby communities had upgraded facilities, and that the Brookfield Club served numerous neighborhoods not just the Brookfield development. He said there were three major proposed changes: the first and most important was the expansion of the clubhouse, which would increase the footprint to allow the locker rooms and restrooms to be enlarged, add a second floor to have a small office, and have a multi-purpose meeting area with a small kitchenette. The second item was the addition of a pavilion or covered deck to expand the club's activities and allow an area in which to host events around the pool. Mr. Stoner pointed out that that project had been approved by the Board almost 20 years prior but was never built. The third item was the extension of the fencing to enclose more of the grass area to allow picnicking, sunbathing, and playing. The club was in agreement with the Park Authority that the fence would not be extended into its easement without the Park Authority's consent.

Addressing staff's Development Condition 6, Mr. Stoner said that the club wanted to amend the hours of operation in the morning by only a half hour to allow swim team practice to begin a little earlier in the morning. The facility also requested that its pool's closing hour be extended by a half hour to 9:30 p.m. and the club house's closing hour be extended to 10:00 p.m. during week nights, and to midnight on weekends.

Concerning staff's proposed Condition 9, the applicant wanted the Department of Public Works and Environmental Services to make the final determination regarding the Stormwater Management and Best Management Practices required of the applicant.

Mr. Stoner asked that Condition 10 reflect that there was only one tree to be removed. He assured Mr. Beard that the proposed fence would be extended into the easement area only with the Park Authority's approval. Responding to Mr. Hart's questions, he asked that a deferral be as short as possible as the club was under certain time constraints, in particular, to be operating for the upcoming swim season. He said that a two-week deferral to allow staff the time to review the development conditions was acceptable. Regarding the number of parties anticipated for the pool and club house, Mr. Stoner said specific numbers had not yet been discussed.

Mr. Hammack stated that, over the years, the Board had composed a standard of provisions that applied to swim and tennis clubs. He suggested that the applicant meet with staff and review those provisions. He noted that different clubs had different needs and the standards had been relaxed accordingly. He said that he believed staff had good development conditions to suggest and they were worthy of consideration. Mr. Hammack voiced his concern over a 9:30 p.m. pool closing as the subsequent noise could be an annoyance to a residential neighborhood.

Mr. Stoner said the issue of closing hours was addressed during a recent land use committee meeting. He said the intent was to have the pool close at 9:00 p.m. In response to Mr. Beard's question regarding future membership, he acknowledged that there was no intention to increase membership, it would remain at 450.

Vice Chairman Ribble called for speakers.

Carl P. Cecil, 4616 Sutton Oaks Drive, Chantilly, Virginia, President of the Brookfield Swimming Club, pointed out that consistently over the years, the pool was the social hub for many communities, and it enjoyed their support. He said at this time, the club could either succeed or decline and its success was dependent upon upgrading its facility. He stated that the club was under a tight budget but the new facility would bring in additional resources which would assure membership retention and growth. Mr. Cecil stated that they had done their homework; there were a few minor issues that required resolution, but upgrading the facility was the most important thing for the club, and he requested the Board's approval.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to defer decision on SPA 81-C-027-02 to May 10, 2005, at 9:00 a.m., to allow staff time

to review the amended development conditions as well as the hours of operation. Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiullian was absent from the meeting.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 7.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05).

Noting that this case was deferred for decision for information concerning the site's access, Vice Chairman Ribble called the applicant to the podium and asked if there was anything additional to present to the Board.

Hamid Matin, agent for the applicant, explained that the Virginia Department of Transportation had denied another accessway from Braddock Road, and the site could only have one median break. He said to reduce the impervious surface they could remove parking spaces to straighten the driveway and at site plan, they would request the Fire Department to allow a reduction of pavement from 24 to 23 feet.

Ms. Gibb pointed out that during the public hearing the Board had suggested that the facility be moved over slightly. Mr. Matin pointed out that that would be very difficult because of the structure and the fact that the trustees wanted the facility sited on Parcel 24.

Mavis Stanfield, Senior Staff Coordinator, said the Department of Transportation's staff informed her that the design of Braddock Road was such that there were only a certain number of median breaks placed in specific areas, and DOT could not support the temple's proposal because the requested additional median break would interfere with other turning movements on Braddock Road. With respect to limiting parking spaces, Ms. Stanfield said that many residents living along Braddock Road had pointed out that parking along Braddock Road was already an issue creating a very dangerous situation. She said that, at this time, she was unsure whether staff would support a reduction in parking spaces.

Discussion followed among Mr. Hammack, Mr. Matin, Ms. Stanfield and Susan Langdon, Chief, Special Permit and Variance Branch, concerning the layout of Parcels 24 and 25 and the long driveway accessway. Ms. Langdon confirmed that staff supported the application but had suggested that the application was better without the long driveway. Using the overhead projector, Ms. Langdon pointed out staff's suggested realignment of the driveway. She also noted that several members of the church owned both parcels.

Ravi Aharam, 4228 Scarlet Sage Court, Ellicott City, Maryland, said he was a trustee on the temple's board and that they acquired Lot 25 in February of 2005, to manage the traffic situation by providing access from Lot 25 to Lot 24. He pointed out that Lot 24 was purchased in June of 2003.

Ms. Stanfield responded to Mr. Hart's questions concerning the facility's proposed septic tank, stating that the system would be encapsulated and should not leak. Regarding his question concerning a proposed temporary trailer and parking, she explained that the trailer would be used while the sanctuary was being constructed, and the 33 temporary parking spaces were in the same area where the permanent ones would be once the temple was completed. In response to Mr. Hart's question concerning whether or not staff considered an entranceway slightly to the left or right of the temple, Ms. Stanfield replied that each was considered but she understood that the temple preferred to have the entranceway be directly in front of the building.

Mr. Matin said that the purpose of the temple's design was such that when approaching the building, it would be clearly visible. He noted that the building could only be orientated in a certain way because of religious requirements.

Ms. Gibb stated that at this time, with the long driveway, she could not support the application as currently designed, but would defer decision in the hope of something better. She asked Mr. Matin if there were any leeway, a possibility of reducing the impervious surface, or using a different material than asphalt.

Mr. Matin stated that at the time there was nothing in the Public Facilities Manual (PFM) that could be used on the driveway, but the Board could choose to make a condition that the applicant explore other alternatives

such as aqua pavers, which were not yet approved by the Department of Public Works and Environmental Services (DPWES). He noted that DPWES was in the process of exploring such materials and their uses, and this case could be an incentive for them to favorably consider and approve alternatives.

Ms. Langdon suggested that the Board defer decision for staff to work with DPWES on what it would allow. She noted that a one-month deferral allowed staff the time to work with DPWES to get its input.

Ms. Gibb moved to defer decision on SP 2004-SP-052 to June 28, 2005, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Beard expressed his concern over the septic situation and requested that staff reevaluate the system.

Mr. Hart asked that the recrd remain open for written comments.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:00 A.M. CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-05 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 previously approved for a church and child care center to permit an increase in enrollment and modification to development conditions. Located at 10550 Georgetown Pke. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 1B. (Decision deferred from 4/19/05)

Vice Chairman Ribble noted that this case was deferred in order to correct an affidavit problem.

Bonnie Anderson, 914 Riva Ridge Drive, Great Falls, Virginia, said she was the agent for the applicant and was listed on the affidavit.

Mr. Pammel stated that this application enjoyed the support of the Great Falls Citizen Association, referring to the April 28, 2005, letter from its Co-Chairman John Ulfedler.

Ms. Gibb moved to approve special permit amendment SPA 83-D-075-05. Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OP THE BOARD OF ZOHING APPEALS

CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-05 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-D-075 previously approved for a church and child care canter to permit an increase in enrollment and modification to develcpment conditions. Located at 10550 Georgetown Pke. on approx. 4.97 ac. of land zoned R-E. Dranesville District. Tax Map 12-2 ((1)) 1B. (Decision deferred from 4/19/05). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 26, 2005; and

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

1. The applicant is the owner of the land.
2. The testimony at the public hearing on April 19, 2005, was positive.
3. Staff supported and rocommended approval 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 Sect(s). 3-E03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Christ the King Lutheran Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 10550 Georgetown Pike, 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 Tri-Tek Engineering, (Kevin Murray, P.E.) dated April 8, 1998, as revised through June 1, 1999, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. All parking shall be on-site, as shown on the special permit plat. All parking spaces shall be paved unless a waiver of the dustless surface requirement is approved by the Department of Public Works and Environmental Services (DPWES). If DPWES approves a waiver for the gravel parking area, the gravel surface shall be maintained in accordance with the Public Facilities Manual.
6. Transitional screening shall be modified as follows:
 - The existing vegetation along the northern and western lot lines shall be deemed to satisfy the transitional screening requirement.
 - The row of evergreen trees along the eastern lot line that extends from the southeastern corner of the building to Georgetown Pike shall be supplemented with understory plantings to provide additional screening for the adjacent residential use. This shall be deemed to satisfy the transitional screening requirement.
 - All dead, dying and/or diseased landscaping and transitional screening vegetation on site shall be replaced with the same or similar plant materials.
 - All new and replacement vegetation shall be planted prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the increase in enrollment and hours for the child care center. The applicant shall work with a representative from the SP/VC Branch, ZED, DPZ, in consultation with Urban Forest Management, to determine number, size, species and location of all new plant material.
7. The barrier requirement shall be waived along all lot lines.
8. Any signs on the property shall be located in accordance with Article 12 of the Zoning Ordinance.
9. The right turn lane shall be retained.
10. Any replacement lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. The maximum seating capacity in the main area of worship shall be limited to 300 seats.
12. Upon issuance of a new Non-Residential Use Permit, the maximum total daily enrollment for the child care center shall be limited to 99 children.

13. Upon issuance of a new Non-Residential Use Permit, the hours of operation for the child care center shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.
14. Notwithstanding that which is shown on the plat, the play area located on the northeast side of the paved parking area, approximately 29.0 feet from the eastern side lot line and 115.0 feet from the closest point of the existing building and the enclosed dumpster, located adjacent to the southeast corner of the paved parking area, approximately 25.0 feet from the eastern side lot line, may remain in their existing locations.

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

Pursuant to Sect.6-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 4, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:30 A.M. GEORGE RUBIK, A 2004-PR-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure (a shed) which exceeds eight and one-half feet in height and is located in the front yard of the property, in violation of Zoning Ordinance provisions. Located at 2765 Winchester Way on approx. 6,125 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 326. (Notices not in order - Deferred from 1/11/05).

Vice Chairman Ribble called the case.

George Rubik, 2765 Winchester Way, Falls Church, Virginia, identified himself as the appellant.

William E. Shoup, Zoning Administrator, announced that Mavis Stanfield, formerly a Senior Planner with the Special Permit and Variance Branch of the Zoning Evaluation Division, had been promoted to the position of Deputy Zoning Administrator for Appeals. He noted that in her new capacity, Ms. Stanfield's primary responsibility would be overseeing the appeal process and staff functions, to include representing the Zoning Administrator's position on all appeal related matters, as well as being responsible for other assignments associated with the overall operation of the Zoning Administration Division.

The Board collectively welcomed Ms. Stanfield to her new position, offered their congratulations, and said they looked forward to a continued good working relationship.

Elizabeth Staziak-Perry, Staff Coordinator, Zoning Administration, presented staff's position as set forth in the memorandum dated April 15, 2005. She stated that after a complaint, an inspection of the subject property from the Zoning Enforcement Branch had determined that a shed, approximately 24 feet in area and approximately 8.8 feet in height, was located in the front yard. Also noted during the inspection was the presence of outdoor storage in the front yard in excess of 100 square feet in area, a violation which was later resolved through compliance. She noted that the initial public hearing was scheduled for January 11, 2005, but was deferred because the required notices were not in order and was rescheduled for April 26, 2005.

For Mr. Beard's clarification, Ms. Perry stated that regardless of the shed's height, the issue was that no accessory storage structure can be located in a front yard, and the location issue was that the shed could be relocated to another area on the lot based on its 8 ½ foot height.

George Rubik said he wanted to keep the shed because it was very valuable for storage and he did not have a garage. He conceded that he had not realized a permit was required for such a small structure, and it was impossible to move because it was a hand-made, pre-fabricated structure. He pointed out that the shed was well screened from the rear as it was nestled in a tall, thick bamboo grove, and there was no area in the back yard to relocate it. Mr. Rubik submitted 16 signatures of neighbors who had no problem with the shed.

In response to Ms. Gibb's question, Ms. Perry said there had been a complaint from a neighbor about the shed.

Vice Chairman Ribble called for speakers.

Herbert L. Woods, 6805 Cavalier Trail, Falls Church, Virginia, came forward to speak. He said he was speaking for himself and a neighbor who was unable to attend the meeting. He said their concern was that the shed was offensive and was clearly visible from his home as it was directly across the street, and at the entrance to the development. Mr. Woods asked that the Board have it removed.

Mr. Rubik said that his shed was not an eyesore when entering the community because it was completely screened by the bamboo grove. He stated that his property had been beautifully landscaped and he had received numerous compliments from neighbors. The photographs initially given the Board depicted his yard in complete disarray, he acknowledged; however, his property had been completely cleaned up after his tenant was evicted. Mr. Rubik stated that he respected the neighbors' concern about keeping the neighborhood attractive.

Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Mr. Hammack seconded the motion and noted that the issue was not how attractive the property was but the fact that there was an 8 ½ foot tall structure in a front yard. He said that Mr. Rubik never contested those facts.

The motion carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales office in a model home without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 13534 Lavender Mist La. on approx. 2,546 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 128. (Admin. moved from 2/15/05 at appl. req.)

Vice Chairman Ribble noted that this case was administratively moved to June 7, 2005, at the appellant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales office in a model home without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 13539 Lavender Mist La. on approx. 1,938 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 65. (Admin. moved from 2/15/05 at appl. req.)

Vice Chairman Ribble noted that this case was administratively moved to June 7, 2005, at the appellant's request.

//

~ ~ ~ April 26, 2005, Scheduled case of:

9:30 A.M. WEBB PROPERTY, LLC, A 2004-SU-049 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination by the Department of Public Works and Environmental Services to disapprove a grading plan revision which does not substantially match Special Exception SE 99-Y-041 for Lots 3 and 4 and further that a special exception amendment or a letter of interpretation from the Department of Planning and Zoning is required prior to approval. Located at 13124 and 13126 Thompson Rd. on approx. 1.21 ac. of land zoned R-1 and WS. Sully District. Tax Map 35-3 ((25)) 3 and 4.

Vice Chairman Ribble noted that this case was withdrawn.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Lancaster Landscapes, Inc. versus BZA pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 10:50 a.m. and reconvened at 11:24 a.m.

Mr. Hammack moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart moved that Ms. Gibb be authorized to draft and send out the letter that was discussed in the closed session.

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

As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Paula A. McFarland

Approved on: April 29, 2008

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 3, 2005. The following Board Members were present: V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammaok, Jr. Chairman John DiGiulian was absent from the meeting.

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

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. JOHN R. AND DORIS W. PATTESON, VC 2004-PR-116 (Admin. moved from 12/21/04 at appl. req.)

Vice Chairman Ribble noted that VC 2004-PR-116 had been indefinitely deferred.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. THOMAS & SUZANNE O'BOYLE, VC 2004-MV-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. with eave 7.0 ft. from side lot line. Located at 8202 Chancery Ct. on approx. 12,685 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((12)) (1) 3. (Decision deferred from 7/6/04 and 1/11/05)

Mr. Pammel moved to defer decision on VC 2004-MV-070 indefinitely at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. WILMORITE PROPERTIES MANAGEMENT, LLC, SPA 89-P-034 Appl. under Sect(s). 8-912 of the Zoning Ordinance to amend SP 89-P-034 previously approved for additional sign area in a regional shopping center to permit an increase in sign area. Located at 7950 and 7965 Tysons's Corner Center and 8043, 8038 and 8042 Leesburg Pi. on approx. 78.65 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-4 ((1)) 35A and 35C; 39-2 ((1)) 2, 4 and 5. (Deferred from 4/26/05)

Mr. Pammel moved to defer the public hearing on SPA 89-P-034 to May 10, 2005, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. PETER & KATE GGELZ, VC 2004-MV-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. with eave 11.2 ft. from the front lot line. Located at 6060 Woodmont Rd. on approx. 15,058 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (4) 1. (Decision deferred from 10/19/04 and 1/25/05)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicants had requested that the decision on VC 2004-MV-107 be indefinitely deferred.

Mr. Pammel moved to indefinitely defer decision on VC 2004-MV-107. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit a change in permittee, building addition, site modifications, change in development conditions and increase in land area. Located at 9105, 9111, 9115 and 9117 Backlick Rd. on approx. 1.35 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B, 27 and 27A. (Admin. moved from 5/18/04, 7/6/04, and 9/14/04 at appl. req.) (Deferred indefinitely from 5/25/04 and 11/30/04) (Admin. moved from 2/8/05) (Decision deferred from 3/1/05)

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board had deferred the case on March 1, 2005, and had asked the applicant to provide them with information concerning additional parking they would be using off-site. She stated that the applicant had submitted information the prior week and was present.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dr. Doan Tran, 2418 Stratton Drive, Potomac, Maryland, the applicant's agent, replied that it was.

Dr. Tran stated that in compliance with the request of the Board at the last hearing, he would address the applicant's concerns regarding the issues raised on March 1, 2005. He gave a brief history of the activities held at the pagoda by its members. He stated that the applicant had received permission from the American Legion's Magnus Temple, situated seven houses northwest of the proposed site, to use their parking lot for overflow during their special yearly events. He said that lot would accommodate approximately fifty parked cars. He noted that a copy of the agreement had been attached to the April 18, 2005 letter addressed to the Board, and photographs had been filed with staff. Another concern was with the trash left behind the property at 9117 Backlick Road, and he stated that the trash had been removed. Dr. Tran said that copies of receipts from the trash company and photographs had been attached to the letter to the Board. He said the new facilities would make it possible for the applicant to conduct all activities inside the building which would eliminate potential noise. Additionally, trees would be planted to develop a buffer between the pagoda and neighboring homes. He said the applicant would apply to the Department of Public Works and Environmental Services (DPWES) for a waiver of Stormwater Management and Best Management Practices (BMPs). As explained in the letter, their engineer had determined that the development of the site would result in an increase in the two and ten-year runoffs at .17 cfs and .21 cfs, respectively. Dr. Tran indicated that those increases would cause the water surface to rise 1/10 percent of a foot or 1.2 percent of an inch, which was minimal compared to the minimum standard of .5 inches required by DPWES. He stated that the runoff would have no adverse impact in downstream properties and that trees and shrubs would be planted at the lowest portion of the site to further reduce the runoff. Dr. Tran said that subject to the approval of DPWES, the applicant would build a rain garden in lieu of the underground detention facilities and indicated that the applicant had made arrangements to have a stormwater management fund set aside in order to clean up the rain garden biannually or as needed.

In response to Mr. Hart's question, Ms. Langdon said there was no requirement for new development conditions.

Mr. Hart asked staff if the applicant would have to advertise the off-site parking if the Board approved the application. Ms. Langdon stated that the applicant needed the required parking on-site and the off-site parking was over and above what they were showing on-site, so there was no requirement for a shared parking agreement. In answer to a question posed by Mr. Hart, Ms. Langdon stated that approval from the Board of Supervisors was not necessary because they met the Ordinance requirement. Ms. Langdon explained that staff had no submittals concerning the plantings; however, if there was something that the applicant wanted to do in addition to what was on the plat, staff could add a condition to that effect.

Referring to the information provided in the April 19, 2005 letter, Mr. Hart stated that the information contained in the letter concerning the number of evergreen trees and native shrubs proposed to be placed around the perimeter of Lots 26A and 26B had not been placed in the conditions. He asked how that would be incorporated. Dr. Tran stated that the applicant wanted to add the planting of the trees because they would alleviate potential noise; however, any potential noise would be mitigated because they would hold their activities inside the buildings.

After a brief discussion between Mr. Hart and Dr. Tran, Dr. Tran advised that the trees referred to that

morning were the ones on the plan and nothing new would be added.

In answer to a question from Mr. Hart, Dr. Tran indicated that the contract for shared parking was scheduled to expire in January of 2006, and they had planned to renegotiate for the year 2006. He noted that the applicant would use the overflow parking lot three times a year for special events. Mr. Hart asked what would happen if the Magnus Temple did not renegotiate. Dr. Tran explained should they not be able to renegotiate there were other lots in the nearby vicinity that could be made available.

In response to Mr. Hart's questions, Ms. Langdon said she did not know if Magnus Temple had a special permit or other approval. Ms. Langdon said that if the temple had a special exception, she assumed they had conditions that addressed their parking. She said it was her understanding that the lot would be used at different times and there wouldn't be a conflict between the two facilities. Ms. Langdon also said that she did not know if the Temple used its parking lot on Sundays and assumed that was the reason they had agreed to the applicant's request. She said the spacas located at the Temple were over and above the minimum required and indicated that the applicant had the minimum required parking spaces on-site. Ms. Langdon said the applicant was limited to 100 seats, and that was what their parking allocation was based on. In answer to Mr. Hart's query concerning parking at the Magnus Temple, Ms. Langdon said that she would have to go through the files to see if they had a special exception or special permit on the site and pull any conditions if they existed.

Ms. Langdon identified the Magnus Temple site on the map and stated that the site came to a dead-end beyond Backlick Road; therefore, there was no problem with pedestrian traffic. She displayed a map on the viewgraph indicating that there appeared to be no sidewalks displayed on the plan.

In response to Mr. Beard's question, Dr. Tran stated that all of the concerns expressed by the neighbors at the last hearing had been addressed.

Dr. Tran stated that the Buddhist Association's Board had decided that if parking was a real problem they would stagger the activities on the three special event days.

Vice Chairman Ribble called for speakers.

Ann Blount, 9119 Backlick Road, Fort Belvoir, Virginia, came forward to speak in opposition to the application. She acknowledged that the trash problem had been taken care of; however, she was concerned about the possibility that the Magnus Temple could rescind its agreement to allow overflow parking. She presented photographs of various violations and a list of neighbors who were opposed to the applicant's request, activities that would or have impeded traffic, stormwater runoff, and the proposed elevation of the rear yard.

In answer to Mr. Hammack's question, Ms. Blount stated that her photographs had been taken in August of 2005, not specifically on high holy days. She said that since the last hearing some of the problems had been taken care of; however, there were still problems with the congregants trying to park in the lot of the historic church and in some of her neighbors' yards.

Mr. Ribble called Dr. Tran to the podium and asked him to comment on the photographs. Dr. Tran said that the photographs depicted the applicant's property not that of the neighbors and had been taken when there was a special event being held. He referred to his previous comments concerning overflow parking, the need for additional spaces on their lot, and that they would not be holding any activities in the evening with the exception of their New Year's celebration which would end at 10:00 p.m.

In answer to Mr. Beard's question, Ms. Langdon indicated that there was no condition concerning the 10:00 p.m. end time for special events; however, one could be added. Dr. Tran stated that the applicant would agree to such a condition.

Mr. Hammack and Dr. Tran discussed the applicant's request for an increase of two additional parking spaces which would total 31 in all. Dr. Tran said that the requested number of spaces would accommodate normal usage. Mr. Hammack called attention to Development Condition 5 that stated that all parking shall be on-site. Dr. Tran said that he understood that and that the 31 spaces would accommodate their parishioners. He said that was why the applicant was willing to stagger the special event activities.

In response to Ms. Gibb's question, Dr. Tran indicated that the photographs that had been submitted were of a fund raising event for the construction of the pagoda and it was a part of the three special events he had

discussed earlier.

In answer to Mr. Hammack's question, Dr. Tran stated that the Mother's Day celebration referred to in the application was held during the celebration of Buddha's birthday.

Mr. Hart referred to Development Condition 6 and asked staff if the applicant's parishioners would be allowed to use the off-site parking if the condition indicated that all parking had to be on-site. Ms. Langdon said it was her opinion that the sentence referred to should be revised to indicate that all parking shall be on-site except for their shared parking with the temple. She noted that since there was no formal agreement, she didn't know how the Board would address it. Mr. Pammel suggested that the sentence be changed to read: "All required parking shall be on-site."

Vice Chairman Ribble closed the public hearing.

There was a brief discussion among the Board and members of the staff concerning the inclusion of a new development condition, noise, and the start and end times for special services.

Mr. Hammack moved to approve SPA 87-V-070 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for a place of worship to permit a change in permittee, building addition, site modifications, change in development conditions and increase in land area. Located at 9105, 9111, 9115 and 9117 Backlick Rd. on approx. 1.35 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B, 27 and 27A. (Admin. moved from 5/18/04, 7/6/04, and 9/14/04 at appl. req.) (Deferred indefinitely from 5/25/04 and 11/30/04) (Admin. moved from 2/8/05) (Decision deferred from 3/1/05) 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 5, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant has demonstrated that it meets the Code requirements for parking.
3. If it is not part of the required parking, the Board cannot control offsite uses if the applicant has a private agreement.
4. It is an existing church and operation that is adding land area and in many ways is not significantly changing the size or the use.
5. The applicant has satisfied the requirements.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-005 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 9105, 9111, 9115 and 9117 Backlick Road (1.35 acres) and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Toan T.V. Nguyen, dated November 15, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon establishment of the special permit amendment, the seating capacity in the main area of worship shall be limited to a maximum of 100.
6. Parking shall be provided as shown on the Special Permit Plat. All required parking shall be on site.
7. Any proposed new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet. At the time when proposed lighting is constructed, all existing lighting shall be modified to meet the same standards.
8. Transitional screening shall be modified as shown on the Special Permit Plat. The barrier requirement shall be waived along all lot lines.
9. The limits of clearing and grading shall be no greater than as shown on the Special Permit Plat, labeled Limits of Disturbed Area, and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to the construct the improvements shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forestry Management Branch, for review and approval.
10. The Applicant shall provide onsite storm water detention and best management practices in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. Notwithstanding what is shown on the plat, the applicant may meet the requirements through the provision of Low Impact Development (LID) techniques as determined appropriate by DPWES.
11. The existing dwellings on Lots 27 and 27A shall be used only for residential purposes and occupied only by employees or members of the church and their families.
12. Architecture and architectural materials shall be in substantial conformance with the elevations submitted with the application, dated February 2005 (Attachment 1), and the list of exterior colors submitted by the applicant received on January 18, 2005.
13. The last worship service on Lunar New Year shall begin no later than 10:00 p.m.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 8723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A. (Decision deferred from 5/25/04, 7/20/04, and 1/25/05).

Vice Chairman Ribble noted that a request to defer the decision on VC 2004-PR-037 to September 20, 2005, had been received from the applicant.

Mr. Hammack moved to defer decision on VC 2004-PR-037 to September 20, 2005, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH, SPA 98-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 previously approved for a church, nursery school and child care center to permit increase in seating, building addition and site modifications. Located at 3439 Payne St. on approx. 2.27 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (B) 12. (Admin. moved from 1/11/05 and 2/1/05 at appl. req.) (Decision deferred from 3/1/05)

Vice Chairman Ribble called the applicant to the podium.

Stephen Fox, 10511 Judicial Drive, Fairfax, Virginia, the applicant's agent, stated that the applicant was in complete agreement with staff's recommendation. He pointed out that there was an inadvertent error in Development Condition 5 that stated that the "seats shall not exceed 156." He stated that the plan showed 236 seats with the addition of the balcony. Therefore, the condition should read: "...shall not exceed 236 seats."

Mr. Fox noted that Margaret Stehman, Deputy Zoning Administrator for Appeals, would be leaving the Department of Planning and Zoning soon and thanked her for her assistance over the years.

Mr. Hart moved to approve SPA 98-M-036-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH, SPA 98-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 previously approved for a church, nursery school and child care center to permit increase in seating, building addition and site modifications. Located at 3439 Payne St. on approx. 2.27 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (B) 12. (Admin. moved from 1/11/05 and 2/1/05 at appl. req.) (Decision deferred from 3/1/05) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 3, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony showing compliance with the applicable standards.
3. Based on the conclusions of staff in the addendum, the principal issues with respect to the parking, the play area, and storm water management all have been satisfactorily addressed.
4. The site is very tight, and it may be difficult to do more beyond this, but at this point staff is satisfied.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Trustees of St. Paul's Episcopal Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 3439 Payne Street (2.27 acres) and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, dated June 4, 2004, and revised through March 29, 2005, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit Plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity of the main worship area shall not exceed 236.
8. The combined total maximum daily enrollment for the nursery school and child care center shall be 50 children.
7. The maximum hours of operation for the nursery school/child care center shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
8. The barrier requirement shall be waived.
9. Transitional screening shall be modified along all lot lines with the minimum number of plants depicted on the plat. The area north of the relocated play area shall be scarified and shall be planted with trees, number and location to approximate Transitional Screening 1. The final number, size and location of new plantings, including plantings that shall be placed to the north of the relocated play area which are not depicted on the plat, shall be determined in consultation with the Urban Forest Management Branch, DPWES.

The Applicant shall submit a tree preservation plan as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect and reviewed and approved by the Urban Forest Management Branch. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees that are twelve (12) inches or greater in diameter, and twenty (20) feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP, and other areas in which

trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by a tree protection fence. Tree protection fencing four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading prior to any demolition/clearing on site.

Methods to preserve existing trees may include, but not be limited to, the following: use of super silt fence, welded protection fence, root pruning and mulching. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing, except super silt fence, shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the Urban Forest Management Branch shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

During any clearing or tree/vegetation/structure removal on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the tree protection fencing remains in place and the trees protected by said fencing are preserved. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by the Urban Forest Management Branch.

10. Stormwater management/Best Management Practices facilities shall be provided as depicted on the Special Permit Amendment Plat or as determined by DPWES.
11. Parking shall be provided as shown on the special permit plat. All parking associated with use of the subject property shall be on-site.
12. Interior parking lot landscaping shall be provided as depicted on the plat.
13. All signs shall be in accordance with Article 12 of the Zoning Ordinance. The applicant shall obtain sign permits for the existing signs within 90 days of this approval and shall move, remove/replace any signs if required in order to obtain the sign permit(s).
14. Any replacement or new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
15. The building materials and architecture of the proposed addition shall be similar to the existing church building.

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

Pursuant to Sect. 3-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, change in development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Leesburg Fi. on approx. 3.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9. (Admin. moved from 3/8/05 and 4/12/05 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 93-P-046, previously approved for a church, nursery school, and a waiver of the dustless surface requirement, to permit building additions consisting of improvements to the sanctuary, including handicapped access, bathrooms, a covered connection to the existing education building and the sanctuary, a family life center to provide space for fellowship activities and a basketball court, the addition of 37 parking spaces for a total of 141 spaces and a Stormwater Management/Best Management Practices (BMPs) facility. The building would be increased in size, in several phases, from 16,271 square feet to 27,928 square feet. The application included frontage improvements to Idylwood Road, dedicated right-of-way on Leesburg Pike for a future turn lane, and interparcel access to two lots with frontage on Leesburg Pike which the church owned. No additional seats in the sanctuary and no increase in the number of children in the nursery school were proposed. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with respect to the size and scope of the proposed additions. However, staff believed that it would be highly profitable to remove the 16 parking spaces proposed along the western lot line which was a parking ratio of 2.5 seats per space, excluding the gravel parking lot associated with the Lutheran Social Services. Therefore, the 16 spaces were not necessary. The application also provided 16 new parking spaces in front of the sanctuary and staff noted that the parking ratio of 2.5 would be the ratio around the church itself and not with the Lutheran Social Services.

Ms. Stanfield noted that the applicant had provided a new plat, dated April 29, 2005, because there had been a minor error on the previous one. She said that in addition to that, the applicant had submitted changes to the development conditions, one of which was Condition 7 regarding the maximum hours of operation for the nursery school from 9:30 a.m. to 12:30 p.m., Monday through Friday. She said staff had no objection to that change. Development Condition 8 included a comment that the parking could be phased and that it would meet the minimum requirement at any phase and staff had no objection to the change. Ms. Stanfield said a proposal had been made to change Development Condition 14 that stated that when development occurred on those two lots abutting Route 7, the inter-parcel connection would be used for that development. She said staff felt very strongly about that condition and thought it would be irresponsible to recommend access directly to Route 7 in that location, and staff did not support removal of that sentence.

In answer to a question posed by Vice Chairman Ribble, Ms. Stanfield said the applicant could better answer his question concerning whether or not the landscaping business on the property was gone.

Mr. Hammack asked Ms. Stanfield to show on the viewgraph where the new building was to be constructed and where the parking spaces were at issue.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the applicant proposed the construction of improvements that could be implemented in phases, specifically the construction of a family life center and improvements to existing buildings. The improvements would include an elevator, a more well-defined gathering space for parishioners entering and exiting services, relocated restrooms and a walkway to connect the existing buildings. She said that all the improvements were intended to serve existing parishioners and not to increase membership. Ms. Strobel stated that there was no proposed increase in the number of seats in the

sanctuary, nor was there a proposed increase in the enrollment of the nursery school. However, the applicant was proposing a change to the nursery school program because they had found that their afternoon session was not well utilized and therefore they were proposing to eliminate that program and have only a morning session and increase the hours of operation by one-half hour, until 12:30 p.m. Ms. Strobel submitted for the record letters of support from the owners of the townhouses next door. She said that staff had indicated that they were concerned about parking along the western property line and that was one condition that was of concern to some of the neighbors. She noted that after meetings with staff and the neighbors, the applicant had reduced the number of parking spaces along that property line from 40 to 16 and they would be served by an existing drive aisle. Ms. Strobel submitted to the Board an elevation that the applicant's engineer had prepared to illustrate the distance of the parking area from the church building which would consist of approximately 54 feet of change in elevation as well as a distance of over 300 feet from that currently shown on the plat. She indicated that because of constraints that could affect some of the parishioners, it was her opinion that it would not be appropriate to have parking toward that part of the property. She said the rear of the building was similarly impacted by topography and so was the stormwater management pond. She said the applicant was proposing to erect a masonry wall, six feet in height, that would allow for parking as well as the barrier and transitional screening, additional trees and plantings at the property line and along the townhouse privacy fences. Ms. Strobel reviewed the proposed development conditions that had been distributed to the Board that morning. She said that contrary to the information contained in the staff report, the applicant would be paving all existing parking. She called attention to the existing gravel parking lot at the Lutheran Social Services building that had been the subject of a waiver of dustless surface. She said the applicant would apply for that again because they did not intend to pave that lot. She indicated that staff had no objections. She called attention to Development Condition 16 and clarified that any new lighting would have to comply with the requirements set by staff. With respect to Condition 14, Ms. Strobel pointed out that the church owned two additional parcels located on Leesburg Pike that were identified on the tax map as Lots 6 and 7 and were zoned R-1. She said those lots were not part of the application and the applicant did not have any plans for that property. She stated that if that property were sold to someone who wanted to develop to a higher density, staff could require that access be provided through the church property and they were willing to agree to a recorded easement to accommodate that. Ms. Strobel said the applicant was requesting that the last sentence of Condition 14 be deleted. She explained that it would give any potential buyer access through the church property or the ability to use an existing curb cut on Leesburg Pike.

In answer to Mr. Beard's question, Ms. Strobel said there had never been two churches located on the site and that the original church was now the social services building.

In response to Ms. Gibb's questions, Ms. Stanfield said staff had objected to parking on the western boundary because it was too close to the existing residential development and that many healthy trees would be cut down to accommodate the masonry wall. She said that if the trees were cut down, there would be more noise and the utility lines would become more visible which was unacceptable to the neighbors. Ms. Stanfield said that if the parking spaces were removed, supplementary transitional plantings would be required regardless of whether or not the wall was built.

Ms. Stanfield agreed with Ms. Strobel that even without parking there would be a barrier requirement that would have to be waived and that had already been recommended by staff.

In answer to Ms. Gibb's queries, Ms. Strobel said the applicant would have to have some type of pond and indicated that currently there was a development condition to that effect. She said the applicant would work with staff at the time of site plan review in an effort to reduce the size of the stormwater pond currently on the plat. She acknowledged that the pond could be smaller through the use of low impact development techniques and potential retaining walls. Ms. Strobel said that even if the pond was made smaller, topography would not allow for additional parking.

Ms. Gibb asked Ms. Strobel if she had seen the letter of opposition that had been submitted by Julia Evans concerning parking and her comment that the vegetation currently on church property was sufficient enough to buffer her property from that of the church. Ms. Strobel said that she had seen the letter and noted that the applicant was doing its best to mitigate any difficulties associated with the proposed parking. She said she did not think there would be a negative impact associated with the proposed parking.

Ms. Gibb said it appeared that the incline, trees and a six-foot wall were a distance from the houses and there appeared to be a distance between that and the travel lane.

Ms. Strobel pointed out that the townhouse community had been built in 1981 and she assumed that they

had been required to provide rear yards with privacy fences as well as additional setbacks to the property line.

In response to Vice Chairman Ribble's question concerning the slope of the land leading up to the 16 proposed parking spaces, Ms. Strobel said that area was fairly flat.

Mr. Hart and Ms. Stanfield discussed the interparcel connection. Mr. Hart asked how the parishioners would exit on to the street since the parcels seemed to dead end in the woods. Ms. Stanfield stated that the applicant would need an easement from the Lutheran Social Services parking lot. In reply to Mr. Hart's statement that the plat did not identify an exit, Ms. Stanfield stated that Development Condition 14 indicated that the area depicted as a possible interparcel connection, which terminated at Lot 6, would be recorded as an access easement prior to site plan approval. Mr. Hart stated that there appeared to be no connection to anything other than Lots 6 and 7 and it was his opinion that a connection to a public street would have to cross Lot 7A.

Mr. Hart and Ms. Strobel discussed the proposed easement on the property. Ms. Strobel stated that the applicant had no objection to granting an easement for egress on to Idylwood Road. She said the applicant had tried to avoid making that easement a requirement because they wanted to prevent anything that would damage the marketability of those lots should they have to sell them. Mr. Hart suggested that by removing the word "obtained" from Development Condition 14 and substituting the following: "...access would be provided through these lots to Idylwood Road..." would be acceptable. Ms. Strobel stated that the applicant objected to the wording "access will be provided" and would agree to "access may be provided."

Mr. Hart called attention to the proposed tree preservation and indicated that there was a conflict between where someone would be driving and where the trees were located. He said that because of those trees, he did not think it was an ideal location for an interparcel connection.

In response to Mr. Hart's query, Ms. Stanfield said Lots 6 and 7 were planned for potential multi-family development. Ms. Strobel stated that the plan suggested development density of 16-20 if all four parcels were consolidated, so she didn't think that Lots 6 and 7 alone could achieve the Comprehensive Plan density range. She reiterated that the applicant did not have any specific plans for the property; however, they could use them for church purposes or sell them. Mr. Hart stated that the County had to anticipate that those two parcels would develop with some amount of traffic and suggested that staff take another look at the easement.

In answer to Mr. Hart's question, Ms. Stanfield said the parking on the western lot line near the wires could not be flipped to the inside of the driveway because a crypt was in the way. Mr. Hart asked if the parking spaces could be moved from the property line by making the road a little further out and making the parking spaces parallel instead. Ms. Strobel said the applicant had considered that option however more trees would have had to be removed and that did not appear to be a viable solution. She stated that the applicant had looked at several options and it was her understanding that the current proposal provided the least amount of impact and the greatest setback available. She displayed various sketches that the applicant had looked at with respect to various parking scenarios.

Vice Chairman Ribble called for speakers.

The following speakers spoke in support of the applicant's position. Charlotte Barrett, 2256 Cartbridge Road, Falls Church, Virginia; Mark Shalthanis, Pastor, St. Paul's Lutheran Church, 8222 Stonewall Drive, Vienna, Virginia; Jerry Kuhn, Pastor Emeritus, St. Paul's Lutheran Church, 2301 Barbour Road, Falls Church, Virginia; Bill Gratz, 2892 Melanie Lane, Oakton, Virginia. Their main points were that: the proposed brick wall and landscaping would be an improvement to both properties; the HOA had removed nine trees to refurbish an existing tot lot and none of them were diseased or posed a danger to the homeowners at Idylwood Station; the HOA held an impromptu meeting at which 4 members of the association were in favor of the proposed application; many home owners did not attend and to this date no poll or petitions had been circulated throughout the neighborhood; the proposal would be an improvement; the church supported many special interest groups and charitable activities; they were good stewards of the land; they were intergenerational; senior members needed to park closer to the church; the neighbors had never expressed opposition to the church's programs or building projects; they enjoyed good relationships with the neighbors; and more parking was needed.

The following speakers spoke in opposition to the applicant's position. Michael Lunter, 2293 Idylwood Station Lane, Falls Church, Virginia; Julia Evans, 2289 Idylwood Station Lane, Falls Church, Virginia; Jane

Martin, 2287 Idylwood Station Lane, Falls Church, Virginia. Their main points were that: there was no response to their questions concerning why an additional 16 parking spaces were needed; parking would compromise the tree and vegetative buffer; neighbors' quality of life would be compromised; parking would be increased by 36%; other parking locations were available on-site; the existing buffer zone would be removed; and, consideration should be given to designating parking closer to the church for older members and families should walk from the center. Photographs of the western line and Ms. Evans letter were submitted for the record.

In response to Mr. Beard's question, Ms. Stanfield explained that if the applicant decided to cut down the trees referenced in the development conditions, they would be in violation.

Mr. Pammel stated that the plat, as submitted, reflected that the proposed wall would be made of brick.

At Ms. Strobel's request approximately 12 people stood in support of the application.

Ms. Strobel stated in her rebuttal that the clearing necessary for the parking spaces was approximately 8 feet, and the applicant was respecting the County's requirements for transitional screening, which was 25 feet, with the applicant exceeding that at the smallest point and by a number of feet in other locations. Many compromises had been made in the preparation of the plans, and there would be no parking on the western property line in order to preserve the trees or in proximity to the playground. She said that supplemental plantings would be provided in the parking area as well as the entire western property line, and there would be no impact on the quality of life. All issues raised would be mitigated with respect to noise, lights, and stormwater management. She stated that the proposed parking was the best the applicant could come up with and that handicapped parking spaces would be provided at the front of the church.

In answer to Mr. Beard's question, Ms. Strobel said there would be a 28-foot screen at the narrowest setback along the property line and the parking area and those areas would be supplemented with vegetation. She concurred that the applicant planned to clear approximately 8 feet. Ms. Langdon stated that the parking spaces had to be 20 feet deep and that according to the plan the limits of clearing and grading would probably come as close as 15 feet to the property line in some places and additional plant material would be replaced in some of the cleared areas.

Ms. Strobel referred to the plat on the viewgraph and indicated that there was an existing drive aisle and approximately 18 feet of clearing which was the depth of the parking spaces; however, after installation of those spaces, there remained 23 feet at the minimum setback and additional plantings would be provided.

Mr. Pammel stated that in addition to what Ms. Strobel said, the masonry wall would be setback approximately 6 feet and that would be devoid of any planting.

Ms. Strobel called on Chris Champaign, Dewberry and Davis, 2362 John (phonetic) Place, Dunn Loring, Virginia, to answer Mr. Pammel's comment. Mr. Champaign explained what the engineers had done to alleviate problems with the parking spaces. He noted that the 28-foot minimum could be provided from the limits of clearing and grading to the property line; however, there would be a retaining wall at the end of the perpendicular parking spaces.

Mr. Hart asked if one-third of the trees currently on the lot would remain. Ms. Langdon replied that they would.

In answer to Mr. Hart's question concerning the proposed wall, Ms. Strobel stated that the intent of the proposal was to have brick on the townhouse side, however, if the Board wanted brick on both sides of the wall that could be accommodated. Mr. Hart indicated that he thought the wall would be more attractive if it was all brick. Mr. Hart asked if the wall would then be a retaining wall if the limits of clearing and grading were tighter. Mr. Champaign said the retaining wall would allow the maintenance of the existing grade because the parking spaces were lower and the ground was higher.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to defer decision on SPA 93-P-046-02 to May 17, 2005, at 9:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:30 A.M. DIDIER VANTHEMSCHE, A 2004-DR-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory structure, which does not comply with the minimum yard requirements for the R-E District, without a valid Building Permit and has installed two entrance gates, which exceed the allowable height regulations, in violation of the Zoning Ordinance provisions. Located at 950 Towlston Rd. on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 22 C. (Deferred from 8/10/04 for notices). (Admin. moved from 11/9/04 and 2/8/05 at appl. req.)

Vice Chairman Ribble noted that A 2004-DR-016 had been withdrawn.

//

~ ~ ~ May 3, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((8)) 7. (Continued from 11/16/04) (Decision deferred from 3/1/05)

Mary Ann Tsai, Assistant to the Zoning Administrator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated April 25, 2005. Ms. Tsai stated that the proposed Zoning Ordinance Amendment that would remedy the violation had been indefinitely deferred and because it was uncertain as to when the amendment would be heard by the Planning Commission and Board of Supervisors, staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's finding that the appellants erected a fence in violation of Zoning Ordinance provisions.

In response to Ms. Gibb's question, Ms. Tsai said that the violation had been determined by a Zoning Inspector who drove by the residence and determined that based on the posts that had been put in place, the fence would be too tall.

Mr. Lane, in answer to Mr. Beard's question, stated that he had been told by his contractor that an official of the County had signed off on the violation. Mr. Lane said he had not been familiar with the County's permit process and that after Roger Sims, Supervising Field Inspector, Zoning Evaluation Division, had advised him that he would be in violation, he contacted his contractor and advised him of the situation. He said his contractor, Steve Stegner (phonetic), with Falcone (phonetic) Construction, had told him that he would be meeting with someone in the Zoning Evaluation office the next day. He stated that Mr. Stegner had called him after his meeting and said he had received a confirmation from staff that there was no violation. Mr. Lane then said that Mr. Stegner had indicated to him that if he wanted to erect a fence up to seven feet tall he could do so and stated that someone in the Zoning Evaluation office had signed off on it. Based on that information, Mr. Lane said he continued with the erection of the fence. He said he had since found out that there were no initials on the plat.

In response to Mr. Beard's question, Ms. Tsai stated that staff had asked that Mr. Stegner or a representative of the construction company attend today's hearing but no one was present.

Mr. Pammel stated that the Board could exercise its power and issue a subpoena requiring the contractor to appear before them.

Mr. Lane stated that he was in litigation with the contractor over an issue of a deck and he was not surprised that Mr. Stegner had not appeared. He said he had some very serious Code requirement issues and this situation added to that problem. He said that at Ms. Gibb's suggestion, he had been in weekly contact with Supervisor Elaine McConnell's office and he had been given to understand that the Zoning Ordinance Amendment would be passed by the end of the month. He requested that the Board defer this appeal until the Amendment had been acted upon.

Mr. Hart said it was his understanding that the Planning Commission and Board of Supervisors would be acting on the reauthorization of the Zoning Ordinance Amendment concerning variance applications on May 28, 2005. He asked if it would be prudent to postpone the issuance of a subpoena until that time.

Ms. Gibb asked the appellant if the fence was included in his litigation against the contractor. Mr. Lane said it was not; however, he had advised his attorneys that the appeal was proceeding. He said he had been told that the contractor had not obtained any initials on the plat but the fax copy that he received had the initials of Anthony Moore, Zoning Administration Division, on it.

Mr. Hammack commented that the Board was not looking at an error in building location, they were being asked to act on the Zoning Administrator's determination. In response to Mr. Hammack's question, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff had no information concerning when or if revisions to the Zoning Ordinance would be made.

In response to comments made by Mr. Hart concerning the information provided in the previous hearing and why it had been deferred, Ms Stanfield said Mr. Moore had looked at the initials on the plat referred to by Mr. Lane and had verified that they were not his. Mr. Hart said there were still questions as to what had happened and indicated that the Board needed more information.

A discussion ensued concerning issuing a subpoena to the contractor and requesting that Mr. Moore appear before the Board as well. Mr. Pammel said that any information obtained by the Board should be on the record and if anyone had problems with that there were avenues that could be pursued.

Mr. Pammel moved to defer decision on A 2004-SP-025 to June 14, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Lancaster Landscapes, Inc., vs. Board of Zoning Appeals, Law No. 2005-002054, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 11:38 a.m. and reconvened at 12:37 p.m.

Mr. Hammack moved that the members of the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that pursuant to Virginia Code Section 15.2-2308 (C), that the Board elect Nancy E. Gibb as its secretary. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that pursuant to Code Section 15.2-2308 (A), that the Board authorize the secretary to send a letter to the Circuit Court regarding the upcoming expiration of Mr. Hammack's term of office. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that the Board recommend to the Circuit Court that Paul Hammack be reappointed to another five-year term. Mr. Pammel seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that Ms. Gibb be authorized to send a letter to the County Executive regarding the request

for an attorney for the subpoena discussed that morning. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting

//

~ ~ ~ May 3, 2005, After Agenda Item:

Approval of April 26, 2005 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: May 20, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 10, 2005. The following Board Members were present: V. Max Beard; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian and Nancy E. Gibb were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:06 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ May 10, 2005, Scheduled case of:

9:00 A.M. CAROL Y. & CHONG HYUP KIM, VC 2004-BR-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. with eave 8.0 ft. from side lot line. Located at 9304 Nester Rd. on approx. 21,161 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((22)) 3. (Decision deferred from 7/20/04 and 1/25/05)

Vice Chairman Ribble noted that the Board had received a request for an indefinite deferral on VC 2004-BR-080.

Mr. Beard moved to indefinitely defer VC 2004-BR-080. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:00 A.M. WILMORITE PROPERTIES MANAGEMENT, LLC, SPA 89-P-034 Appl. under Sect(s). 8-912 of the Zoning Ordinance to amend SP 89-P-034 previously approved for additional sign area in a regional shopping center to permit an increase in sign area. Located at 7950 and 7966 Tysons's Comer Center and 8043, 8038 and 8042 Leesburg Pi. on approx. 78.65 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-4 ((1)) 35A and 35C; 39-2 ((1)) 2, 4 and 5. (Deferred from 4/26/05 and 5/3/05 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hillary Zahm, the applicant's agent, Cooley Godward LLP, 11951 Freedom Drive, Reston Town Center, Reston, Virginia, replied that it was.

Peter Braham, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amended sign package to allow three types of signs; signs larger than 200 square feet in size, including those already on the property; signs to be mounted on a parking garage, which is not otherwise permitted by the Zoning Ordinance; and, a way-finding package of signs to be put around the ring road and other roads in the center. He said the reason Board had to address the way-finding signs was because the proposed signs exceeded two square feet in size, which was the size allowed by Article 12.

Mr. Braham explained that there were two packages submitted with the application, one labeled building and garage mounted signs and the second labeled way-finding signs. He said the proposal was related to the expansion of the mall currently under construction and not related to the proposed change to a mixed-use or transit oriented development written about in the newspaper, which was pending pursuant to a rezoning application, RZ 2004-PR-044. A majority of the way-finding signs would be replaced with larger, more informative signs that identified the location of the major anchors and provided directions to a valet parking service, which the mall intended to add to the site. The garage mounted signs and the signs which exceeded 200 square feet in size were addressed by the building and garage mounted sign package. The two existing free-standing signs and the strip center were not included in the application. The strip shopping center stood on its own with regard to building mounted signage, and sign permits had been issued for the two existing nonconforming free-standing signs.

Mr. Braham said there were three standards in paragraph 2 of Sect. 12-304 that needed to be addressed. The mall was 2.5 million square feet in size, and because it was in excess of 400,000 square feet, it met the definition of a regional mall. The applicant's position was that the hardship cited for the property was its location at the convergence of three major arterial streets, the change in topography across the site, and the main mall building being ringed by parking structures, which was the reason for the proposal to put signs on

the parking garages. The proposed signage did not exceed 125 percent of what would be normally allowed on the mall building.

Mr. Hammack asked why some of the proposed signs were not included in the proposed development conditions. Mr. Braham explained that staff decided that the focus would be on the signs that did not meet the provisions of the Ordinance. Signs that were otherwise permitted by Article 12 would go through the normal sign permitting process, and the applicant would not be required to come back to the Board each time a store changed and wanted a slightly different size of sign that met Article 12.

Mr. Hammack asked whether all the signs that were not included were still approved. Mr. Braham said the signs were still allowed, and permits had been obtained for the signs. The development conditions would require that the applicant submit a matrix with any sign permit application, including those that were otherwise permitted by Article 12, which would greatly enhance the ability to track the signs.

Mr. Pammel asked whether the development conditions dated April 25, 2005, were the applicable provisions. Mr. Braham said those were the development conditions staff recommended, but he believed the applicant wanted to request a slight change to one of the conditions.

Mr. Hart asked whether Condition 1, which reflected the applicant as Wilmorite Properties Management LLC, needed to be changed in light of the sale of the mall and the new affidavit listing a new partnership, MACWH LP, formerly known as Wilmorite Holdings LP. Mr. Braham stated that the applicant's name had not been formally changed by submitting an amended application form, but Condition 1 included the phrase "its successors or assigns."

Mr. Hart said that the new owner might not be a successor or assign of the management company or there could be a new owner with a new management company. He said he wanted to ensure that the application was not obsolete because a specific entity had been referred to and there were new affidavits which changed things.

Mr. Hart asked whether the large sign located on Route 7 would be changing and whether the Board was dealing with that in the subject application. Mr. Braham said that both that sign and one exactly like it located on Route 23 had gotten permits before the current provisions of the Ordinance had gone into effect, so even though free-standing signs of that size were not allowed in the County, they were deemed to be legally nonconforming signs because they had permits. Mr. Hart asked whether the signs could be fixed up or whether they had to stay as is or else fall under the new rules. Mr. Braham said a permit could be obtained to re-face it and change the wording slightly, but if more substantial changes were made, it would have to meet the current rules.

Mr. Braham stated that Condition 1 could be changed to include the new property owner if the Board desired. Mr. Hart said he thought it should reflect the correct information.

Mr. Beard asked whether the special permit would run with the applicant or the property, and if there was a new owner, whether they would have to come back to the Board. Mr. Braham explained that because the language proposed by staff included the phrase "and its successors or assigns," if the shopping center was sold by the new owner to some other entity, the special permit would be allowed to continue in force.

Mr. Hammack noted that the applicant's name referenced it being a limited liability corporation and the name on the affidavit referenced a limited partnership, and he asked if there was any documentation showing the connection. Ms. Zahm stated that Wilmorite Property Management LLC still existed and was still the entity that owned and managed the mall. She said MACWH LP had purchased the entire company of Wilmorite Property Management LLC, not just the mall, and she was comfortable that the affidavit was accurate. She said the applicant had requested the proposed phrase of "its successors or assigns" in the development conditions to avoid the need to come back for another amendment to the special permit if the mall ownership changed again, and the applicant would not object if the special permit went with the land as opposed to the owner.

Ms. Zahm presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the application was to amend two previously approved special permits, one approved in 1988 and the other in 1989. She discussed the hardships the mall faced, including the restricted visibility of the center due to the location of the surrounding roadways and the parking structures located around the periphery of the site. Concerns had been raised by customers attempting to find specific stores or locations within the mall, which was the reason for providing a more comprehensive

way-finding package, as well as to reduce confusion as people tried to navigate around the expansion. Ms. Zahm said the applicant had worked with two condominiums that were the closest neighbors on the other side of the beltway, and in response to concerns and questions raised, the size of the most visible signs of Barnes and Noble and AMC had been reduced, and locations of additional signage had been limited as well as the hours the signs and panels would be lit. She presented a letter to the Board which she said had been sent to her from the condominiums saying they would not oppose the application and appreciated the efforts made to address their comments. She requested that Development Condition 5 be changed to reflect an allowed extension of six feet from the face of the garage rather than five feet on the sign panel mounted on Parking Terrace E, with which she said she understood staff was agreeable.

Ms. Zahm said there were no proposed changes to the existing larger signs on Routes 7 and 123 associated with the subject application; however, there was a pending rezoning application, and there could be a change with that application regarding the relocation of one of the signs due to some dedication and proposed bus turnarounds.

Mr. Hammack asked whether Ms. Zahm agreed with the proposed development conditions dated April 25, 2005. She said the only change requested was to Condition 5.

In regard to Condition 7, Mr. Hart asked what was being lit that was referred to as the illumination associated with the architectural panels on the southern and eastern facades. Ms. Zahm said the southern panel was shown on Sheet 12 of the building and garage mounted package, and the applicant had agreed to turn the panels off between midnight and 8:00 a.m. She said they were architectural features to provide interest in the building, and there was no text on the panels.

Mr. Hart asked whether there would be a sign which showed what movies were playing. Ms. Zahm said there would not be one outside.

In response to questions by Mr. Hart regarding the restaurant signs on the garage shown on Sheet 9, Ms. Zahm said the applicant had not made a commitment to turn them off at a certain hour. She said the reason there had been a commitment regarding the eastern and southern facades was because they directly faced residential neighbors.

Vice Chairman Ribble called for speakers.

Mr. Hart asked whether the references in the development conditions to the numbers and signs had been double checked for accuracy. Ms. Zahm said they had.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 89-P-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILMORITE PROPERTIES MANAGEMENT, LLC, SPA 89-P-034 Appl. under Sect(s). 8-912 of the Zoning Ordinance to amend SP 89-P-034 previously approved for additional sign area in a regional shopping center to permit an increase in sign area. Located at 7950 and 7966 Tysons's Comer Center and 8043, 8038 and 6042 Leesburg Pi. on approx. 78.65 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-4 ((1)) 35A and 35C; 39-2 ((1)) 2, 4 and 5. (Deferred from 4/26/05 and 5/3/05 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 2005; and

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

1. The applicants are the owners of the land.

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

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

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

1. This approval is granted to the applicant, Wilmore Property Management LLC., and its successors or assigns only and is not transferable without further action of this Board, and is for the location indicated on the application, Tysons Corner Center (78.65 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a Special Permit amendment, if such uses do not affect this Special Permit approval for increased signage.
2. This Special Permit is granted to permit the signs that would not otherwise be permitted by Article 12, Signs, as depicted on the two special permit packages for additional sign area submitted with this application and prepared by RTKL, which are respectively entitled "Tysons Corner Center Site Wayfinding Signage" dated April 1, 2005 and "Tysons Corner Center Building-Mounted and Garage-Mounted Signage" dated April 15, 2005 and approved with this application, as qualified by these development conditions. Accordingly, the signs regulated by this special permit approval include the following signs as listed in the sign packages:

Site Wayfinding Signs

Signs listed on the Existing Site Sign Matrix (Sheet 4): #1-#10,
Signs listed on the Proposed Site Signs Matrix (Sheet 6): All Signs

Building-Mounted and Garage-Mounted Signs

Signs listed on Sign Schedule Calculations (Sheet 4): #3, #4, #7, #9, #11, #18, #19,
#21, #22, #23, #24, #32, #33, #36, the panel with signs #39 - #46, #47, #48 and #49.

Any sign permit for the signs listed above submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor deviations in sign location; design, such as shape, font, text and colors; and sign area of the above listed signs may be permitted when the Zoning Administrator determines that such deviations are minor and are in substantial conformance with this Special Permit pursuant to the provisions of Par. 4 of Sect. 8-004 of the Zoning Ordinance. Signs otherwise allowed by Article 12, Signs, in the Zoning Ordinance are also permitted, unless qualified by these development conditions.

3. A copy of this Special Permit SHALL BE kept in the shopping center management office on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. A matrix shall be provided to the Zoning Administrator prior to the issuance of the first sign permit and all subsequent sign permits which includes the tenant name, address, sign type, sign height, sign area, and Non-Residential Use Permit number and/or any other pertinent information deemed necessary by the Zoning Administrator in order to allow efficient tracking of all signage to be provided on site. Each sign permit shall be accompanied by a letter from the property owner, manager and/or agent of the property stating that the requested sign has been reviewed for compliance with this approval. This matrix shall be submitted with each sign permit whether or not the sign is listed in Condition Number 2 above. A separate matrix may be submitted for signs on the strip shopping center building adjacent to Chain Bridge Road.
5. Building and/or garage mounted signage shall not project more than three (3) feet from the building face except as follows. The panel sign mounted on the north side of Parking Terrace E may extend up to six feet from the face of that garage.
6. Traffic regulatory signage shall meet the Manual on Uniform Traffic Control Devices (MUTCD) and Virginia Department of Transportation (VDOT) standards.

7. The AMC sign (#33) and the Barnes and Noble sign (#32) on the eastern face of the mall building and the illumination associated with the architectural panels on the southern and eastern facades shall be lit only between 8:00 a. m. and 12:00 midnight.
8. No additional signage other than that shown on the Building-Mounted and Garage-Mounted Signage plan shall be located on the eastern façade of the mall building 48.5 feet above the finished first floor level as indicated on Sheet 7 of this plan.
9. Notwithstanding the illustrations on sheets 9, 10 and 11 of the Building-Mounted and Garage-Mounted Signage plan, the number of individual signs on the panel sign on the northern elevation of Parking Terrace E listed as # 38 - #46 on the matrix on Sheet 4 of this signage plan shall be limited to ten (10). The area of this panel sign shall be limited to 948 sq. ft.
10. This approval shall not preclude the installation of additional signs on the mall building that comply with the provisions of Article 12 of the Zoning Ordinance. The total maximum sign area for the application property shall not exceed 7,983.5 sq. ft. The existing free-standing signs located at the entrances to the mall from Leesburg Pike and Chain Bridge Road (signs #18 and #19 on the matrix on Sheet 4 of the SP Plat entitled Site Wayfinding Signage), the signs noted in the Site Wayfinding Signage package (except those labeled as "Highway Signs"), all building mounted signs on the mall building and all garage mounted signs shall be included in the total maximum sign area calculation. For the purposes of determining allowable sign area, the strip shopping center building located adjacent to Chain Bridge Road shall be considered as a separate building and shall not be included in the total maximum sign area calculation; but shall be included in the matrix and other information to be submitted with each sign permit application required by Condition Number 5 above.

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 Sign Permits through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless a Sign Permit has been obtained for any of the signs not otherwise permitted by Article 12 of the Zoning Ordinance shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to obtain a sign permit if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 18, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:00 A.M. DAVID A. DISANO AND CAROL S. DISANO, VC 2004-SU-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.1 ft. from rear lot line. Located at 5856 Linden Creek Ct. on approx. 5,016 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((7)) 14. (Decision deferred from 6/8/04, 7/20/04, and 1/25/05)

Vice Chairman Ribble noted that VC 2004-SU-048 had been withdrawn.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:00 A.M. KEVIN C. & MICHELLE L. HEALY, VC 2004-MA-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 32.3 ft. with eave 30.9 ft. from front lot line and addition 14.9 ft. with eave 13.8 ft. from rear lot line of a corner lot. Located at

3807 Foxwood Nook on approx. 12,396 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((12)) 273. (Decision deferred from 8/15/04, 9/21/04, and 3/8/05)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that she had spoken with the applicants' agent the day before the hearing, and the agent had verbally requested an indefinite deferral.

Mr. Pammel moved to indefinitely defer VC 2004-MA-059 at the applicants' request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:00 A.M. BROOKFIELD SWIMMING CLUB, INC., SPA 81-C-027-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-C-027 previously approved for community swimming club to permit building additions and site modifications. Located at 13615 Pennsboro Dr. on approx. 2.89 ac. of land zoned R-3 and WS. Sully District. Tax Map 44-2 ((1)) 15 and 16. (Decision deferred from 4/26/05 at appl. req.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Stoner, the applicant's agent, 1925 Isaac Newton Square, Suite 250, Reston, Virginia, replied that it was.

Vice Chairman Ribble noted that the application had been deferred for decision only. He asked whether there was new information for the Board. Susan Langdon, Chief, Special Permit and Variance Branch, said the decision had been deferred so staff and the applicant could work on several of the development conditions, and a new addendum had been distributed to the Board with the proposed changes. She said staff and the applicant had agreed on the changes, with the exception of Condition 10 concerning whether the closest tree should be removed for construction. Staff suggested letting the urban forester decide whether it was hazardous after construction, and the applicant requested permission to remove the tree before construction.

Mr. Stoner confirmed that there was agreement regarding everything except the tree. He said the tree was located 20 feet from the existing façade of the clubhouse; with the expansion of the clubhouse, it would be 10 feet away; and, the canopy of the tree currently extended to the existing façade of the building. The applicant appreciated staff's proposal that the tree be allowed to be removed if it proved hazardous, but with the tree being so close to the building, it would pose a constant maintenance problem, would have to be pruned for construction and regularly pruned significantly back from the face of the building, would cause maintenance problems regarding the roof and the gutters, and the roots may continue to grow and interfere with the foundation of the clubhouse. Mr. Stoner said the applicant would be willing to replace the tree with an evergreen tree eight to ten feet in height at the time of planting. Ms. Langdon said staff would be agreeable to the applicant's proposed wording for Condition 10 with the addition of the language that the applicant would replace the tree with an eight- to ten-foot tree.

Mr. Beard noted that the maximum number of club memberships of 450 families had been discussed at the previous hearing, but the actual membership had been around 280. Mr. Stoner said the club's by-laws presently limited the membership to 375 families, and actual membership was currently in the low 300s.

Mr. Hart asked whether there was agreement that the pine tree could be removed if an eight- to ten-foot evergreen was planted after construction. Ms. Langdon said that was correct.

Mr. Hart asked whether Condition 8 meant that outdoor events could not be or had to be on Friday or Saturday evenings. Ms. Langdon said the events ending as late as midnight had to be on Friday or Saturday evening, and the events Sunday through Thursday would be from 8:00 a.m. to 10:00 p.m. Mr. Hart said he thought the language needed to be refined, and Mr. Stoner offered alternative language.

Mr. Hart asked whether the use of amplified music from inside the building which could be heard outside through the windows had been discussed and if something could be added to Condition 8 to address it. Ms. Langdon and Mr. Stoner said the issue had not been discussed. Mr. Hart suggested putting in language in Condition 8 stating that amplified music would comply with the Noise Ordinance. Mr. Stoner said that was agreeable.

Mr. Hammack asked about events being held on Sunday evenings before Monday holidays and whether that should be addressed in the conditions. Mr. Stoner said the language previously discussed without any provision in it for Sunday evenings before holidays was sufficient.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve SPA 81-C-027-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BROOKFIELD SWIMMING CLUB, INC., SPA 31-C-027-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 61-C-027 previously approved for community swimming club to permit building additions and site modifications. Located at 13615 Pennsboro Dr. on approx. 2.89 ac. of land zoned R-3 and WS. Sully District. Tax Map 44-2 ((1)) 15 and 16. (Decision deferred from 4/26/05 at appl. req.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 2005; and

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

1. The applicants are the owners of the land.

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

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

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

1. This approval is granted to the applicant only, Brookfield Swimming Club, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 13615 Pennsboro Drive, and is not transferable to other land.
2. This Special Permit Amendment is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Theodore L. Britt, Tri-Tek Engineering, dated December 6, 2004, as revised through March 30, 2005, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit amendment shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. All parking shall be on-site as shown on the special permit plat.
6. The hours of operation for the facility shall be limited to a maximum of:
Swimming Pools: 7:30 a.m. to 9:00 p.m., daily, between Memorial Day and Labor Day weekends

Clubhouse: Upon request, year round, 8:00 a.m. to 10:00 p.m., Sunday through Thursday, 6:00 a.m. to 12 midnight, Friday and Saturday

No more than six after-hours outdoor events shall be permitted each year. Any outdoor event shall end not later than 12 midnight and shall be held on Friday or Saturday evenings only and including holidays.

7. The applicant shall adjust the existing pool light fixtures or will use retrofit shields for these light fixtures to prevent lighting above the horizontal plane. Any new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
8. No loudspeakers shall be used before 9:00 a.m., and the use of the loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and only during swim meets. The maximum decibel level of the loudspeakers shall not exceed 55 dBA at the property line.
9. Notwithstanding that which is shown on the special permit plat, stormwater management and Best Management Practices facilities shall be provided as determined by DPWES, and shall, if feasible, consist of infiltration trenches, as shown on the plat, or bioretention gardens. If necessary, an underdrain for the infiltration trench or bioretention garden shall be provided and shall connect to the existing stormwater facilities on-site. No existing vegetation shall be removed to provide any of the referenced facilities.
10. The existing vegetation as shown on the plat shall be maintained and shall be deemed to satisfy the Transitional Screening requirements along all the lot lines. This condition does not prohibit the removal of the 15 inch pine tree identified as T10 on the applicant's existing vegetation map:
 - The tree may be removed, but shall be replaced with an evergreen tree eight (8) to ten (10) feet in height at time of planting.
 - All construction, including staging of equipment, shall take place from the southern, eastern or western side of the clubhouse. No heavy equipment, which could compact the soils around the root base of the trees on the north side of the clubhouse, shall be permitted on the hill where the trees are located. Any construction on the north side of the clubhouse shall be conducted at the base of the hill and not at the top of the hill where the trees are located.
 - The proposed handicapped access from Pennsboro Drive to the second story of the proposed clubhouse shall be constructed by hand in the root area between the trees on the north side of the clubhouse.
 - The applicant shall provide tree protection fencing in the form of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart, or other forms of tree protection fencing approved by Urban Forest Management, DPWES for the area between Pennsboro Drive and the proposed new clubhouse. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets and demolition plan sheets of the site plan submission. The details for these treatments shall be reviewed and approved by Urban Forest Management, DPWES and accomplished in a manner that protects affected and adjacent vegetation to be preserved.
11. The barrier requirement shall be modified along all lot lines to permit existing and proposed fencing to satisfy the requirements.
12. The maximum number of family memberships shall be 450.
13. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during the pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer lines by using the following guidelines for all pool discharge materials.
 - All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax

County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during drainage or cleaning operations; add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH level approximately equal to that of the receiving stream and as close to the neutral (a pH of 7) as possible.

- If the water being discharged from the pool is discolored or contains a high level of suspended solids that could 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.

14. Prior to site plan approval, the applicant shall obtain written approval from the Park Authority for the location of fencing on the Park Authority easement, on the west side of the pool and clubhouse. If approval is not obtained, the fencing shall be modified to exclude the area covered by the Park Authority easement, without the necessity of an amendment to this special permit.

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

Pursuant to Sect. 3-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 18, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:30 A.M. VEENA RAILAN, A 2005-DR-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a masonry wall and a metal fence both of which are in excess of four feet in height and located in the front yard of property in the R-1 District and that the masonry wall was erected without a Building Permit are in violation of Zoning Ordinance provisions. Located at 6531 Georgetown Pi. on approx. 1.5 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 55.

Vice Chairman Ribble noted that the Board had received a deferral request regarding A 2005-DR-001, and he called the appellant to the podium.

Vik Railan, 6531 Georgetown Pike, McLean, Virginia, came forward. He said they were applying for a special permit, and he requested a deferral.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, said staff did not support a deferral because the appellant had four months to file a special permit for a noise barrier and complete the noise impact study and had not done so. She said staff believed the special permit the appellant intended to apply for would not be applicable because the appellant stated in the appeal application that noise and lights from the high school were impacting his property, but Sect. 8-919 of the Ordinance stated that a noise barrier was to reduce the adverse impacts of highway noise. Ms. Tsai said the noise barrier would not be in harmony with the surrounding community.

Vice Chairman Ribble called for speakers to address the question of the deferral request.

James Robertson, no address given, came forward to speak. He said he was present to represent the McLean Citizens Association, who had looked into the matter and believed the wall should not remain because it was unsightly and not in harmony with the community. He said he was opposed to a deferral.

Thomas Moore, 6510 Anna Maria Court, McLean, Virginia, came forward to speak. He said he was vice president of the Langley Oaks Homeowners Association, who opposed the deferral because the wall had existed for a year and should be considered.

Cuneyt Oge, 6521 Georgetown Pike, McLean, Virginia, came forward to speak. He said he was appearing on behalf of himself and 11 other neighbors who had signed a letter which asked that the Board make a decision and not defer because the wall had existed for a year and there had been ample time to deal with it.

Mr. Hart asked when staff had first received the request for a deferral. William Shoup, Zoning Administrator, Zoning Administration Division, said it had been received on May 2, 2005.

Mr. Hammack asked whether action had been taken by the appellant to file a special permit application. Ms. Tsai said no application had been filed.

Sharon Burdick, 1099 Langley Fork Lane, McLean, Virginia, came forward to speak. She said she was representing the Langley Fork Lane Homeowners Association, who opposed the deferral request.

Mr. Hart asked why the appellant had waited so long to request a deferral and had not filed for a special permit. Mr. Railan said he had gotten a noise study done and had not yet received the results. He said he was allowed due process.

In response to questions from Mr. Hart, Mr. Railan said he had engaged the laboratory to do the noise study about one and a half months prior. He said he had received a violation letter, which was later withdrawn, and then received another violation letter. Ms. Tsai said the first notice of violation letter had been issued on October 13, 2004, which had been withdrawn and reissued on December 28, 2004.

Mr. Hart asked if someone could submit a special permit application and then later file a noise study. Mr. Shoup said he thought the noise study was a submission requirement, and without it, the application would not be accepted.

In response to a question from Mr. Hart regarding what the filing fee would be for a special permit for a noise barrier, Mr. Shoup said it would be \$1,708.

Mr. Beard asked to see the original copies of the photographs attached to the staff report. Ms. Tsai displayed them on the overhead viewer.

Mr. Pammel said it was significant that three months had elapsed since the appeal had been filed and accepted, which was more than adequate time to have moved ahead with whatever was necessary. He said the Board was here at the place and time when the public hearing had been scheduled. He noted that the Code required that permits be obtained from the County, and they had not been.

Mr. Pammel moved that the Board go forward with the public hearing as scheduled. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

Mr. Shoup said the correct amount for the special permit fee previously discussed would be \$190 since it was a single residential lot.

Ms. Tsai presented staff's position as set forth in the staff report. The appeal was of a determination that a masonry wall and a metal fence which were in excess of four feet in height and located in the front yard of the subject property in the R-1 District were in violation of Zoning Ordinance provisions, and the masonry wall had been erected without a building permit. Ms. Tsai said staff from the Department of Public Works and Environmental Services, which issued building permits, had determined that a building permit was not needed for the 10-foot high masonry wall because it was deemed most similar to a fence, which did not require a building permit. The heights of masonry wall and the metal fence were in excess of the four-foot height restriction for such structures located in the front yard of a lot containing less than two acres. Ms. Tsai said the appellant did not contest in the appeal application that the wall and fence exceeded the height limitation, but stated that the noise and lights from Langley High School located across the street were a disturbance.

At the request of Mr. Beard, staff indicated on a drawing using the overhead viewer where the wall and fence were located.

Mr. Hart said a survey given to the Board showed that the area where the wall turned the corner was located well onto the narrow strip of land to the west of the subject property which was owned by someone other than the appellant. He asked if the appeal dealt only with the part that was facing the street. Bruce Miller, Zoning Enforcement Branch, said that if the wall was on someone else's lot, it was still a violation for the appellant because it needed to be accessory to the lot where the house was located. He said anything in front of the front plane of the house was in the front yard, and everything in front of the front plane of the house to the street was the subject of the violation.

Mr. Railan presented the arguments forming the basis for the appeal. He said the side wall had been removed, and there was no longer a side wall on his neighbor's lot. He said it had been six inches across the property line, and he had immediately removed it once he realized it went beyond his property. Mr. Railan said the wall was in excess of four feet in height, and the seven-foot high metal fence had been constructed when the house was constructed and was not built by him. Mr. Railan said Mr. Robertson from the McLean Citizens Association had stated to him that he did not mind if the appellant kept the fence, but took down the wall. Mr. Railan said his plan was to put up a decorative stone or brick façade to the wall, but he had stopped because of the violation, although did not mind doing it. He also said trees could be put in so the wall would not be visible from Route 193. He said the traffic turning, the music from cars, and the loudspeaker from the high school were disturbing. Mr. Railan said he would comply with the law, but if there was a provision for a special permit, he wanted to be able to approach that as due process. He said the unsightliness of the wall could be addressed, that six-foot tall trees could be planted, which would be ten feet tall in a couple years and completely hide the wall.

Mr. Hart asked whether a contractor had built the wall. Mr. Railan said a gentleman from El Salvador built the wall, but he did not ask whether he had a contractor's license.

Mr. Hart asked whether an engineer or architect designed the foundation and the construction of the wall. Mr. Railan said he himself had a bachelor's degree and was licensed in the States of Virginia, Maryland, and Washington, D.C., as a professional engineer, but in the discipline of electrical engineering, not structural. He did make sure there was rebar in the wall, and when the side wall was removed, it was difficult because it had been very strongly built. Mr. Railan said the wall was not over or under designed.

Mr. Hart asked whether Mr. Railan had designed the wall himself and done the calculations regarding the height and the strength. Mr. Railan said he had, and the concrete foundation was approximately two and half to three feet deep. He said he did not profess to be a structural engineer.

In response to a question from Mr. Hart regarding whether the high school had existed when Mr. Railan moved in, Mr. Railan said it had.

Mr. Hart asked whether there would be any prohibition to a homeowner putting in high bushes, evergreens, or trees to screen something, like a 20-foot high row of plants 50 feet deep, but they just could not build a wall. Ms. Tsai said the height of the wall being 10 feet was a violation. Mr. Hart clarified by asking if the appellant could put in landscaping as high as he wanted, and Ms. Tsai said yes.

Vice Chairman Ribble called for speakers.

James Robertson, no address given, McLean Citizens Association, came forward to speak. He said the association was opposed to the existence of the wall because it was unsightly and would not achieve the results Mr. Railan hoped it would. Mr. Robertson said that it was common knowledge that a sound wall had to be a continuous wall, and the wall on the subject property had two breaks in it for the circular driveway. The sound would go through, and the wall would have no effect. He said the wall was not in keeping with the community, but the association did not oppose the metal fence that had been there for years without complaint and would have no objection to it remaining.

Thomas Moore, 6510 Anna Maria Court, McLean, Virginia, came forward to speak. He stated that he was the vice president of the Langley Oaks Homeowners Association. He said Langley Oaks was located on the north and west sides of Langley High School, with houses closer to the high school than the appellant's house, and there were no walls in their community because people had found other effective ways of blocking the sound. Mr. Moore said the appellant's house had been built less than 20 years prior, the high school had been at the location for approximately 40 years, and the appellant had moved in within the past several years, so it was not a case of a public facility being put in after the appellant was there. He said the association supported the position of the Zoning Administrator and staff and believed that both the metal and stone walls should be at the levels allowed by the Ordinance.

Mr. Hammack asked Mr. Moore why the association had not complained about the height of the metal fence when it had been constructed. Mr. Moore said they had not known that the prior owner had not gotten approval through the County.

Cuneyt Ogo, 6521 Georgetown Pike, McLean, Virginia, came forward to speak. He said his property was adjacent to the subject property on the east side, and he and the other 11 families he was speaking for had concerns and had spoken with Mr. Railan on several occasions about the issue. Mr. Ogo said he had built his house in 1987 and had lived there for 18 years. He said that not only did he live across the street from the high school, but there was a church with a Montessori school next to him, so noise was a fact in the area. He said he could empathize with Mr. Railan, but over the years he had found other ways to deal with the noise and lights, like evergreen trees. Mr. Ogo said he had consulted professionals who suggested carpeting in the house to muffle the sound and sound absorbing wallpaper on the ceiling and walls. When the high school was holding football games and there were drums beating, they could at times hear it, but it had not impacted the quality of his family's lives. He said his concern was that what the appellant had done was an unsightly solution to a problem shared by others who had found other solutions, and even with putting decorations on, it would still be an unsightly wall. He said there was no objection to the metal fence that had been there for years and was an aesthetic addition to the area. Mr. Ogo said that with respect to the side walls earlier referred to, the side wall on the other side of the property had been demolished, but there was also a wall on his side which had not.

In response to questions from Vice Chairman Ribble regarding whether Mr. Ogo had a fence in his front yard, Mr. Ogo said he did not. He said he had three rows of evergreen trees, had built the house himself, and had not put in any kind of ornamental fence.

Barbara Ball, 6539 Georgetown Pike, McLean, Virginia, came forward to speak. She said she agreed with all that the speakers had said. She said the appellant had removed the wall which had been built on her property, but the footing still needed to be removed. Ms. Ball said that if the wall ended up being taken down, she would like some requirement that the rubble be removed as well. She said she had moved into her house five years prior, with the high school existing, and had spent a fair amount of money planting trees in front of her yard to help prevent the sound and light, which had been successful.

In his rebuttal, Mr. Railan said the driveway to the high school was directly across from his house, and the traffic coming out of the high school would not affect Mr. Ogo's property as much as it did his. Mr. Railan said the Balls' driveway was even further away from the main driveway of the high school. He said his property had the maximum impact from the noise and traffic, and he had been told to buy some earplugs, but he did not feel that was practical.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold-in-part the determination of the Zoning Administrator as to the wall and fence, with the exception of the building permit issue. The issue of the masonry wall being erected without a building permit had become moot by staff's explanation. He said that based on the record before the Board, there was ample evidence that both the fence and the wall were a violation of Zoning Ordinance provisions. It was a difficult situation when non-residential uses were juxtaposed with homes, and sometimes there were conflicts between the activity at the non-residential use and the enjoyment of the other property. Mr. Hart said there was an Ordinance provision allowing an applicant to file for a special permit for a noise barrier under certain circumstances, and there may be a provision in the wake of the Cochran decision to allow certain front yard fences up to six feet under certain circumstances. He said the arguments that had been raised by the appellant dealt with why a wall would be reasonable, but failed to address the correctness of the Zoning Administrator's conclusions regarding the violations. On the record that was before the Board, the Zoning Administrator was correct except that staff had later concluded that the masonry wall did not need a building permit, but the rest would still hold true. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

Mr. Pammel advised Mr. Railan that there was a provision in the Zoning Ordinance that would permit encroachments such as fences in yards if it were done in error or by mistake, and since the metal fence had been installed by a previous property owner and the error was not the result of something he did, Mr. Railan had the right to file for a special permit to allow the metal fence to remain as it was presently located. He said Mr. Railan would not have to tear down the metal fence until he had a special permit application heard by the Board. Mr. Railan said he appreciated the information, but he would like to have the enforcement postponed until the special permit had been decided. Mr. Pammel said if Mr. Railan elected to file for a special permit, staff would not enforce the provisions dealing with the metal fence.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:30 A.M. ENRIQUE LOPEZ, A 2005-MV-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located at 10014 Richmond Hy. On approx. 23,311 sq. ft. of land zoned C-8. Mount Vernon District. Tax Map 113-2 ((1)) 65.

A 2005-MV-006 had been administratively moved to July 12, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:30 A.M. EXPRESS TINT, A 2004-SU-030 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is occupying the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance provisions. Located at 13900 Lee Hwy. on approx. 5,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04 and 3/8/05 at appl. Req.)

Vice Chairman Ribble called the appellant to the podium.

Mr. Hart indicated that he would recuse himself from the public hearing.

Tara Wiedeman, the appellant's agent, Walsh, Colucci, Lubeley, Emrioh & Terpak, PC, 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, came forward. She said the appellant had been diligently working with staff to appropriately categorize the use of the subject property and to obtain a non-residential use permit (Non-RUP). She stated that a Non-RUP had been issued on May 3, 2005; however, it had contained errors with respect to the identification of the zoning district and the classification of the use. She requested a brief deferral to allow her the opportunity to correct the errors and obtain a new Non-RUP.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, said staff supported the deferral request.

Vice Chairman Ribble called for speakers to address the question of the deferral request.

H. Kendrick Sanders, 3905 Railroad Avenue, Suite 200 North, Fairfax, Virginia, came forward to speak. He said he was the attorney for Dennis O. Hogge and J. William Gilliam, the owners of the property and the appellants in the following appeal, A 2004-SU-031, which was a companion case, and he thought both matters should be deferred until the issue with the Non-RUP was resolved.

Mr. Hammack moved to defer A 2004-SU-030 to June 7, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:30 A.M. DENNIS O. HOGGE AND J. WILLIAM GILLIAM, A 2004-SU-031 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a tenant to occupy the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Ncn-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance Provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04, notices not in order) (Deferred from 3/8/05 at appl. req.)

Mr. Hart indicated that he would recuse himself from the public hearing.

Vice Chairman Ribble called the appellants to the podium.

H. Kendrick Sanders, 3905 Railroad Avenue, Suite 200 North, Fairfax, Virginia, came forward. He stated that the appeal was a companion case to the appeal from Express Tint, A 2004-SU-030. He requested that the appeal be deferred to June 7, 2005. He said that once the non-residential use permit issue was straightened out, the appeal would no longer be necessary.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, said staff supported the deferral request.

Vice Chairman Ribble called for speakers to address the question of the deferral request; there was no response.

Mr. Pammel moved to defer A 2004-SU-031 to June 7, 2005, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

The meeting recessed at 10:37 a.m. and reconvened at 10:41 a.m.

//

~ ~ ~ May 10, 2005, Scheduled case of:

9:30 A.M. MRS. BETSY BOYLE AND MRS. DEMETRA MILLS, A 2005-BR-005 Appl. under Sect(s). 13-301 of the Zoning Ordinance. Appeal asserting that the Zoning Administrator made a verbal determination on January 26, 2005 not to issue a Notice of Violation at that time for operating a place of worship without special permit approval on property located at Tax Map 70-3 ((4)) 113. Located at 8434 Thames St. on approx. 10,500 sq. ff. of land zoned R-3. Braddeck District. Tax Map 70-3 ((4)) 113.

Vice Chairman Ribble noted that the Board had received a deferral request regarding A 2005-BR-005.

William Shoup, Zoning Administrator, Zoning Administration Division, said that was correct. He said the appeal pertained to 8434 Thames Street, and the appellants were not the owners of the property. The owner of the property had sent in the letter requesting a deferral.

Mr. Hart said he understood there had been an issue regarding the 90-day requirement and the advertising, and the hearing had been set for that day because it was the first day it could be advertised, and the appellants had agreed to the date. He asked whether it would be past the 90-day requirement if the hearing was deferred. Mr. Shoup said it would be past the 90 days.

Mr. Hart stated that the four members constituted a quorum, and four votes were needed to reverse a determination of the Zoning Administrator. He said that may be one consideration in whether to hold the hearing or defer it. He asked whether the appellants had a position regarding moving the hearing beyond the 90-day requirement.

Betsy Boyle, 8437 Thames Street, Springfield, Virginia, came forward to speak. She said the primary concern was the initial date proposed by the Zoning Administrator had been June 28th, which fell in the middle of all the neighbors' vacations, and those who wanted to respond would not have an opportunity to do so. The second concern was there were six people present who had taken off from work to attend the hearing. She said her daughter was graduating from nursing school, but she was at the hearing rather than attending the graduation. She said the appellants' preference would be to resolve the issue as soon as possible, and it would be a hardship for the neighbors to take off work again to speak to the issue later.

Mr. Hart asked whether that was the position of the second appellant. Ms. Boyle said the reason Ms. Mills was not responding was because the staff report said staff thought she should be removed from the appeal, but both of the appellants were in agreement.

Mr. Hart asked whether staff had a position on the deferral request. Mr. Shoup said staff did not object to a deferral. He said that because it was a third-party issue, he thought the owner had a right to seek counsel, and that was the purpose of the owner's request for the deferral.

Mr. Hart asked whether it was correct that if the appellants did not agree to a deferral, the Board had to hold the hearing. Mr. Shoup said that was correct.

Vice Chairman Ribble called for speakers to address the question of the deferral request.

Carol Ann Hilton, 8439 Thames Street, Springfield, Virginia, came forward to speak. She said she was to travel for business, but had changed her flight in order to attend, and that was the level of commitment some of the neighbors had to seeing the issue through. She said she would support whatever decision the appellants made as to whether or not to proceed.

Mr. Hammack asked whether the appellants had seen the information given to the Board, which included a brief from a litigation matter, approximately 20 pages of additional information, and the request made by the property owner. Ms. Boyle said the only part she had seen was the information the appellants had submitted. She said she had received a copy of the staff report the prior Thursday, and the information was their response to the staff report. She said she had no copies of what the neighbors or the property owner had written.

Mr. Hammack said one of the things in the property owner's letter said that she was preparing to hold her meditations in a different location in August of 2005, at which point the issue would become moot. Ms. Boyle said she had heard that, but if that did not happen, they would end up before the Board again. She said there had been no special permit issued, and there was no assurance that it would be a moot point in August. She said the appellants needed some sort of assurance that the worship activity on their street was stopped.

Arun Dougal (phonetic), no address given, came forward to speak. He said he was the nephew of Mrs. Santosh Chopra, the owner of the subject property, and had been authorized to speak on her behalf. He said the plan was to move the activities to someplace else in August, but the staff report said it had been determined that there were no violations involved with what Mrs. Chopra was doing. He said he had letters from the neighbors at 8432 and 8436 Thames Street and from a neighbor across the street, and the letters said they had no problems with the use of Mrs. Chopra's residence. He submitted the letters to the Board. Mr. Dougal requested the hearing be deferred until August.

Mr. Beard said the implication in Mrs. Chopra's letter was that subsequent to August of 2005 the meditations would be held somewhere else, but it could also be read that the activity would be somewhere else in August and then be back at the subject property after. He said it needed to be clarified.

Mr. Hart asked whether Mr. Dougal was an attorney. Mr. Dougal said he was an engineer, not an attorney. Renu Sahni, 2101 Highcourt Lane, Herndon, Virginia, came forward to speak. She said the intent was to hold the meditations at a different location effective August of 2005. She said she supported the deferral.

Puch Ghas (phonetic), no address given, came forward to speak. She said she lived in Vienna and had attended the meditations for the past 22 years. She said it was silent meditation, and they did not bother anyone. She said they wanted time to continue and find another place.

Mr. Hart said he understood that if the appellants did not agree to a deferral and it was past the 90-day requirement, the Board had to hold the hearing. He moved to deny the deferral request. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

In response to questions from Mr. Hart regarding the standing of the appellant and whether it was contested, Mr. Shoup said staff did not believe Ms. Mills had standing in the appeal because she no longer owned the property next to the subject property after having sold it in June of 2004. She currently lived approximately two miles from the subject property. He said she did not meet the test of being an aggrieved party and should be dismissed as an appellant.

Mr. Hammack said he recalled the Board recently hearing a case involving a zoning violation where the party who lodged the violation was located approximately five miles away. Mr. Shoup said the one he recalled was the Davis Store issue, and staff had raised the same argument in that case. Mr. Hammack said it was a case subsequent to that. Mr. Hart said it was a playhouse in a side yard. Mr. Hammack said a zoning inspector had issued a notice of violation, and it was someone who had just gone through the neighborhood and had done a little policing. Mr. Hammack said there was no issue about an aggrieved party raised in that. Mr. Shoup questioned whether it was a complainant in a zoning violation as opposed to an appellant, and he

said there was a difference. Mr. Hammack said the appellants were effectively complainants who wanted a zoning violation issued. Mr. Shoup said there was no issue with the fact that the appellants lodged a complaint, and staff had followed up on the complaint, but there was a different test or standard that had to be met once they appealed a decision.

Vice Chairman Ribble said he would allow Ms. Mills to argue that she should stay in as an appellant if she so desired.

Demetra Mills, 5232 Capon Hill Place, Burke, Virginia, came forward to speak. She said she would leave the decision up to the Board. She had lived at the property and had filed the complaint several years prior, and she felt that if anyone had been aggrieved in the situation, it was her because the situation was so bad she had to move. She said she would be happy to remove herself if it would make the proceeding go forward more quickly.

Vice Chairman Ribble said Ms. Mills could remove herself and still speak to the issue. Ms. Mills said she was happy to be a witness, and that would be fine.

Vice Chairman Ribble stated that Ms. Mills had effectively removed herself as an appellant.

Mr. Shoup said there were two ways to address the appeal. He said there had been a long discussion with the Board when the appeal had been filed about the appropriateness of the appeal, and staff continued to maintain that the decision was not appealable because it involved the discussion of the Zoning Administrator to determine whether or not there was a violation of the Zoning Ordinance. He said it was staff's position that for the appellant to ask the Board to require the Zoning Administrator to issue a notice of violation was tantamount to asking for a mandamus, which was not appropriate in this case. Mr. Shoup said staff's position with respect to the appeal was that there were weekly gatherings at the subject property that took place every Sunday with 28 to 33 people observed on the site. During the investigation of the complaint, there had been meetings through the Supervisor's office, and an effort was made to get Mrs. Chopra to minimize the activity on the property by orchestrating carpools and removing any signs or indication that gatherings were taking place, which Mrs. Chopra had cooperated with. He said at one point there had been an advertisement on the Internet about the property being a gathering place for religious practice, and it had been removed.

Mr. Shoup said the question became whether it was a place of worship in the context of the Zoning Ordinance that required regulation, meaning that it needed special permit approval to operate on the property, and after taking a long look at the situation and conducting a number of inspections, the activity on the property had the characteristics of other places of worship that had been regulated and enforcement action taken, but in the subject case after the level of activity had been reduced, staff viewed it in the context of the Religious Land Use and Institutionalized Person Act (RLUIPA) and compared it to other activities that occurred on a residential property. For years bible study groups had been allowed to meet on residential property with gatherings of 20 or more people, and those were not considered a place of worship, were not regulated, and did not need special permit approval. Other activities, such as Boy Scout meetings and garden clubs, with fairly large gatherings on a residential property, have not been subject to any special regulation and were typical of what was associated with a residence. Mr. Shoup said the level of activity that was occurring on the subject property was most similar to some of the other types of activities that staff had said was permitted. He said he informed the citizens who attended a meeting in January conducted in Supervisor Bulova's office that staff would not be taking enforcement action or issuing a notice of violation at that time and would monitor the site, and if the level of activity changed, increased, or had more of an impact, staff would take a look at whether at that point it should be regulated and a notice issued.

Mr. Shoup said there were some very strict standards in RLUIPA with respect to imposing regulations on places of worship, and there had to be a compelling governmental interest to impose what could be considered a substantial burden, which would be to require them to get special permit approval because it would be extremely unlikely that a special permit could be approved for a church on the subject property. It was not in dispute that religious worship activity was taking place, but the question was whether it rose to the level that should be regulated by the issuance of a notice of violation. Based on the information presented in the staff report, staff's position was that currently it did not, and staff believed the appeal should be dismissed.

Mr. Shoup stated that with respect to RLUIPA, he had sought guidance and counsel from the County Attorney's Office, and Cynthia Bailey was present to answer any questions the Board had with respect to legislation.

Mr. Hammack asked how the subject group differed from the Buddhist group that was on Annandale Road that only had a few cars parking on the street and was required to get a special permit several years prior. Mr. Shoup said some of the activity was similar, but the difference was that the group on Annandale Road had at one point obtained special permit approval from the Board, so that demonstrated that a special permit was attainable. He said that requiring a place of worship to get a special permit did not violate RLUIPA, and it clearly had not constituted a substantial burden on that group. Mr. Shoup said there was still an impact from what was occurring, and staff still heard from neighbors on the Annandale Road case. He said there was a distinction between that case and the subject case, given the circumstances.

Mr. Hammack asked what the distinction was. He said he recalled the Annandale Road case involved a notice of violation, and an attorney had been obtained who told the group to get a special permit. They went through the process, but the level of activity had been very similar. He asked whether the Annandale Road case came in before RLUIPA. Mr. Hammack said the Board gave them a special permit for 13 cars, and in the subject case, it was agreed that there was more traffic than 13 cars generated. Mr. Shoup said there was no definition in the Zoning Ordinance of a place of worship, which made it difficult, and what staff had traditionally done in the past was looked at whether a religious leader was present who led the services, whether the services were regularly scheduled, whether there were other signs of religious activity taking place on the property, and the impact from cars and people coming to the property. He said the cars parking on Annandale Road generated a lot of citizen concern. Mr. Shoup said there was not a big distinction between the two cases, other than in looking at it under RLUIPA, the ability to meet the tests that were present with the RLUIPA legislation had been a key factor, and the fact that the Annandale Road property had the ability to obtain special permit approval had been a factor considered.

Mr. Hammack referred to language on page 10 in the staff report regarding a long-standing interpretation of the Zoning Administrator that not all gatherings were necessarily religious, and he asked whether the interpretation was in writing, and if so, was it available to the public and did it set forth criteria. Mr. Shoup said that over the years staff had issued several written interpretations, but most of the interpretations had been verbal in discussions with citizens regarding whether activity was regulated based on the fact that in the early years of the Zoning Ordinance interpretations had been made regarding prayer groups, as an example. He said anything in writing could be made available as it was public record, but there was not a formal interpretation set out in the Zoning Ordinance regarding the issue.

Mr. Beard asked to be given an example of a compelling governmental interest with respect to RLUIPA. Ms. Bailey said the whole notion of a compelling governmental interest was a term in case law for which there was not an overabundance of information, and it was not crystal clear. She said a situation where there were busloads of people coming to a particular kind of property or a septic system that was unavailable for the number of people coming to a property such that it created a real hazard to the public health and welfare could be argued to be a compelling governmental interest. She said in certain circumstances an argument could be made that traffic could be a compelling governmental interest if it rose to such a level that it created a safety hazard or was in some regard really hazardous. Ms. Bailey said that over the course of history, the United States Supreme Court had viewed compelling governmental interest as very narrow, and typically one found them in the context of national security or military kinds of interests. She said there had been some case law that had loosened it up somewhat, but it was viewed to be very high, where there was some sort of personal peril that the government needed to regulate in order for it to rise to a compelling governmental interest.

Mr. Beard asked whether there would be a compelling governmental interest if there was a small community that was overrun with religious groups or churches where the government would have to cease functioning because tax revenue was being taken away. Ms. Bailey said she was unaware of any cases that had determined that tax revenue was a compelling governmental interest.

Mr. Hammack said that page 10 of the staff report referenced three tests that trigger the jurisdictional grounds, one being the imposition of a substantial burden on religious exercise in a program or activity that received federal financial assistance. He asked whether it was correct that the subject case would not fall under that. Ms. Bailey said that was correct.

Mr. Hammack said the next test was the imposition of a burden in a manner that affected interstate commerce. Ms. Bailey said that was not implicated in the subject case.

Mr. Hammack said the third test was the imposition of a substantial burden in the context of a governmental system that employed procedures or practices of individualized assessments, and he asked whether that was the criteria the subject case fell under. Ms. Bailey answered affirmatively and said there was possibly a

fourth. She said it would fall under individualized assessments because that was what the Zoning Administrator was engaged in, analyzing a particular piece of property and determining how that property was being used in the context of the Zoning Ordinance, so the Zoning Administrator was making an individualized assessment about the use of the property. Ms. Bailey said that if Mrs. Chopra was required to come before the Board of Zoning Appeals to obtain a special permit, then the Board would be making an individualized assessment on the particular property. She said the case law was very clear that those kinds of governmental actions were covered by the jurisdictional prong of the statute. Ms. Bailey said the final jurisdictional prong was separate and distinct from the substantial burden in the compelling interest inquiry, and it was whether the government treated religious uses the same as it treated secular uses. She said the Zoning Administrator had testified that there were a large number of similar types of activities that were unregulated, such as Boy Scout clubs, Bunco groups, and gardening associations, and it was her belief that given the fact that those kinds of uses would be very similar in impact to the subject use, it was very possible that those provisions of RLUIPA would be triggered, in which one would not even need to enter into the substantial burden inquiry because it would just be flatly a violation.

Mr. Hammack said an attorney from the County Attorney's Office had explained to the Board approximately two years prior that RLUIPA did not affect the way the Zoning Ordinance was being applied in Fairfax County with respect to places of worship and that the Board should follow the procedures it had always followed. He asked whether there had been a change in the position of the County Attorney. Ms. Bailey said she had not been privy to the conversation and could not speak to it, but the statute had been discussed in the case law, and a wide variety of cases had come out that would have altered whatever opinion the Board would have received several years prior.

Mr. Hammack said the interpretation that was currently being applied by staff was almost like an amendment to the statute or the Ordinance and the way it was written. He asked whether there was anything in the Ordinance that gave authority to effectively interpret the Ordinance in that way and was there any effort being made on the part of the County to amend the Ordinance to bring it into compliance with RLUIPA if it was a change in the Ordinance. Ms. Bailey said she disagreed with Mr. Hammack's characterization that it was an amendment to the Ordinance. She said that to the extent there had been somewhat of a departure, it had been dictated by the federal statute, and one would have to look at the statute in the entirety of the context of the Zoning Ordinance in terms of how it was applied, which went back to the first argument that it was a matter that was within the discretion of the Zoning Administrator. She said that because it was not an amendment of the Zoning Ordinance, there had been no effort made to actually amend the Ordinance in the context of religious land uses.

If the Board accepted Ms. Bailey's argument in this kind of case, Mr. Hammack asked whether there would conceivably be other religious groups with a low level of activity in the future coming in and saying they were not under the Ordinance because they could not possibly get a special permit because they were operating out of a house; therefore, because they were operating in this manner, RLUIPA protected them, and they should be allowed to continue to operate indefinitely at least at some level. Ms. Bailey said that if that situation developed, it may be possible that the Zoning Ordinance would need to be amended, but it was speculative to conclude that was what was going to occur.

In response to questions from Mr. Hammack regarding how to differentiate between different cases of religious groups, Ms. Bailey said all of the facts and circumstances surrounding the particular use would have to be looked at, such as how it was impacting the neighborhood and traffic and how large the house was. She said there was a myriad of factors that would go into the analysis, and it would be unproductive to just base it on purely an arbitrary number of people attending. She said that if a particular use continued to grow, there would come a point where the County would have every right to regulate it, but what the statute required was if these kinds of uses were going to be regulated, a compelling governmental interest had to be shown, and the regulations imposed would be the least restrictive means of furthering the interests.

Mr. Hammack said page 14 of staff report talked about that even if the owner of the subject property applied for a special permit, it was reasonable to conclude that the Board would be precluded from approving it in light of the Zoning Ordinance's off-street parking requirements necessary for a place of worship. He said he thought the County was trying to speculate as to what the Board's position would be, and if the County Attorney said RLUIPA allowed on-street parking, the Board might issue a special permit for a limited use. He said the position the County had taken to justify its position was simply inaccurate, and he found it objectionable that staff was presupposing what the Board would do. Ms. Bailey said an owner would need to come in for a special permit once it had been determined that a place of worship was operating, but in the subject case, the activities were of such low level that the Zoning Administrator had not made that determination. Mr. Shoup said staff was not trying to step in and assume some of the Board's authority. Staff was trying to be reasonable, and looking at it in the context of the substantial burden issue, he was

unaware of any cases the Board had approved on a 10,000-square-foot lot where the applicant had been allowed to put in eight parking spaces.

Mr. Hart said the analysis in the staff report was completely the opposite of what he had expected, and he concluded from it that if someone was conducting worship services on a regular basis every Sunday morning in a house where there was basically no parking, it was a by-right use in an R District because there was a RLUIPA problem with requiring them to get a special permit. In the subject appeal, a special permit could not be required because the property was so bad in the parking context. He asked whether that was a fair characterization. Mr. Shoup said he was not sure it could be boiled down as simply as that, but if there was a low level of activity, they would be permitted to conduct religious activity if the alternative in applying the Zoning Ordinance placed a substantial burden on them.

Mr. Hart said he understood from Ms. Bailey's explanation that the case law did not provide clear guidance as to a threshold number of cars. Ms. Bailey said she agreed, and it also did not provide guidance regarding numbers of people, noise levels, and a variety of factors that would be looked at to determine whether each of the factors would create a compelling governmental interest.

Mr. Hart said parking seemed to be the tipping point in staff's analysis, and he agreed with Mr. Hammack that it was speculation to say the Board would never approve it. The Board had required carpool arrangements and shared parking agreements and approved special permits where there had been insufficient parking and waived or modified transitional screening in other cases. He said the Board was not precluded from imposing development conditions, and on a case-by-case basis, there could be an accommodation for parking, and transitional screening could be modified. He asked whether there was something other than parking that was problematic about the subject site. Ms. Bailey said there were no special permit requirements for secular uses of the same nature, and that provision of RLUIPA would be triggered, which precluded the County from regulating the activity because the activity would have been regulated specifically and solely because it was religious in nature. She said she would argue that it was also precluded by the First Amendment. Ms. Bailey said Boy Scouts, Bunco groups, garden clubs, and other uses that the facts indicated were identical to the subject use were not being asked to obtain a special permit.

Vice Chairman Ribble said the Board had regulated Boy Scouts and their activities to some degree on church property where they were not allowed to use a storage shed in a certain area and had to meet in a specific area of the church lot. Mr. Shoup said that was through the special permit for the church and not the Boy Scouts as an organization, and the Boy Scouts were not required to obtain special permit approval.

Mr. Hart said he recalled a Buddhist temple on Bull Run Drive that was a three-bedroom house on a five-acre lot which was mostly wooded where regular weekly meetings were held. The house was the monk's residence, and sanitation was not a problem because the people attending did not use the bathroom on the site. He said the case went to court, and there was no RLUIPA problem, even though the RLUIPA issue had been briefed in the Supreme Court. Mr. Hart asked what had changed that prompted the belief that there was now a RLUIPA problem with requiring a special permit in an R District.

Discussion ensued between Mr. Hart and Ms. Bailey regarding the Supreme Court matter involving the Buddhist temple located on Bull Run Drive, a case involving a soup kitchen, and other RLUIPA related litigation matters.

Mr. Hart said that if someone was applying for a non-residential use permit (Non-RUP), there would be a review of fire exits, sanitation, access for emergency vehicles, and other health and safety issues, and he asked whether no review would be done if the subject case did not require a special permit. Mr. Shoup said that when a Non-RUP or occupancy permit was issued, certain minimum standards had to be met, but in the subject case, staff was saying the activity was something that was permitted in the home as an extension of the residential use.

Mr. Hart asked how the Board was to determine that there was not enough of a critical mass if there was no objective standard and there was no case law stating how many was too many. Ms. Bailey said the building code official who had reviewed the subject site had indicated that the critical mass in terms of the number of people was 50.

Mr. Hart asked where the number 50 came from, and Mr. Beard asked whether the number fluctuated with the facilities. Michael Congleton, Zoning Enforcement Branch, Zoning Administration Division, said he had spoken with Paul Lynch, the head of residential inspections, who had visited the house, reviewed the plans

for the addition where the meetings were being held, and said there was no violation of the building code. Because the meetings were held two hours each week and it was not a commercial, institutional, or industrial use, the normal residential codes were sufficient to meet a weight load of 50 people on the subject site. Mr. Congleton said he was told by Mr. Lynch that it was not unusual for people to have 50 or 60 people inside their homes, and the current residential codes would meet that.

Mr. Hart asked where the two-hour-per-week standard came from. Mr. Congleton said it was not a standard, that Mr. Lynch had said it was a two-hour occurrence similar to when people came over to watch a football or baseball game. Mr. Hart asked whether that was Mr. Lynch's personal opinion as opposed to something the Board of Supervisors or the General Assembly had enacted. Mr. Congleton said the question which had been posed to Mr. Lynch was would any building code issues or violations occur with the use of the subject dwelling for a two-hour period with 35 to 40 people, and Mr. Lynch's answer was no.

Mr. Hart asked whether there was some sort of emergency vehicle access analysis that was being skipped over. Mr. Shoup said the street was a typical subdivision street where parking on both sides would not hinder emergency vehicles.

Mr. Hart said he was not sure why in situations of home occupations and home day care people were consistently told parking could not be on the street, but there must be some reason why the County did not want people parking on streets. Mr. Shoup said the Zoning Ordinance parking requirements required a minimum number of spaces for a particular use to be onsite.

Ms. Boyle presented the arguments forming the basis for the appeal. She said what needed to be determined was whether or not there was a place of worship on the subject site that required a special permit. There were a lot of different interpretations of RLUIPA, and she understood that RLUIPA did not even become an issue until a property owner raised it as an issue. She said the property owner had a special room built, had people coming regularly every weekend, and admitted that she had been doing that for 25 years. Ms. Boyle said sometimes there were 50 to 100 people there. She said she had 20 minutes of video footage in which the people arriving could be counted, and signage along the sidewalk and the banner in front of the house could be seen. Ms. Boyle said Mr. Shoup had stated in an e-mail to her on July 6th that in looking strictly at the Zoning Ordinance, the circumstances of the situation would suggest that it was a place of worship, and the operation of such an activity without a special permit approval was a violation. She said that in regard to the level of activity, in the Tran vs. Gwinn case, there had been five acres and 30 people; in the Annandale Road case, there had been 3.3 acres and 24 people; and in the subject case, it was a quarter acre and 50 people.

Ms. Boyle said if there was any discrimination taking place, it was against the neighboring residents who were subjected to the situation week after week for 25 years. She said she had requested public records from Zoning Administration regarding how many complaints had been filed on the subject property over the years and the information pertaining to the building officials who had checked out the site, but were told it would cost \$250, so that had not been pursued. Ms. Boyle said what was irritating was the statement from the Zoning Administrator that the level of activity had not risen to such a degree that the Zoning Ordinance needed to be enforced. She said it had risen to that degree, and then the Zoning Administrator negotiated, along with the District Supervisor, a compromise deal which could not be enforced. Ms. Boyle said the staff report stated that a notice was not issued for every zoning violation, and staff typically worked with the violators to clear the violation. She asked why the Zoning Administrator had that authority. She said she understood the Board had the authority to issue special permits, the Zoning Administrator's job was to enforce the Zoning Ordinance, and the County Attorney's job was to do whatever was needed to facilitate the enforcement of the Zoning Ordinance. Ms. Boyle said most of the case law she had read said there was no RLUIPA problem, and RLUIPA was not designed to override local Zoning Ordinances. She said the Zoning Administrator's discretion to define a place of worship should be done away with, and the Board should define the term so the situation would not come up again.

Mr. Hart asked whether Ms. Boyle agreed that the Board could not issue a violation, and Ms. Boyle said she understood the Board had the authority to issue special permits and could tell the Zoning Administrator it disagreed with his decision, but it could not tell the Zoning Administrator that he had to change his mind and issue a violation. She said what she wanted was for the worship activity on Thames Street to stop.

Mr. Hart said the Board could not issue a violation and could not tell the Zoning Administrator to issue a violation, and he asked if what Ms. Boyle was asking the Board to do was just say the Zoning Administrator was wrong. Ms. Boyle said she was asking the Board to define a place of worship so it could tell the Zoning Administrator, by the Board's definition, his decision was not correct.

Mr. Hart asked whether Ms. Boyle had any authority for the proposition that the Board could issue an advisory opinion as to a definition. Ms. Boyle read from a document that said a key role of the Board of Zoning Administration on appeal was to determine whether the Zoning Administrator had correctly interpreted the Zoning Ordinance. She said there were no criteria for a place of worship, and if there was no definition, someone needed to help the Zoning Administrator with a definition, and she assumed it was the Board.

Mr. Hart asked why the person to help with the definition was not a Circuit Court judge. Ms. Boyle said she was exhausting administrative remedies, as had been repeatedly discussed with Ms. Bailey. She said she understood the Board could make a determination whether the Zoning Administrator's decision was correct or incorrect, and the Board could define a place of worship.

Mr. Hart asked whether Ms. Boyle had any authority for the proposition that it was some kind of reversible error for a Zoning Administrator to decline to enforce an ordinance provision. Ms. Boyle said she did not, but it was wrong to discriminate against one group of people who were not in favor of a land use.

Mr. Hart asked whether Ms. Boyle had any evidence like still photographs that would demonstrate that the Zoning Administrator was somehow incorrect in his assessment of the number of people or the level of activity. Ms. Boyle said that in the past 25 years she had submitted many still shots and license plate numbers.

Vice Chairman Ribble called for speakers.

Jim Whitenack, 8449 Thames Street, Springfield, Virginia, came forward to speak. He said the section of Thames Street where he lived was U-shaped and intersected with the same street at both ends. When the subject property owner held her meetings, there were cars parked on both sides of the one-lane road, and there was a safety problem because of the number of cars and the number of people in the building every Sunday.

Joe Faudale, 8469 Thames Street, Springfield, Virginia, came forward to speak. He said he had lived at 8466 Thames Street for approximately 19 years. He said that although he had heard testimony that it was a quiet worship, it was not. During the summer, there was music and singing, and when he had people visit him, he would spend 30 minutes explaining what the singing and music was. He said he moved across the street and was currently about 100 feet further away. The cars were still a problem, the speed limit was not observed, and as his children were growing up, he had to make sure his children were not playing in the front on Sundays.

Mr. Beard asked Mr. Faudale to confirm that the activities were always on Sundays during the same two-hour timeframe, and Mr. Faudale said they were.

Mr. Hammack asked whether Mr. Faudale could hear the noise inside his house and what the level of noise was. Mr. Faudale said that if the windows were open, the music and chanting could be heard, and if he was listening to the radio, he had to turn the volume up.

William Olin, 8461 Thames Street, Springfield, Virginia, came forward to speak. He said that for health purposes he had been a regular walker around the block and had made note of the number of parked cars, and he had never seen less than 14 cars. He said two cars could not be safely driven down the street when there were cars parked on both sides.

Arun Dougal, no address given, came forward to speak. He stated that he was again speaking on behalf of Mrs. Chopra. He said two videotapes were provided by the appellant, and it was the opinion of staff that the noises related to the activities were less noticeable than the rustling of the leaves on the trees, the chirping of birds, a dog barking, and hammering being done in the area. He said there had been a meeting with Supervisor Bulova in September of 2003 where it had been agreed that the cars would be parked at a nearby elementary school. Mr. Dougal said some people were dropped off at the curb, but the people came and left quietly. He said there were many other cars and construction vehicles parked along the street. He said the County had done a number of inspections on Sundays, and he had letters from the most affected neighbors who said there was no problem. Mr. Dougal said the appeal was inappropriate.

Demetra Mills, 5232 Capon Hill Place, Burke, Virginia, came forward to speak. She said that as part of her three minutes to speak, she wanted the videotape played for one minute. The videotape began playing, and she said it was taken out her bedroom window, which was 30 feet away from the subject house, at 11:52 at

night. She said she had been awakened several times on Sunday mornings with the windows closed. She described audible chanting and drum playing. Ms. Mills said the inspector had found amplifiers during an inspection. She said the videotape showed 50 people.

Mr. Shoup said Ms. Boyle had referenced his e-mail which said this was a place of worship looking strictly at the Zoning Ordinance, but when enforcing the Zoning Ordinance staff had to look at the Zoning Ordinance in the context of all laws, and to ignore RLUIPA, he would not be doing his job. In enforcing the Zoning Ordinance, discretion oftentimes had to enter in because it was not a black and white document, and in the subject case, interpretation and discretion was needed to determine if there was a place of worship occurring on the property. Mr. Shoup said he thought the videotape was taken before the discussion with Mrs. Chopra because staff had seen no evidence of signs at the property since the meeting. He said it had never been determined that there was any kind of violation of the noise ordinance occurring at the subject property, and he had stood in Ms. Mills' backyard and heard faint muffled chanting and music being played inside, but nothing of an excessive nature. Mr. Shoup said that he had arrived at the site before anyone coming to the activities had, and there were cars lined up and down both sides of the street from residents. He said that at the time everyone had arrived for the activities, the level of parking on the street was not much different than on other neighborhood streets.

In her rebuttal, Ms. Boyle said she would like to know when Mr. Shoup's visits had occurred and whether it was after he made the compromise agreement or issued his own special permit that allowed the activity to continue without the Board intervening. She said a compromise and decisions had been made, and in effect a special permit had been given to the residence by stating requirements regarding the number of cars, the amount of noise, and activities which could not take place in the front yard. Ms. Boyle said that over the past 25 years, there had been meetings every Sunday, but there had also been special holidays where meetings had been held on days other than Sunday, and the number of people attending had been 75 to 100 people. She said the neighbors directly next door and across the street who had sent letters had owned the properties for a limited amount of time and would be complaining in the future.

Vice Chairman Ribble asked Ms. Boyle when the 20-minute videotape had been recorded. Ms. Boyle said it had been recorded on September 14, 2002.

Vice Chairman Ribble asked Mr. Shoup when he had visited the subject property. Mr. Shoup said it had been in April of 2004.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said the issue he was most concerned with was the aspect of the building code requirements for the County. He said it was the responsibility of government to protect the health, safety, and welfare of the residents of the County, and it was the responsibility of staff to move forward and do what was necessary to resolve the issue. If it required the subject property owner to file for a special permit for a place of worship, that was what should occur. Mr. Pammel said the Board did not have the authority to require the Zoning Administrator to issue a notice of violation, so with respect to that issue, the appeal must be denied. He said he was concerned because it was agreed that 50 people was the threshold, but the appellants had documentation of at least 53 and said in other instances there had been more. He calculated that with 33 people, there would be 20 square feet per person; with 50 people, there would be 13 square feet per person; and, with more than 50 people, it would approach 10 square feet per person. Mr. Pammel questioned whether the County was protecting the public health, safety, and welfare of the residents of the community and the people who used the facility if there were not adequate fire exits and toilet facilities with a 640-square-foot addition containing 33 to 60 people at a given time and sometimes more. He said there was a host of building requirements that came into play when the threshold was exceeded, and if it was found that the threshold was being exceeded, the County must proceed to implement and enforce the building requirements. He asked staff to review the videotapes which were almost three years old to see if the count clearly exceeded 50 people. Mr. Pammel said it would be appropriate to do another two onsite inspections to get a clear count, and he suggested the two following weeks.

Mr. Pammel moved to defer decision on A 2005-BR-005 to May 24, 2005, at 9:30 a.m., to receive input back from staff as to the issues he raised. Mr. Hammack seconded the motion.

Mr. Hart asked whether the motion to defer decision applied to both appellants since one was no longer aggrieved. Mr. Pammel said he thought it had been agreed upon that Ms. Mills was no longer a party.

Mr. Hart said he had no problem with a deferral. Because the Board had recently received a large amount of documentation that he had not yet digested, he questioned whether two weeks was sufficient.

Mr. Hammack said he agreed that time was needed to read the materials received at the hearing and would not object to a longer deferral.

Mr. Pammel made a substitute motion to defer decision on A 2005-BR-005 to June 7, 2005, at 9:30 a.m. Mr. Hammack seconded the motion.

Mr. Hart said that during the period of the deferral, he would prefer that any written comments be submitted sooner so a second deferral would not be necessary. He said the ultimate issue was why was it plainly wrong to not enforce something if the decision to enforce was discretionary. He said maybe there was authority regarding why it was not discretionary, but that was the issue that was troubling him from the appellant's side. The Board had to conclude that the Zoning Administrator was plainly wrong, and if he had the ability to decline to enforce something, was that plainly wrong. He said the issue had not been squarely addressed. He said the issue of whether prosecutorial discretion was or was not applicable in a zoning context had not been addressed.

Mr. Beard asked whether the Zoning Administrator would be making his interpretation based on the zoning laws if he changed his mind as a result of the investigation during the deferral as opposed to the various other laws he had spoken about basing his decision on. He wondered if it was as simple as making it based upon the zoning law, and if it was indeed a place of worship, it required a special permit. He asked whether it was correct that was within the Zoning Administrator's purview and what he could choose to decide. Mr. Shoup said a federal statute could not be ignored. Mr. Beard asked whether the Zoning Administrator still would not do anything about the situation if he decided it was a place of worship because of the federal situation. Mr. Shoup said yes, because RLUIPA was so intertwined, he did not see how he could divorce the two. He would not be prepared to issue a violation unless the level had risen. He said it was not in dispute that worship had been taking place in the house. In response to Mr. Beard's statement that it was a place of worship, Mr. Shoup said it was a place of worship just like when prayer groups got together, but it got back to the point that given the RLUIPA statute, a notice of violation would not be issued to a place of worship at the subject level of activity. He said he had to qualify it because he would not be doing his job by ignoring RLUIPA.

Mr. Hammack said one of the things that came out during the hearing was the lack of any criteria for determining the case, and he thought that was part of the problem that the Board was facing. He said RLUIPA may apply to some situations, but he asked how the public would know what place of worship required a special permit and what did not. Mr. Hammack said objective criteria were needed. Mr. Shoup said he understood Mr. Hammack was saying there should be something more black and white so anyone could read the Zoning Ordinance and determine whether or not a place was a place of worship, but too much in the Zoning Ordinance was not black and white. Mr. Hammack said without criteria, it was completely subjective, and a subjective law could not stand up to judicial review.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Lanoaster case and BZA by-laws pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

The meeting recessed at 1:07 p.m. and reconvened at 1:24 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 10, 2005, After Agenda Item:

Approval of October 12, 2004 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 10, 2005, After Agenda Item:

Approval of May 3, 2005 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:25 p .m.

Minutes by: Vanessa A. Bergh / Kathleen A. Knoth

Approved on: October 17, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 17, 2005. The following Board Members were present: V. Max Beard; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian and Nancy E. Gibb were absent from the meeting.

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

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. KIRK T. KERN, SP 2005-SU-013 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit addition to remain 14.0 ft. from side lot line. Located at 6194 Hidden Canyon Rd. on approx. 13,200 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (5) 25.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kirk T. Kern, 6194 Hidden Canyon Road, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to minimum yard requirements for certain R-C lots to permit a screened porch to remain 14 feet from the side lot line. A minimum side yard of 20.0 feet was required; therefore, a modification of 6.0 feet was requested. She noted that in Development Condition 2, Appendix 1 of the Staff Report, which referred to an "accessory" structure, the word "accessory" should be "addition."

Mr. Kern presented his special permit request as stated in his statement of justification submitted with the application. He noted that the setback of the replacement screened porch and deck was 14 feet instead of the original 8.0 feet, but because his property was rezoned from R-2 Cluster to R-C, the new setbacks rendered his replacement deck in violation of the Ordinance. At the time of final inspection, the County informed him that his building permit was issued in error and they could not grant final approval without a special permit. Mr. Kern requested that a special permit be approved so that he could obtain final approval for the completed construction. He said his neighbors approved of the addition.

Mr. Hart stated that Mr. Kern had performed all steps correctly, completing the forms and documenting everything requested; the mistake was that the County issued the building permit in error.

Ms. Hedrick concurred with Mr. Hart's statement, adding that when Mr. Kern returned to the County to add stairs, which were not on the original structure, the County discovered its error and final approval was denied.

Discussion followed between Mr. Hammack, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, concerning the standard development condition for R-C Lots that required an applicant to obtain another building permit.

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

Mr. Hammack moved to approve SP 2005-SU-013 for the reasons stated in the Resolution.

As part of his motion, Mr. Hammack said he had two minor changes. He would delete the part of Development Condition 2 requiring Mr. Kern to obtain another building permit and insert the language ". . . that final inspection shall be obtained within 30 days for final approval of this application or this special permit shall be null and void," and that the words "accessory structure" be change to "addition."

Mr. Beard suggested that the language be stricken that stipulated that the County issue its permit within 30 days as one could not guarantee that the County could schedule a site visit within that time-frame.

Mr. Beard's suggestion was accepted.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIRK T. KERN, SP 2005-SU-013 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit addition to remain 14.0 ft. from side lot line. Located at 6194 Hidden Canyon Rd. on approx. 13,200 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (5) 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 May 17, 2005; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant has met the five standards set forth in our standard resolution form.

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, of the Zoning Ordinance. The Board has determined:

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

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

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

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

1. This Special Permit is approved for the location of the screened porch as shown on the plat prepared by Robert C. Harrover, RC Harrover P.L.S., dated May 25, 2001 and signed by Kirk T. Kern, dated February 28, 2005, submitted with this application and is not transferable to other land.
2. Final inspection shall be obtained for the addition or this Special Permit shall be null & void.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 of land zoned R-2. Dranesville District. Tax Map 40-1 ((1)) 12. (Admin. moved from 11/2/04 and 3/15/05 at appl. req.)

Vica Chairman Ribble noted that this case was administratively moved to August 9, 2005, at the applicant's request.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1. (Admin. moved from 10/5/04, 11/30/04, and 3/15/05 at appl. req.)

Vice Chairman Ribble noted that the notices were not in order for this case. He stated that the application was previously administratively moved three times.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant was requesting a special permit for a home professional office, which did not involve a violation. She explained that Ms. Akhlaghi deliberately had not prepared her notices because she intended to request a deferral or have staff administratively move her application, which staff could do. Ms. Langdon confirmed that notices would have to be sent out and posting was required again.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.55 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57.

Vice Chairman Ribble noted that this case was administratively moved to July 19, 2005, at the applicant's request.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-002 Appl. under Sect(s). 3-103 of the Zoning

Ordinance to permit a subdivision sales office. Located at 12861 Sunny Fields La. on approx. 37,200 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((25)) 1.(Admin. moved from 3/15/05 at appl. req.) (Decision deferred from 3/22/05)

Vice Chairman Ribble called the case.

Michael Kinney, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, agent for the applicant, said he was accompanied by John Stewart, the Director of Sales for Winchester Homes.

John Stewart, 5801 Indian Summer Drive, Clarksville, Maryland, introduced himself.

Vice Chairman Ribble noted that this case was deferred for decision from March 22, 2005.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concurred that the case was deferred for decision only and that the applicant wanted to request a deferral.

Mr. Kinney said the applicant was requesting a deferral to the first BZA hearing date occurring after the upcoming Sully District Land Use and Transportation Committee meeting on June 8th. He submitted his letter dated May 13, 2005, for the Board's purview, which addressed citizen issues of concern that were raised by Mr. Parnes, the First Vice President of the Sully District Land Use and Transportation Committee. Mr. Kinney said that, in deference to Mr. Parnes' response, Winchester Homes was requesting the deferral.

Responding to Mr. Hammack's question, Mr. Kinney said that since March the office had sold no units according to the procedure that raised the citizen complaints, and he did not believe any would be sold before the June 6th meeting. The reason why almost two months had passed since the March 22nd public hearing to his May 13th letter was that time was needed to research the issues that were raised by Mr. Bartee, a speaker at the March 22, 2005, public hearing, and any possible federal and state laws to which Winchester must comply.

Susan Langdon, Chief, Special Permit and Variance Branch, said the case could be scheduled for June 7th.

Vice Chairman Ribble asked if there was anyone present who wished to speak to the deferral request.

Tasneem Ahmed, 13552 Lavender Mist Lane, Centreville, Virginia, was opposed to a deferral, stating that the applicant had requested numerous deferrals, and the concerned citizens felt it was a stall for time. Ms. Ahmed said that she and the others were present, had taken time from their busy schedules, and they were ready and willing to proceed. She stated that she lived in the town house development down the road, but that her development was equally impacted by the activities of Winchester Homes.

Ms. Stanfield said a speaker at the March 22nd public hearing raised several matters of which Mr. Kinney was unaware. The Board requested additional information from the applicant concerning people camping out in their cars until lots were released. The applicant required some time to research the problems and to propose solutions; therefore, the Board deferred decision. Ms. Ahmed told Ms. Stanfield that the same release procedures currently in contention were being conducted at her town home development and she was advised to contact Winchester Homes directly. She said that apparently her situation needed to be resolved in a similar fashion.

Responding to Mr. Hart, Ms. Stanfield concurred that the town house development was five miles away from the single family site which was the subject of the hearing that morning.

Mr. Hart clarified for Ms. Ahmed that the Board was considering a different model home within a different community. Since the issues were similar and Mr. Kinney and Mr. Stewart were both available, he suggested that she meet with the applicant after today's hearing and perhaps some of their suggestions for resolving the matters dealt with could be considered for her neighborhood.

Ms. Ahmed said she appreciated Mr. Hart's suggestion, but pointed out that Mr. Kinney contacted her last week to inform her that no more town homes would be sold until a new release plan was implemented; however, the following weekend, the same release occurred.

Sue Bartee, 12807 Rose Grove Drive, Herndon, Virginia, said it was her husband who spoke at the March 22nd public hearing to convey to the Board how upset the homeowners were on the way Winchester Homes released its lots for sale. She stated that she and her neighbors were against a further deferral because the

problem was ongoing for eight weeks and the applicant had yet to advise the homeowners on how it would release lots. Although Mr. Kinney said Winchester Homes just became aware of the problem 8 weeks prior, for over 2 ½ years she has resided in her home and she and several neighbors had complained about the developer's sales method. Ms. Barttee said she believed the applicant has had sufficient time to devise and implement a sales program that would not adversely impact the neighborhoods.

Sheryl Kimball, 12805 Rose Grove Drive, Herndon, Virginia, concurred with Ms. Barttee's testimony as she too believed the deferral request was another stall tactic on the part of the builder. She suggested that the applicant hoped to drag things out until the homeowners would just go away as they had not the time or resources to pursue the matter further.

Rob Hinderlighter (phonetic), 12810 Rose Grove Drive, Herndon, Virginia, clarified that there were no contracts being signed but a site visit over any weekend would reveal 7 or 8 cars parked in the street doing some sort of business. He said the issue was not just the releasing of a lot, but the continued daily traffic generated which was a safety hazard, and the fact that there was no lot parking, only parking on the streets.

Joel Johnson, 12860 Sunny Fields Lane, Herndon, Virginia, said his home was greatly impacted with the on-street parking. He said that during his home's construction, people camped outside and utilized his unfinished basement to go to the bathroom because there was no portable toilet at the site and, one of his cars was stolen from his driveway. His complaints 8 months prior to Winchester Homes got neither action nor relief and he opposed a further deferral.

Mr. Hart stated that Mr. Kinney's letter to Mr. Parnes addressed several of their issues. He said the Sully District Land Use and Transportation Committee's monthly meetings reviewed land use applications and often made recommendations.

Ms. Barttee voiced her concern that Winchester Homes would be selling units from areas that were both inside and outside Fairfax County.

Ms. Stanfield confirmed that there was a sales regulation mandating that the model home be located within the same development as the units.

There were no further speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel stated that the actions of prospective home buyers or their agents was the result of a booming real estate market, and that such an active market caused problems. He said he sympathized with the speakers' situation and why they wanted an immediate solution, but Mr. Kinney needed to work with the Sully District Land Use and Transportation Committee to get its position and recommendation on how to handle the issue. The Sully District Land Use and Transportation Committee was the umbrella group that represented the speakers as well. Mr. Pammel said he did not believe it appropriate to take action that day, and Mr. Kinney should have the opportunity to work with the Sully Committee.

Mr. Pammel said there would be no further deferrals and moved to defer decision on SP 2005-SU-002, to June 7, 2005, at 9:00 a.m., at the request of the applicant.

Mr. Hart seconded the motion.

Mr. Hammack said he supported the motion but believed that while waiting for the Sully District Land Use and Transportation Committee's review, all remaining units may sell and then the matter would be moot. He said he thought that a builder had the right to have a model home, but that right may be jeopardized if its use negatively impacted the community. Mr. Hammack said it was not a question of selling but how they allowed sales to be committed.

As Mr. Stewart, the Director of Sales for Winchester Homes, was present, Mr. Beard said he wanted to hear what Mr. Stewart had to say about the matter.

Mr. Stewart said that Winchester Homes was in the process of putting together a new release program, and they wanted to assure fairness and consistency with their buying process and wanted to have all prospective buyers notified at the right time. He said that there were Fair Housing Laws to which they must comply, and that the research was taking a little longer to finalize the process. He maintained that there would be no need for anyone to camp out to wait for a home.

Mr. Hart said he supported the motion, but it was his understanding that no lots would be released until after the Board's decision.

Mr. Stewart assured that business was running as usual in the sales office but no new sales were being conducted, just the usual follow-up business with new purchasers. In response to Mr. Beard's question of why business must continue from the sales office, Mr. Stewart explained that a process of selecting one's amenities was done within the model. He said there was not a backlog of new home buyers as roughly only two houses per month were sold, which would not generate a good deal of traffic. He stated that additional parking was added to the model's driveway to accommodate the homeowners and assure no on-street parking.

The motion to defer decision to June 7, 2005, at 9:00 a.m., carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, change in development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Leesburg Pl. on approx. 6.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9. (Admin. moved from 3/8/05 and 4/12/05 at appl. req.) (Decision deferred from 5/3/05)

Vice Chairman Ribble noted that this case was deferred for decision on May 3, 2005. He said Ms. Gibb was to view the site but was ill and unable to attend today's meeting.

Mr. Hart said he, too, looked at the site but had not had time to read the letter from Mr. Bunn, nor review the development conditions or plats received that morning.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff required a week to review the May 17th development conditions submitted that morning.

Lynne Strobel, Esquire, agent for the applicant, offered to go over the minor changes.

Mr. Hammack moved to have Ms. Strobel review the applicant's changes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

The church was there for a number of years, Ms. Strobel said, and had proposed several changes. One of which was the provision of 16 parking spaces along the western property boundary, which was the central issue from the May 3rd meeting. Ms. Strobel said she walked the site with Janice Cena, a certified arborist, and other Dewberry & Davis representatives, to reevaluate the area where parking was proposed. A brick wall would be erected, and to save a large oak tree, parking was reduced to 15 spaces, as shown on the plat, and additional plantings would supplement existing vegetation. She pointed out that they exceeded the transitional screening requirement because the minimum requirement for a church use in a residential district was 25 feet, and the closest point that the brick wall came to the property line was 28 feet. Ms. Strobel noted that the only modification requested was to preserve existing vegetation, which the applicant intended to supplement. Ms. Strobel referenced the May 12th letter from the law firm, Chadwick, Washington, et al., who represented a homeowners association next door to the church. She knew of members of that community who supported the church, and she was unaware of an association vote that indicated there was a 25 percent adverse impact on the homes. She indicated the parking area which, she maintained, affected only 6 homes. She stated that all trees and vegetation remained undisturbed except for the applicant's provision of supplementary plantings. She said that trees within the utility easement would not be disturbed but, if diseased or dying, would be removed. She said that the handicapped parking area was slated at the front of the church. Ms. Strobel called attention to the applicant's May 17th proposed development conditions, clarifying Condition 8 which regarded the phasing of parking. She said she had not yet had the opportunity to discuss the changes with the neighboring homeowners.

Ms. Stanfield suggested that the decision be deferred for longer than a week to allow the County's Urban Forester time to make its determination on which trees could and should be saved.

Ms. Strobel responded to questions from Mr. Hart regarding the location of a flight of stairs and the general area where an easement could be located.

Vice Chairman Ribble asked if Brendan Bunn, the author of the May 12th Chadwick, Washington, et al., letter was present and wished to speak on the case.

Michael Lunter (phonetic), Vice President of Idylwood Homeowners Association, said his association had not asked Mr. Bunn to attend today's meeting because they understood that no speakers were allowed at decision only hearings. He said he did not know how Mr. Bunn arrived at the 25 percent cited in the letter, but assumed the percentage of adversely affected homes was between 25 and 6 percent.

Mr. Hammack said staff had not had the opportunity to review the new plats, that apparently the proposal had changed and, he thought a decision deferral was warranted. Mr. Hammack moved to defer decision on SPA 93-P-046-02 to June 14, 2005. Mr. Beard seconded the motion.

In response to Mr. Pammel's question, Carla Spencer (phonetic), President of the Idylwood Station Homeowners Association, no address given, clarified that there were 62 homes in her development.

The motion to defer decision carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 at appl. req.)

Vice Chairman Ribble noted that this case was administratively moved to June 28, 2005, at the applicant's request.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 at appl. req.)

Vice Chairman Ribble noted that this case was administratively moved to June 28, 2005, at the applicant's request.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 at appl. req.)

Vice Chairman Ribble noted that this case was administratively moved to June 28, 2005, at the applicant's request.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:30 A.M. SIDDARTH GOVINDANI, A 2005-PR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 8811 McHenry St. on approx. 31,866 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (4) 33.

Vice Chairman Ribble called the case.

Siddarth Govindani, 8611 McHenry Street, Vienna, Virginia, submitted several written testimonials from his neighbors who approved of or had no problem with the fence.

Cynthia Porter-Johnson, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated May 10, 2005. The subject property was located at 8611 McHenry Street, in an R-1 District, and was a corner lot with two front yards adjacent to McHenry and Patrick Streets. This was an appeal of a Notice of Violation that a fence in excess of four feet in height was located in the front yard. In response to a complaint, a County inspector visited the site while the fence was under construction and informed the appellant of the violation. Subsequently, a six-foot high fence was installed in the front yard that faced Patrick Street, and a Notice of Violation was issued. Staff recommended that the BZA uphold the Zoning Administrator's finding that the appellant was in violation of having a fence in excess of four feet in height in a front yard in a residential district.

Discussion followed among Mr. Hammack, Mr. Govindani, and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concerning the fact that it was the property owner's son who filed the appeal, not his mother, Ms. Nisha Govindani, and whether it was Siddarth Govindani who was considered an aggrieved party.

Ms. Stanfield said that Siddarth Govindani was considered an aggrieved party because he resided on the property, and technically, a Notice of Violation could be issued to a tenant. In the past, she pointed out, both tenants and property owners had been issued violations, and staff had accepted appeals in both situations.

Ms. Porter-Johnson presented a brief history of Patrick Street, stating that in 1978 and '79, four of the five original property owners on Patrick Street, per a maintenance agreement among themselves, agreed to maintain the road as a private driveway, and not petition the State or County for maintenance until such time that the road was upgraded, for public acceptance, to County and State standards.

Ms. Stanfield said there was a 50-foot right-of-way for street purposes, that the property was owned by the Board of Supervisors, and when the property was subdivided, the homeowners attempted several times to have Patrick Street constructed by the County.

Mr. Hart said that original deeds and plats would be helpful in determining whether it was a paper street or an outlot, and maintenance agreements could be premised on assumptions that were not consistent or valid with what was stated in the Zoning Ordinance.

Siddarth Govindani quoted the Ordinance's definition of a corner lot stating that, in his interpretation, McHenry Street could not be considered a corner lot. He pointed out a section of the street that was unpaved and unkempt, stating that his lot did not lie at the corner of two intersecting streets. In response to Mr. Hart's questions, Mr. Govindani concurred that that he resided on the property, that it was owned by his mother and, the fence was six feet tall.

Michael Adams, Senior Zoning Inspector, Zoning Enforcement Division, pointed out on the viewgraph what areas of the subject property were considered a front yard. He concurred with Mr. Beard's assumption; the fence height in that area of the yard was, in itself, a violation because of its height.

Vice Chairman Ribble called for speakers.

Kathy Handforth, 2505 Patrick Street, Vienna, Virginia, said her house was next door and on the other side of the six to seven foot tall fence. She asked that the Board enforce the law because the fence was in an established front yard. She said the fence was unattractive as well as a safety hazard because the sight

distance was blocked, and someone pulling out from the two driveways could easily surprise a motorist passing on the main road. Ms. Handforth said there were no sidewalks and no place for children to walk along the side of the road because the fence was built 12 feet beyond the property line into the right-of-way. Ms. Handforth added that, before it was erected, the Govindanis had assured her that the fence would be no taller than four feet.

Bill Handforth, 2505 Patrick Street, Vienna, Virginia, voiced his concern about the traffic on Patrick Street and that he believed the fence caused a safety issue because of poor sight distance and no sidewalks.

Julia L. Cook, 2509 Patrick Street, Vienna, Virginia, said she was opposed to the fence because of its height. She concurred with the Handforth's that the issue was one of safety because people often drove down Patrick Street assuming it a through street, then turn around and travel back out at a dangerous speed. She said the fence was not harmonious with the neighborhood and no one else had a fence of that material or that tall.

John W. Arehart, 2508 Patrick Street, Vienna, Virginia, said he was an original property owner since 1979, and his County paperwork documented that he and his neighbors were the caretakers of the road, and that they would continue to take care of it. Mr. Arehart said the road was put in by the original owners and there was no problem over the years until the Govindanis erected their fence. He said he thought the fence was a dangerous situation that had developed only recently.

In rebuttal, Mr. Govindani said he believed the neighborhood was made safer because of his fence. He maintained that it was very attractive and he had received numerous compliments from the neighbors. Mr. Govindani stated that he never told Ms. Handforth that the fence would only be four feet tall, and even if he had, that was irrelevant as he was entitled to put up a fence, according to regulations, on his property.

In response to Mr. Hart's questions, Mr. Govindani said the company hired to erect the fence had not obtained any permits, and that a surveyor staked out the property's corners. He said he contacted Virginia Department of Highways and was assured the fence could be built up to the roadway, but was advised that at a later date, if right-of-way was needed, they would require that the fence be taken down. Mr. Govindani said they told him it was a very common occurrence for a fence to be placed quite close to a roadway and it was not considered a violation.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on A 2005-PR-003 to June 21, 2005, at 9:30 a.m., to allow staff time to get information concerning an original plat and a deed dedicating the road, and any additional information on the house locations survey. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

Mr. Hart suggested that Mr. Govindani submit any additional information he might be able to obtain regarding Patrick Street.

//

~ ~ ~ May 17, 2005, Scheduled case of:

9:30 A.M. RECYCLE AMERICA ALLIANCE, LLC, A 2005-BR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting outdoor storage in association with a recycling center which is operating on property located at Tax Map 77-2 ((1)) 58A in violation of Zoning Ordinance provisions. Located at 10400 Premier Ct. on approx. 4.02 ac. of land zoned I-5. Braddock District. Tax Map 77-2 ((1)) 58A.

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

Frank Stearns, Esquire, Agent for the appellant, said this issue was very important and to reverse the Zoning Administrator's determination it took not just a majority of the Board members present but a majority of the full Board. He requested a deferral to a date when the full Board would be present.

Vice Chairman Ribble informed Mr. Stearns that the Board did not usually defer for that reason. He then asked staff for its opinion on a deferral.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff did not support a deferral.

Vice Chairman Ribble asked if there was anyone present who wished to speak on the issue of deferral.

David Lister (phonetic), Briggs Road, Fairfax, Virginia, said he was the resource manager for Burke Centre, and he believed the matter could go forward.

Mr. Pammel said it was normal for the Board to grant deferrals requested from applicants and appellants, but, in his opinion, it was a questionable reason to grant a deferral for the purpose of having a full Board present. However, Mr. Pammel moved to defer A 2005-BR-004 for one week.

In response to Mr. Hart's question, Elizabeth Perry, Staff Coordinator, Zoning Administration Division, said this was the first staff was informed of a request for a deferral.

Mr. Stearns said he had not talked to staff because he did not know the full Board would not be present until he came to the meeting, however, he was prepared to go forward today, and his client was anxious to get the matter resolved. He stated that it was a very important matter and he felt entitled to have a full Board present to determine the case. He reminded the Board that this was their first appearance before the Board and, they were not dragging anything out.

Vice Chairman Ribble noted that there was no second to Mr. Pammel's motion to defer, therefore, the motion failed for lack of a second, and the case would be heard.

Ms. Perry presented staff's position as stated in the May 10, 2005, staff report. This was an appeal of the determination that the appellant was permitting outdoor storage in association with a recycling center on property zoned I-5. In response to a complaint that recyclables were stockpiled outdoors on the parking lot and spilling over a slope into a small stream, an Inspector from the Zoning Enforcement Branch conducted an investigation of the property which revealed outdoor storage of recyclables to include glass, plastic, and cardboard. A recycling center is a use permitted by right in the I-5 District but it is subject to Zoning Ordinance Use Limitations, specifically that it shall not have outdoor storage. Ms. Perry stated that the outdoor storage at the recycling center did not comply with Ordinance standards, and the property was in violation.

Ms. Perry responded to Mr. Hart's question concerning pictures of a bulging fence and cinder block wall explaining that staff's issue, as evidenced by the wall and fence, was that there were containment measures in place which suggested or indicated that it was a regular, ongoing and apparently very extensive storage process at the facility, and it was not the walls that were the problem.

Mr. Stearns stated that the issue was the definition of storage. He explained the recycling process, stating that it was continuous as trucks daily picked up curb-side recyclables throughout the County and several times daily deposited their loads at the three recycle centers where each load was sorted by glass, cardboard, and plastic and pushed up to its particular products door for processing. He explained the warehouse's activities, the trucks' drive-through and deposit procedure, and that there was storage but it was all within the building. Mr. Stearns said the material was deposited outside to be front-end loaded and moved into the warehouse at the soonest moment. The intent was never to allow the material to remain outdoors for any length of time as, after it was processed, it would be resold. Mr. Stearns pointed out that what was seen in the photographs contained in the staff report was never the same pile of materials being left there, but was material constantly being deposited, then moved into the facility, and processed as quickly as possible. There was an instance when one of the machines broke down and the piles outside were not able to be brought into the facility right away, but all was moved inside immediately after the machine was repaired. Mr. Stearns explained that there was an inherited problem with migrating glass and broken bottles left in undesignated areas, which had been discussed with the Department of Public Works and Environmental Services (DPWES) and the matter resolved, but it was during that time that the issue of storage arose. He maintained that there was no intention to store at the facility, but occasionally the deposited recyclables could not be moved as quickly because of the huge amounts left. He submitted that a pile of material was not stored, but for a time was held as portions of it would be shoved into the facility while another truck might deposit onto the pile. Mr. Stearns stated that it was new product coming in and being moved in as soon as it arrived, not the same pile of materials sitting there. He said the facility strove for 99 percent recovery and currently they were at 95 percent. They worked 18 hours a day to move the materials inside before it was blown away or rain soaked and rendered unable to be processed. He stated that reselling the recyclables was how the appellant made its money.

Discussion followed among Mr. Hammack, Mr. Beard, Mr. Hart, and Mr. Stearns regarding a picture staff took at night that showed a pile of product outside on the pavement; Mr. Stearns definition of storage; and, the fact that machines broke down occasionally.

Edward Duke, 8878 Elaine Avenue, Manassas, Virginia, the manager of the facility, responded to Mr. Beard's questions concerning days and hours of operation and the square footage of the facility's processing space.

Mr. Beard asked staff, Joseph A. Bakos, Assistant Branch Chief, Zoning Enforcement Branch (ZEB), or David B. Grigg, Senior Zoning Inspector, ZEB, if either in his professional opinion, was convinced that the facility was operating within its capacity or that perhaps the facility was overtaxed.

Mr. Bakos said the only facility with which he was familiar and to which he might parallel Recycle America's operation was the County's facility on West Gx Road. He said that the County's entire process occurred within the bays of the transfer station with trucks backing in to a bay, depositing their load, and the equipment inside immediately moving the material to its processing location. He noted that the County's facility was quite a bit larger and that all processing was managed inside with no dumping outside on the lot.

Vice Chairman Ribble asked if there was anyone else present who wished to speak to the appeal.

Pamela Gratton, Recycling Manager for Fairfax County, said the County was very willing to work with the managers of Recycle America Alliance to ensure that their operations could continue according to Code. She said a letter was written asking that they provide the County with operational details of how they intended to prevent any outdoor storage of materials on their lot but, to date, a response had not been received. The matter came to the attention of the County's stormwater management division when work was done downstream and it was noticed that there was a large amount of material that migrated off the property site into the woods. Recycle America was requested to ameliorate the situation, which they did, but it was noted that there appeared that more material was being received than the facility could handle. She pointed out that the other material recovery facilities in the County all unload within their facilities. Ms. Gratton stated that based on her own visual observations as well as staff's, there remained issues with the material, its movement around the parking lot, and excessive exterior storage.

In response to Mr. Pammel's question of what would happen if the facility were unable to operate, Ms. Gratton noted that there were materials generated from outside the County being deposited at the facility, and within the County there were other commercial recycling facilities that could manage a portion of the material. She pointed out that the County had an issue with out of County material being trucked in, but due to Interstate Commerce activities it could not be prevented. She noted that there were other locations within and outside the County where material could be taken that were within a reasonable haul distance for the collection companies.

For Mr. Beard's clarification, Ms. Gratton said that as far as she knew, of the three commercial facilities within the County, Recycle America Alliance owned two.

Mr. Lister said he worked at a maintenance facility across the street from Recycle America Alliance and had a number of problems with them over the years. Parking and storage were two major issues because Recycle America utilized his business's property to park and store their trucks because they did not have the room on their site. He said that on a regular basis, his product/materials became contaminated with bits of trash, plastic, glass or whatever migrated into his wood products, the mulch and wood chips, and occasionally his entrance was blocked with Recycle America Alliance's vehicles. He said that both concrete and stone was stored and for the past six months, a Recycle America Alliance crane had been parked on his property. Mr. Lister said it actually was an issue with the appellant storing things on other people's properties.

In response to Mr. Beard's question, Mr. Lister said that, in his opinion, what needed to be done was to have a more contained facility because the majority of the materials migrating off the site occurred because there was no boundary fence and the wind carried out a lot of the lighter materials, the paper and plastics, with it settling all over the place. He said he did not advocate shutting them down but a better containment system should be devised to assure the material stayed on site.

In rebuttal, Mr. Stearns acknowledged that his client appreciated working with Ms. Gratton. He stated that the appellants had owned the facility for only a few years, and some of the problems were inherited from its original owner. He noted that Mr. Lister's statements addressed litter, not the storage issue. He maintained

that the definition of storage, from all his resources, did not comport with what Recycle America Alliance was doing, reiterating that storage meant to hold something for some period of time for future use; the recyclables were not being held, but were moved as quickly as possible inside the building. Mr. Stearns said he believed staff's analysis was unfair, that one could not conclude, from looking at the pictures, that what was shown was something being stored. Storage must have a definitive meaning, it must be made clear. He stated that the business of Recycle America Alliance was a necessary service, and there was a great deal of disposables because of the increasing number of people and the throw-away mentality society. In summary, Mr. Stearns stated that they were present to define what storage was, and if what Recycle American Alliance did, their process of unloading trucks and moving the material into a warehouse, constituted storage.

Ms. Perry referenced Ordinance language Par. 3 of Sect. 5-505, which specifically prohibited recycling centers from having outdoor storage. She noted that recycling centers were permitted in both I-5 and I-6 Districts but an I-6 District did not contain that prohibition. Ms. Perry said that the operation described by the appellant was probably anticipated when they were considering a recycling center, however, an I-5 District prohibited recyclables out of doors. She noted there was a site plan waiver, agreed to by the appellant, with the condition that all parking spaces be maintained, and to have recyclables deposited in the parking area, whether or not it brought the site below the minimum required parking, was not allowed. Ms. Perry agreed that there were no direct interpretations but, staff had concluded that it was the idea of holding materials out of doors, which was occurring. She said the photographs and the complaints regarding noise heard during the night, indicated that it was an area specifically and permanently reserved for stockpiling materials out of doors. She said the litter migrating on to other properties would not be a problem if the storage was indoors. Ms. Perry said that recycling centers exist without outdoor storage, and this site's problems, and about which there were numerous complaints, would not occur if the appellant were complying with provisions. In conclusion, Ms. Perry stated that it was staff's determination that outdoor storage was being maintained at this facility in violation of Zoning Ordinance provisions.

Mr. Beard said he thought the crux of the issue was whether or not the business would be viable if the trucks were required to back up into the facility and dump each load in to the bays; could the facility continue to function profitably.

Mr. Duke explained that trucks generally deposited loads two or three times daily, and they could not move in and out very quickly if each had to enter a bay. He said they could continue to operate but it was a continuous operation all through the day, with only one loader operator to move the deposited materials, and someone who continually cleaned up the area. With the way the equipment was configured, the material could not be moved to its processing point if already inside the facility, although the building was large enough to accommodate huge piles. Mr. Duke said occasionally a truck deposited on Saturdays and paper products were routinely dropped off on Saturdays, and these loads were not problematic and were immediately moved inside so as not to remain outside over the weekend.

In response to Mr. Hart's question, Ms. Perry explained that a carport type structure to hold deposited material was not legal, that the structure must be completely enclosed to satisfy Ordinance requirements. She pointed out that there was correspondence regarding that issue where the appellant was informed that that type structure was not permitted.

Discussion followed between Mr. Hart and Mr. Stearns concerning what constituted storage, what may be considered the difference with placing recyclables out at the curb overnight for a morning pickup, and material deposited on to the pavement and at some unspecified time moved elsewhere, the fact that there needed to be a definitive description of storage, examples of produce or products placed on grocery or store shelves and how that may or may not be considered storage or the storing of items, and the concept of time or a time-frame before a product was considered stored or was replaced with a like unit.

James Marsinko, 7684 Swallow Road, Sykesville, Maryland, clarified that if everything had to go inside, and all was to be processed as the material was tipped, and there was a surge of many trucks making their runs, the loader that moved the material would vie for the same space as the trucks, and there would not be room to operate.

Vice Chairman Ribble closed the public hearing.

Mr. Beard moved to defer the decision on Recycle America Alliance, LLC, to allow the Board to walk the site. The motion failed for lack of a second.

Mr. Hammeck moved to uphold the determination of the Zoning Administrator. His concept of "storage" did not have to have a time duration attached, and none of the definitions presented required storage to exist, nor stipulate it had to exist for some defined or qualified duration. He referred to such things as sand, gravel or mulch that were added to or taken away on a daily basis, and the way the product was being used fell within a broad definition of storage. There were use limitations attached to the facility which expressly conditioned that there be no outside storage, and he found that Ordinance language clear and plain. A third and subordinate reason was that the conditions required maintenance of loading areas, travel ways and the parking space to be in good condition at all times, and some areas where the product was deposited before being processed may be in violation of that condition. Mr. Hammack stated that until the product could be processed inside the building, it constituted storage, albeit short-term storage, and he concurred with the Zoning Administrator's determination that the product constituted storage in an I-5 District, which was not allowed, and moved to uphold the Zoning Administrator's determination.

Mr. Beard acknowledged a letter of complaint from the Bonnie Brae Civic Association but pointed out that Mr. Duke seemed a fair-minded business man trying to perform a much needed service to the County as well as run his business. He said he could not support the motion because he thought the situation warranted a more lenient review.

Mr. Hart said he supported the motion, but acknowledged it was a difficult case. The Ordinance provided that a recycling facility could have no outdoor storage, but it did not expressly define what "outdoor storage" meant, and without a definition in the Board's glossary, the ordinary, customary meaning of a word was used. He was satisfied from the dictionary definitions that outdoor storage could include storage during the day or for a period of hours, perhaps intermittently but, on a regular basis, the use of an area for staging some product before processing. He said what the Board was presented was whether the Zoning Administrator was correct in its determination of whether or not the Zoning Ordinance allowed the use. He said he recognized that there was an element of practicality, and acknowledged that the Board was often given difficult decisions to make, and he hoped the Board's observations on different cases might affect what went on the Work Program. Mr. Hart said if this was the kind of use needed in the County, but a situation created with the Ordinance made it a practical problem to comply with it, they did not want to create a catch-22 situation where the use was allowed, but prohibited outdoor storage if that was needed to sort the material. He said the question remained about the definition of outdoor storage, and he suggested that the Work Program research the definition of "storage."

Mr. Hart seconded the motion, which carried by a vote of 3-2. Mr. Beard and Mr. Pammel voted against the motion. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE REFERENCED APPLICATION ON MAY 24, 2005. A NEW PUBLIC HEARING WAS SCHEDULED FOR JULY 12, 2005, AT 9:30 A.M.

//

~ ~ ~ May 17, 2005, After Agenda Item:

Approval of May 10, 2005 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the McCarthy case, the Lane case, and the Lencaster case, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

The meeting recessed at 12:23 p.m. and reconvened at 12:37 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard,

discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Ms. Gibb were absent from the meeting.

//

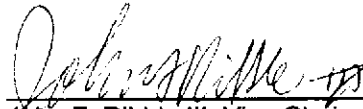
As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Paula A. McFarland

Approved on: May 13, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 24, 2005. The following Board Members were present: Vice Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. Chairman John DiGiulian was absent from the meeting.

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

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. JERRY L. WINCHESTER, VC 2004-MV-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.3 ft. with eave 10.3 ft. from both side lot lines and stoop 6.0 ft. with stairs 3.0 ft. from one side lot line and stoop with stairs 6.0 ft. from other side lot line. Located at 6430 Fourteenth St. on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (10) 31 and 32. (Reconsideration granted on 6/29/04) (Decision deferred from 9/21/04 and 1/11/05).

Vice Chairman Ribble noted that VC 2004-MV-055 had been withdrawn.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. ENRIQUE SUAREZ DEL REAL, VC 2004-PR-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.9 ft. from front lot line. Located at 2829 Cherry St. on approx. 6,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((11)) 22. (Decision deferred from 10/19/04 and 2/1/05).

Vice Chairman Ribble noted that the applicant had requested an indefinite deferral.

Mr. Hammack moved to indefinitely defer decision on VC 2004-PR-109. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. JEFFREY P. AND CATHERINE L. BOWERS, SP 2005-DR-014 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9500 Brian Jac Lane on approx. 40,000 sq. ft. of land zoned R-E. Dranesville District. Tax Map 19-1 ((5)) 35.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Abbas Mazaher, the applicants' agent, 9500 Brian Jac Lane, Great Falls, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow an accessory dwelling unit within an existing dwelling. Staff recommended approval of SP 2005-DR-014 subject to the proposed development conditions.

Mr. Mazaher presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition of a bedroom, bathroom, and TV room had been requested because the applicant needed the additional space to provide an in-laws suite that would accommodate Mrs. Bowers' parents. He noted that a kitchen was already in existence.

In response to Mr. Hammack's question, Mr. Mazaher stated that he had read the proposed development conditions contained in Appendix 1 of the staff report and asked for clarification on paragraph 3. He stated that paragraph alluded to a business, and that was not the case.

Mr. Hammack asked staff if that was a standard provision that was included in all applications for accessory dwelling units. Ms. Langdon replied that it was. She stated that an open inspection condition was standard

for every accessory structure so that staff could ensure that an applicant was abiding by the conditions.

Mr. Hart referred to the phrase "shall be posted in a conspicuous place on the property" and asked where that would be located. Ms. Langdon responded that the sign could be placed where it would be visible when an inspector entered the accessory structure.

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

Mr. Hammack moved to approve SP 2005-DR-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY P. AND CATHERINE L. BOWERS, SP 2005-DR-014 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9500 Brian Jac La. on approx. 40,000 sq. ft. of land zoned R-E. Dranesville District. Tax Map 19-1 ((5)) 35. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 24, 2005; and

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

1. The applicants are the owners of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

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

1. This approval is granted to the applicants only, Jeffrey P. and Catherine L. Bowers, and is not transferable without further action of this Board, and is for the location indicated on the application, 9500 Brian Jac Lane (40,000 square feet), and is not transferable to other land. These conditions shall be recorded among the land records of Fairfax County.
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 Dominion Surveyors, Inc., dated December 27, 2004, as revised through February 26, 2005, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain no more than one (1) bedroom.
6. Parking shall be provided as shown on the special permit plat. The garage shall not be converted to any other use besides parking.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health, and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. Should the property be sold, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance or another use as permitted by 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 any required permits through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 24, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. ROMULO AND BIANCA B. CASTRO, VC 2004-PR-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.5 ft. from front lot line. Located at 2822 Douglass Ave. on approx. 4,757 sq. ft. of land zoned R-4. Providencia District. Tax Map 50-2 ((9)) 106. (Concurrent with SP 2004-PR-034). (Moved from 7/27/04 for notices) (Decision deferred from 10/12/04 and 3/22/05)

Vice Chairman Ribble noted that the applicants had requested a deferral.

Mr. Pammel moved to indefinitely defer decision on VC 2004-PR-087. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 13-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 17.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.) (Continued from 2/1/05) (Decision deferred from 2/15/05) (Reconsideration granted on 3/22/05).

Vice Chairman Ribble noted that VC 2004-MV-112 had been administratively moved to June 7, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. NEW HOPE CHURCH, INC., SP 2005-MV-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and child care center. Located at 8905 Ox Rd. on approx. 8.88 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 7. (Admin. Moved from 4/26/05 at appl. req.)

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

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

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow construction of a 58,000-square-foot church in two phases, with a child care center of up to 99 children, an outdoor recreation court, and a 244-space parking lot. Staff recommended approval of SP 2005-MV-010 subject to the revised proposed development conditions dated May 24, 2005. Mr. Varga said the words "then, elimination of #10" in the second to last sentence of Condition 11 should be removed. He said staff had no objections to the applicant's request for slight modifications to Conditions 10 and 13.

Mr. Hart referred to Item 2 in a memorandum from Kevin Nelson, Transportation Engineer, Department of Transportation, dated March 15, 2005, that stated that "Blu Steel Way should be extended across the frontage to the southern property line." He stated that had not happened and asked staff for an explanation as to why it had not. Mr. Varga stated that the easement had been provided for future access, but at this point staff felt that the construction of the road was unnecessary. In answer to Mr. Hart's question, Mr. Varga said staff was okay with an easement rather than a dedication. Mr. Hart then referred to sheet 1 of 5 of the special permit plat and asked about the proposed 10-foot wide easement for a trail that was not on the Comprehensive Plan. Mr. Varga indicated he was correct and that staff did not have an issue with a trail along Route 123. Susan Langdon, Chief, Special Permit and Variance Branch, stated that if the property had developed residentially, staff would have wanted a through connection on the trail, but since this was not a residential development, it was not an issue for them.

Mr. Hart asked about a driveway on the plat that showed handicapped parking spaces and a note on the plat that was located in the middle of the driveway that read "to be relocated." Ms. Langdon explained that the applicant had referred to that as an electrical power pole that would be relocated.

Mr. Hammack and Ms. Langdon discussed the proposed location of a 10-foot trail along Route 123, the AT&T easement that ran through the property, and the purpose for a trail that would stop at the property line.

Ms. Langdon and Mr. Beard discussed the applicant's agreement to stagger its services by extending the time in between to allow the parking lot to empty out before the next service was held. Mr. Beard asked about the proposed study to determine if an extension of the left-turn lane from Ox Road would be required. Ms. Langdon stated that Development Condition 19 stated that a study of the proposed extension of a left-turn lane would take place one year after the Non-RUP was granted, and further study would take place every three years thereafter for a period of ten years. She said the County's Office of Transportation would be responsible for the studies.

Mr. Hammack referred to Development Condition 15 that stated that a "bioretention area shall be provided subject to the requirements of the Virginia Dominion Virginia Power Company." He asked staff what those requirements were, whether the applicant could meet them, and if they had they agreed to them. Ms. Langdon said the applicant had not specifically agreed to the requirements. She noted that the language had been requested by the applicant to enable them to work with the power company in case the easement was not granted. Ms. Langdon stated that if the applicant did not get the easement from the power company, they could defer to Development Condition 16 which required bioretention in other places on the site. She said that if that could not be provided within the parking island, which was shown on the plat, staff was looking for bioretention in other areas as covered in Development Condition 16. She pointed out that there were two other islands that were outside the easement where the applicant could also provide bioretention.

Ms. Hall presented the special permit request as outlined in the statement of justification submitted with the

application. She said the applicant was the contract purchaser of the land that was zoned R-1. She stated that there was a special exception that had been granted on the property that was still in effect until August of 2005 to commence construction for a plant nursery. She stated that the applicant had met with staff, the neighbors, the Mount Vernon Planning and Zoning Committee, the South County Federation Land Use Committee, the South Springfield Alliance, and the Virginia Dominion Power Company. Ms. Hall said the plan before the Board had been revised in response to comments made by everyone they had consulted. She said the number of seats and parking spaces had been reduced from the original request, the site for the church had been moved back from Route 123 at the request of the citizens and staff, the church would be constructed in two phases with the sanctuary being first and the gymnasium second, a right-turn lane would be built and a left-turn lane would be built as necessary, and the church had negotiated an agreement with the developer of Remington Place to share the cost of constructing the joint entrance at the median break. She also said the applicant had committed to pay its pro rata share of the traffic signal at the median break and to provide police direction on Sunday mornings as necessary. Ms. Hall advised that the applicant had received the support of the Cross Pointe community and the South County Federation, who had opted for support of the application at the suggestion of Cross Pointe because they preferred a church with a child care facility to a plant nursery.

Ms. Hall stated that the applicant was requesting two amendments to Development Condition 10. She said the first was a clarification that transition yards were shown on the plat. She indicated that staff had requested that the applicant look at the northwest boundary adjoining Remington Place which was within the Dominion Virginia Power Company's easement. Ms. Hall also indicated that staff had asked the applicant to work with Dominion and the Urban Forestry Division to come up with an appropriate transition yard. She pointed out that trees could not be planted within Dominion's easement, but they were willing to allow the applicant to plant shrubs. She referred to the lighting conditions and said the applicant had added the words "...except as reasonably necessary for security purposes..." at the end of that condition. With respect to questions posed by members of the Board, Ms. Hall said the applicant had increased the easement on Blu Steel Way from 30 feet to 44 feet wide as it crossed Remington Place. She pointed out that there was an easement at Cross Pointe, but there was no trail on it. She confirmed that the trail along Route 123 was already there and in the right-of-way, and the pole would be relocated. She said the bioretention feature was within Dominion's easement and reiterated that the applicant would not be able to plant trees, but would work with Dominion Virginia Power Company to plant appropriate shrubbery. She said the applicant was requesting approval from the Board in order to meet contract deadlines. Ms. Hall submitted letters of support for the record.

In answer to Mr. Ribble's question concerning the outdoor play area, Ms. Hall stated that when Phase 1 was built, the play area for the child care center would be located where the gym would be built, and when that was built, the outdoor court in the rear would then become the play area for the child care facility.

Mr. Ribble called attention to the AT&T easement through the area. Ms. Hall indicated that was acceptable because the applicant would not be building a structure on it and that AT&T's fiber optic lines were located underground.

Mr. Hart and Ms. Hall discussed the lack of a connection to the trail easement. Ms. Hall stated that she had understood the trail had always been there to enable Dominion to get into the easement. She said she agreed with Ms. Langdon's earlier statement that the easement was probably stubbed off with the idea that the property could be developed residentially at some point.

Mr. Hart asked if the sidewalk along the driveway should connect to the trail on Route 123. Ms. Hall said the applicant would commit to the connection, but they would have to work with the Virginia Department of Transportation (VDOT) because it was in the right-of-way.

Mr. Hart asked what would happen if the property to the south was developed because he assumed the road would go where the 44-foot ingress/egress was. Ms. Langdon said his assumption was correct, and there was a possibility for institutional use that would require either a special permit or a special exception. Mr. Hart commented on the egress from the property and asked if the Fairfax County Office of Transportation (DOT) had looked at that. Ms. Langdon said that they had, and it was referenced in Condition 18 that stipulated that DOT would do some work on the entrance to the church and make it a 90-degree turn when and if that happened. Mr. Hart expressed concern about the number of vehicles that would be leaving the property at the same time, and it did not appear that there was any stacking distance for the vehicles turning left from Blu Steel Way to Route 123. Ms. Langdon said the DOT had looked at that problem and pointed out that because of their study, most of the transportation conditions had evolved from that, and they appeared to be satisfied with the issues and needs on the site.

In response to Mr. Hart's question, Ms. Langdon said the towers would remain on the site and there was no restriction concerning their proximity to buildings that were outside the easement. Ms. Hall stated that Dominion had requirements, and they had been met.

Mr. Beard asked for clarification of Development Condition 24 on Attachment 1 that used the word "generally" with respect to the architecture. Ms. Hall said the church would look like the architect's rendering. Ms. Hall said that staff had included the word "generally," and it was her assumption that they wanted the applicant to be able to make a few minor changes such as the number of windows the church would have. At Mr. Beard's request, Ms. Hall identified on the viewgraph the main entrance to the church. Ms. Hall also pointed out the entrance to the proposed gymnasium. She called attention to the lack of gymnasiums in the County and indicated that it would be an asset to the community and a benefit to the child care center.

In answer to Mr. Hammack's question, Ms. Hall confirmed that the maximum FAR on the property would be .15, and the church had no plans for expansion.

Mr. Beard noted that the applicant had reduced the number of required seats and asked if they anticipated any future growth. Ms. Hall responded that the applicant had originally requested 800 seats and had since decided that they would go to a two-service schedule, which would make the requested 685 parking spaces work. Ms. Hall said that Sunday attendance was typically 300-400 persons with the addition of children attending Sunday school at the same time the service was being held in the sanctuary.

Ms. Hall agreed with Mr. Pammel's comment that if the applicant acquired additional property, they could request an expansion; however, the application before the Board incorporated only what had been submitted in the special permit request.

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

Mr. Pammel moved to approve SP 2005-MV-010 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NEW HOPE CHURCH, INC., SP 2005-MV-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and child care center. Located at 8905 Ox Rd. on approx. 8.88 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 7. (Admin. Moved from 4/26/05 at appl. req.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 24, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant met the prescribed requirements as set forth in the Zoning Ordinance for the use.
3. There is no opposition to the application.
4. There are numerous letters in support of the application, particularly one from the South County Federation.

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

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

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

1. This approval is granted to the applicant only, New Hope Church, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 8905 Ox Road, Lorton, Virginia, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap (Walter L. Phillips, Inc.) dated 1/10/05 through 5/13/05, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The number of seats in the sanctuary shall not exceed 685.
6. The total maximum number of children in the child care center shall not exceed 99.
7. The child care center's maximum hours of operation shall be 6:30 A.M. and 7:00 P.M., Monday through Friday.
8. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
9. All worship services shall be scheduled to avoid vehicles entering and exiting the site for services at the same time. Therefore, services shall be staggered so that no one service ends within a minimum of one hour of the next service's beginning and no Sunday School classes shall be held between services. The multi-use space (Phase II) shall not be used for services or other activities that coincide with services in the sanctuary other than Sunday School activities.
10. The transitional screening requirements shall be modified along all lot lines as shown on the special permit plat except that along the entire northwestern lot line, adjoining Remington Place, the intent of Transitional Screening 1 shall be realized to the maximum extent reasonably possible as determined by Urban Forestry Management (UFM) in consultation with Virginia Dominion Power.
11. A landscaping plan shall be developed and implemented to provide additional landscaping over and above that shown on the special permit plat, around the perimeter of the parking lot, the perimeter of the stormwater management pond and around the church structure, and along the northwest property line. Plant selection, including size, species, and number, shall be coordinated with Virginia Dominion Power and Urban Forestry Management (UFM). Plant material, including ornamental trees and shrubs, grasses, and flower perennials may be used.
12. The barrier requirement shall be waived along all lot lines, except that seven (7) foot high wood fence shall be provided along a portion of the southeastern lot line as shown on the special permit plat.
13. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no uplighting on site, including any sign or the building, and lights shall be turned off when the site is not in use except as reasonably necessary for security purposes.
14. The limits of clearing and grading shall be at a minimum of that shown on the special permit plat. The proposed conservation easement areas shall remain undisturbed. The tree save areas shall be protected by tree protection fencing in the form of four (4) foot high, 14-gauge welded wire, attached to six (6) foot stool posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Prominent signs shall be placed on the fencing "TREE SAVE AREA - DO NOT DISTURB" to prevent construction from encroaching on these areas. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed prior to any clearing and grading activities on the site. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading or

demolition activities, the Applicant's certified arborist shall verify in writing that the tree protection fencing has been properly installed.

15. Notwithstanding the note on the special permit plat, the bioretention area shall be provided in the northwestern parking lot island subject to the requirements of Virginia Dominion Power.
16. Stormwater Management/Best Management Practices facilities shall be provided as depicted on the special permit plat or as determined by DPWES, provided, however, no additional vegetation shall be cleared over which is shown on the plat. Bioretention/infiltration trenches and/or other low-impact design techniques for stormwater management and Best Management Practices shall be provided around the perimeter of the parking lot, in the parking lot islands or in other areas on site as determined feasible by DPWES.
17. A right-turn lane shall be constructed at the site entrance/Blu Steel Way, to VDOT standards.
18. At such time as Blu Steel Way is extended across the frontage of the property, the applicant shall reconfigure its driveway so that the driveway shall intersect Blu Steel Way at an approximately 90-degree angle.
19. One year after the applicant is granted a Non-Residential Use Permit and every three (3) years thereafter ending 10 years after issuance of Non-RUP, the applicant shall perform and submit to Fairfax County Department of Transportation (FCDOT) a queuing analysis for the southbound left-turn lane on Ox Road at the site entrance. In the event that the analysis indicates that the queue exceeds the capacity of the left-turn bay, the applicant shall either extend the length of the left-turn land as necessary or commence an appropriate staggering of its Sunday morning services as determined by FCDOT.
20. At the time of site plan approval the applicant shall contribute to Fairfax County its *pro rata* share of a traffic signal to be installed at the intersection of Ox Road and the joint entrance in an amount determined by FCDOT. The applicant's *pro rata* share shall be held in escrow for three years. In the event VDOT determines that a traffic signal is not warranted at the end of the three years, the funds may be used by Fairfax County for other transportation improvements.
21. At the time of site plan approval the applicant shall grant a 44-foot wide public ingress/egress easement across the frontage of the property from the joint entrance to TM 106-2((1))8.
22. Arrangements for police direction shall be made at the entrance on Sunday morning, if necessary.
23. No structure shall exceed 50 feet in height.
24. The architecture of the church shall be generally as depicted in the elevation included in Attachment 1.
25. The applicant shall work with VDOT and shall connect the sidewalk to the trail in the right-of-way along Route 123.

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

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

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel moved to waive the 6-day waiting period. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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

May 24, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-178 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.) (Moved from 3/1/05 for notices.) (Admin. moved from 4/19/05.)

Vice Chairman Ribble noted that VCA 2002-MA-176 had been administratively moved to July 12, 2005, at 9:00 a.m.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:30 A.M. THANH TRUONG, A 2005-PR-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a place of worship on property in the R-3 District without an approved special permit in violation of Zoning Ordinance provisions. Located at 3418 Annandale Rd. on approx. 3.35 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A.

Vice Chairman Ribble called the appellant to the podium. Thich Van Dam, aka Thanh Troung, 3418 Annandale Road, Falls Church, Virginia, came forward.

Diane Johnson-Quinn, Zoning Administration Division, presented staff's position as set forth in the staff report dated May 17, 2005. She stated that the special permit for a place of worship had been approved by the Board in 2000, and since the special permit had expired, it had been determined that the appellant was operating a place of worship without the required permit approval.

Ms. Johnson-Quinn agreed with Mr. Hammack's comment that the original special permit had been approved in 1998, and the actual permit was issued on October 31, 2000. Mr. Hammack called attention to the federal government's enactment in September of 2000 of the Religious Land Use Institutionalized Perscrns Act (RLUIPA) and asked why that did not protect the appellant in the same way it protected the applicant in the Thames Street, Kings Park West development that was heard two weeks prior.

William Shoup, Zoning Administrator, Zoning Administration Division, stated that RLUIPA was not raised as an issue or defense in this case. Mr. Hammack asked if that meant the County only considered RLUIPA when it was considered to be an issue as a defense, but not in other cases. He pointed out that the County had raised the issue of RLUIPA in the Thames Street case. Mr. Shoup responded that he wanted to point out that RLUIPA was not a basis for this appeal, and it did not cover this appellant because they had the ability to obtain special permit approval, and that was a key factor. He stated that activities occurring on the Thames Street site were religious worship services, and the circumstances were different. At Mr. Hammack's request, Mr. Shoup explained how this appeal was different from the Kings Park West case. He pointed out that the Thames Street site was smaller and the appellant's site was larger and could easily accommodate a parking lot. He stated that the special permit that had been granted was for weekly services, and the Board of Zoning Appeals had limited them from holding memorial services; however, services had been occurring, and a permit was required.

Mr. Hammack asked whether the Board was supposed to consider RLUIPA in its consideration of this type of application. Cynthia Bailey, County Attorney's Office, outlined the reasons why the Zoning Administrator's position was legally correct. She said the distinction between this case and the Thames Street case was the notion of whether or not there had been a substantial burden imposed on the religious exercise. Mr. Hammack interrupted Ms. Bailey and asked how she knew that since no application had been made since the appellant's permit had expired. He pointed out that in the Thames Street case, the staff report assumed that the Board would not grant a special permit, and they did not give the Board an opportunity, in its analysis, to make that decision. Ms. Bailey responded that in the Thames Street case, under various provisions of the Zoning Ordinance, no special permit could be issued. She stated that the only way the

Board could issue a special permit in that particular case would be to ignore other provisions of the Zoning Ordinance, specifically the off-street parking requirements.

Mr. Hammack asked what would happen if they requested shared parking. He referred to the staff report submitted two weeks prior and reiterated his previous comment that staff had assumed it could not be met and they were not giving the appellant the opportunity to try to meet it. Mr. Shoup explained that a shared parking arrangement under the Zoning Ordinance had to be on a lot contiguous, and he did not think that would occur. Mr. Hammack expressed his doubts and said there were many lots with shared and off-site parking that were not on contiguous lots. Mr. Shoup asked if he was talking about required parking or excess parking. Mr. Hammack replied that he was talking about both and cited a few instances of where such parking occurred. He noted that in some cases approval of the Board of Supervisors was necessary. Mr. Shoup responded that he was not familiar with those instances and referred back to the Zoning Ordinance.

Mr. Hammack asked again why staff had not worked with the appellant as it did with the Kings Park applicants to reduce the impact to avoid the necessity for a special permit, especially since the standard set forth in the Thames Street property case indicated a load factor of less than 50 was acceptable and cars on public streets were acceptable. He said he had made comparisons between the two cases and had determined that they conflicted with one another. He asked again why the appellant was not protected by RLUIPA. Ms. Bailey said they were not protected because no substantial burden existed against this particular appellant, and none had been triggered because the appellant had the ability to apply for a special permit, and the process was available to them. She said it was the position of staff that the appellant should afford itself of the special permit process. Mr. Hammack asked why that opportunity was not available to the people in Kings Park. He again said staff was taking the position that the Board would not grant a special permit, and the appellant couldn't, under any circumstances, obtain one. He said he found the process to be inconsistent, and it was very difficult for him to reconcile the difference between the two cases. Ms. Bailey said she would agree to disagree with Mr. Hammack with respect to whether the Thames Street property could lawfully apply for a special permit to establish that use at that location. She said that because they couldn't do that, that was when the substantial burden provisions of RLUIPA were triggered, which was why the entire analysis, the compelling interest in the least restricted means analysis of that statute, came into play, and it did not apply in this case.

Mr. Pammel said this was a significant site and indicated that the appellant had explained that they could not control the participation by its worshipers. He pointed out that it was a spiritual site, and there was no special time for their congregants to assemble. He asked staff if they were stating that the followers of the faith could not meditate at the temple as they needed. Mr. Pammel said that would be an infringement on RLUIPA, and he had difficulty with staff's position.

Mr. Hammack stated that if the Board were to uphold the Zoning Administrator in this appeal, the appellant would no longer be able to have people attend funerals or weddings, and essentially it would close them down. Mr. Shoup said that was correct unless they obtained special permit approval. Mr. Hammack compared this case and the Thames Street case and said the issue was whether the Board was supposed to consider RLUIPA in its decisions in upholding the Zoning Administrator because there was no reference to it in any of the detailed arguments that had been presented by the appellant with respect to this appeal. He asked for a definitive answer. Ms. Bailey stated that in this case RLUIPA was not applicable because it had not been raised by the appellant; however, in the Thames Street case staff had advised the Board that it was an issue of whether or not to bring a Notice of Violation, and that was a matter to be determined by the Zoning Administrator, and because the Board had rejected that argument, staff had been forced to explain the rationale for the Zoning Administrator's decision, which was why RLUIPA came to bear in that situation.

Mr. Hammack then noted that in footnote 8 on page 15 of the Thames Street staff report, the comment was made that the report did not include any discussion regarding the constitutionality of RLUIPA because under well-established law the Board of Zoning Appeals did not have the authority to consider either the validity or the constitutionality of statutes and ordinances and referenced the court case that had been taken from. Mr. Hammack asked whether the Board was to consider RLUIPA if it affected Zoning Ordinances, and if the Zoning Administrator considered it, shouldn't the Board of Zoning Appeals be considering the application of RLUIPA. Ms. Bailey responded that he was correct in that assumption; however, in this case it had not been raised as a defense, and the Zoning Administrator had determined that because a special permit could be issued, the substantial burden provisions of the statute had not been triggered. She acknowledged his concerns and his point.

Mr. Hart said he had never been aware of a requirement that someone plead affirmative defenses in

response to a Notice of Violation, and he did not believe that such a requirement existed. He asked if there was a requirement that the appellant had to file paperwork containing certain words or the Board could not consider those issues. Mr. Shoup said an appellant was required to submit their grounds for an appeal. Mr. Hart said Mr. Van Dam's letter said the local government and U. S. Constitution had allowed them to exercise their religion and worship anywhere, including their home. Mr. Hart asked if that qualified as a RLUIPA argument. Mr. Shoup said that the letter that had been passed out was not submitted within the 30-day deadline for setting the grounds for an appeal. He said staff had not seen the letter, and he did not think it appropriate for the appellant to try to establish new grounds for the appeal at this late date. Mr. Hart stated that he was not aware of a technical requirement either in case law or the Code that specified that certain defenses had to be pled with respect to the Statute of Limitations and other legal documentation. He asked where that information had come from. Ms. Bailey stated that the Code provisions provided that an applicant had to state the grounds by which they were aggrieved, and that was what the County was basing its argument on. She said she did not have the provisions with her today, but would provide it to the Board if they wanted a copy. Mr. Hart pointed out that the space for explaining how an appellant was an aggrieved person was too limited. Mr. Shoup said an appellant was provided with a set of instructions that were attached to the application form that elaborated on that. Mr. Hart asked if the Board could raise the issue on its own accord. He pointed out that to him the County Attorney's Office was trying to bend over backwards on the Thames Street case to find every means, from many ambiguous non-local cases, to find a reason why regular activity every Sunday morning couldn't be regulated. He stated that the Zoning Administrator was putting the Board in an awkward position to try to reconcile from one week to another whether they could consider RLUIPA or not. Mr. Shoup said the County had to be reasonable in that RLUIPA could not be looked at in isolation in concert with what the substantial burden would be under RLUIPA. He stressed that he did not think that a special permit could have reasonably been approved on the Thames Street lot. Mr. Hart said he also wanted to know if an appellant waived their defenses if they did not specifically raise the issue of RLUIPA.

Mr. Hart and Mr. Shoup continued to discuss the disparity between the two cases referenced above.

Mr. Hart stressed that it did not seem to be reasonable that placas of worship with 50 people every Sunday morning was a by-right use on a tiny lot and they were not allowed such a use. He asked how a decision could be made that parking was approvable on the appellant's site and not on the other site. Mr. Shoup explained that parking had been approved once on this site so that gave the County a basis to say that it would not constitute a substantial burden to make this appellant go back through the special permit process. Mr. Hart said it was his understanding that the Board could consider RLUIPA even if it was not raised as properly as it could have been. He said if that was the case, there was no substantial burden because the appellant met the parking requirements once on the site and could again, notwithstanding the wedding and funeral component. He pointed out that the Board had denied those activities because the lot could not be parked for those events, but they were doing so anyway. Ms. Bailey said that with respect to another special permit that would come in on this property in the future, it may be that the Board could not impose a condition to completely preclude all funerals and weddings on this site. She said there may have to be some conditions and some compromises made with respect to that particular use, whereas it was banned under the previous special permit prior to the passage of RLUIPA. Mr. Shoup stated that the County had looked at this 3.3-acre site and did not know if the appellant could come in with a proposal that the Board would find acceptable for additional parking. Referring to the special permit shown on the viewgraph, Mr. Hart said this was a site that did not have room for a parking lot to support the use, and the Board added the condition. He said his point was that this site had obvious parking constraints similar to the Thames Street site. He said the activities that would generate the most need for the parking were the activities the Board had decided they would not do, and yet they now had the opposite conclusion.

In answer to Mr. Hammaock's question, Mr. Shoup acknowledged that he had been evaluating the site on its size. Mr. Hammaock stated that the violation was of an Ordinance that said "...no use or structure that is designated as special permit..." That did not deal with lot size, just its use. He said the appellant was in violation because he was using the property, and nothing in Section 303 of the Ordinance pertained to site size. He asked how the Zoning Administrator reconciled the differences between the appellant's property and the Thames Street site. Mr. Shoup said each set of circumstances had to be looked at. Mr. Hammaock asked why RLUIPA was not violated if Mr. Van Dam closed down. He said that was a real problem the County had with the Thames Street site because they could not get the use, so they would have to terminate their prayer services, and that had triggered RLUIPA. He said that if the Board upheld the Zoning Administrator in this instance, it would require Mr. Van Dam to close down, and again he asked why that would not trigger RLUIPA.

Ms. Bailey said that at the last hearing the County had provided a variety of cases that had tried to interpret

RLUIPA. She said she would agree with Mr. Hart that in some sense they were all over the map. However, she said the one issue that was very clear and various Circuit Courts of Appeal had been very consistent upon was that the mere requirement to obtain a special permit was not by itself a substantial burden. She went on to say that because in this case that process had been used before successfully, the conclusion was reached that no substantial burden existed, and, therefore, the provisions of RLUIPA were not triggered. She said that was the watershed difference between this case and the Thames Street case. Ms. Bailey said she understood the Board's concern that the County had prejudged in the Thames Street matter as to whether or not a special permit would be issued. Given their best interpretation of the Ordinance and what would be allowed via a special permit, she said that it seemed that in that case to require those people to come in for a special permit would be pretextual. She said there was some suggestion in the case law that indicated that when something could not be done, to require it would, in fact, be a substantial burden.

Mr. Beard said the initial approval was prior to RLUIPA, and the violation pertained to a funeral service. In response to Mr. Beard's question, Bruce Miller, Zoning Inspector, said that on the occasions when he inspected the site, there were no remains on site. Mr. Beard then asked how the County could dictate what the parishioners could pray about. Mr. Shoup responded that there was no definition of a place of worship, and that was what was regulated under the Ordinance. He said what was traditionally referred to as a place of worship was where there were services led by a religious leader. He said staff usually looked at whether or not they were regular services, and in this case they were not. He said this specific religion was not typical of what was envisioned when the Ordinance was drafted. However, Mr. Shoup said the question for staff was whether it was a place of worship. He stated that when those types of activities were being conducted on site, special permit uses were presented to the Board of Zoning Appeals. He said staff was not trying to dictate what they could or could not do. They were taking a look at what the appellant was doing and trying to determine if it fit in with a place of worship as they had been regulating.

Mr. Hammack asked if staff had tried to define "place of worship" for purposes of its application even though it was not defined in the statute. He also asked if staff had looked up the dictionary definition. Mr. Shoup said they had in the past, and this question had been before the Zoning Administration Division many times over the years. He pointed out that many times fledgling churches began in a home. Mr. Hammack responded that the Board had regulated all of them up until now.

Mr. Hammack asked if any religious group that wanted to set up in a small house that could not meet the Ordinance would be protected by RLUIPA. Ms. Bailey stated that the government at that point, if they tried to shut them down and they triggered what they believed was the substantial burden provisions of RLUIPA or the disparate treatment provisions of RLUIPA, would have to show a compelling governmental interest in order to regulate the use and that whatever the County's regulations were was the least restrictive means of furthering that compelling governmental interest. Mr. Hammack stressed that in the Thames Street case staff had set standards of up to 50 people, and the staff report stated that if they could comply and mitigate the impact, they would not be required to apply for a special permit because it was more akin to a prayer service than a place of worship. He said he was trying to determine how staff came to those conclusions or what the criteria was that would be applied to the difference between a prayer service and a place of worship. He said that it was his opinion that wherever a prayer service was held involved worship. He said that staff had told the Board that prayer meetings were held all over Fairfax on a regular basis and that the people attending did not pose a problem. Mr. Shoup stated that over the years staff had developed guidance standards to look at the various aspects of worship services, this was far from a black and white issue, and staff had to make a judgment call and apply all the applicable statutes.

Mr. Hart quoted from the staff report which stated "...however, the most recent inspections reveal that the appellant continues to conduct Buddhist services including prayer, meditation, and funeral or memorial services on the subject property, thus the use conducted on the property still possesses many of the same characteristics of that proposed with the special permit for a place of worship that the Board of Zoning Appeals approved..." He asked if prayer and meditation were regulated. Mr. Shoup stated that question could not be answered in isolation because staff had to look at whether it was a place of worship that should be regulated under the Zoning Ordinance, and at that point staff would have to look at the use in total. Mr. Hart stated that if he was interpreting what Mr. Shoup had said, sometimes prayer and meditation were regulated. Mr. Shoup said yes, and with this particular type of religion, there was a regular leader leading regular services as opposed to Bible study groups that rotated from house to house. He noted that the appellant had admitted in their last permit application that what they were doing was a place of worship because they had gone through the special permit process.

Mr. Hammack said the problem the Board was having was that the earlier application was pre-RLUIPA, they did not follow through, and they did not get their special permit, so it was a clean slate because it did not get

implemented, and they could reapply. However, he said that given the similarity of the facts involved, it was hard for him to distinguish this from the Thames Street case. He said that the Notice of Violation said the appellant was directed to clear the violation within 90 days, and that effectively was closing them down. He read from the Notica that stated the appellant had the right to appeal within 30 days. Mr. Hammack said RLUIPA changed some things, but in terms of the criteria on small church congregations, staff required that they obtain special permits. He said he was having trouble determining the criteria. He then asked if the position of the staff would be different if the appellant had not applied for a special permit in 1998. Mr. Shoup said he doubted that. He said that given the size of the lot and its location, staff would have looked at it and determined that probably there was a reasonable possibility of obtaining a special permit on this site. Mr. Hammack then asked what staff's position would have been if the appellant had moved to a smaller lot. Mr. Shoup said they would have to look at each lot. Mr. Hammack then read from page 9 of the original staff report regarding no large events with more than 50 people, no outdoor activities, carpooling arranged for attendees with a maximum of five cars parked in the neighborhood, two in the driveway of the subject property, three on the street, satellite parking or valet parking arranged off local streets and no advertising of activities or on-site signs and no internet listings. Mr. Hammack said that if the appellant had complied with those criteria, staff was not prepared to file a Notica of Violation. Mr. Shoup said that was not staff's agreement. He indicated that criteria came through the Supervisor's office in trying to negotiate something that might quell the concern in the neighborhood, but staff did not say that was where they would draw the line in all cases. He said he would not use the 50 number or the criteria as something staff would use in every case.

The appellant presented the arguments forming the basis for the appeal. Mr. Van Dam stated that because of the September 11, 2001, terrorist attacks, his congregants did not have enough money to apply for a special permit. He said they had requested an additional two months to enable them to meet County requirements, and they had been denied. He said they looked at other sites for their Sunday service and were renting from the National Memorial Park Funeral Home. Mr. Van Dam stated that for Buddhist memorial days and Buddha's birthday, they rented space from the national park. With respect to the zoning inspector's report concerning their holding a funeral service, he said the type of service was not clearly defined. He said his father had passed away recently, and he did not think he had to ask permission from the government to invite people to his home to pray for him. He emphasized that this was not a communist country, but was a country where everyone had religious freedom. He said he had appealed the Zoning Administrator's decision in order to seek support from the Board in determining the best way to approach their dilemma. Mr. Van Dam stated that he was looking for another place to worship. He said he had studied Buddhism for over 40 years, people came to him for counsel, and the County had placed him in an untenable position.

Mr. Hammack asked if Mr. Van Dam understood that he could apply to the Board for another special permit. Mr. Van Dam said he called a meeting of his congregation, and it had been determined that because of all the money they had expended on the case so far, they were not in a position to hire a lawyer.

In answer to Mr. Hart's query, Mr. Van Dam stated that in June of 2004 they had held their Sunday services at an offica building on Lee Highway, and since June of 2003, funeral, memorial and prayer services were being held at the National Memorial Gardens with approximately 30 or 40 people in attendance. Also in response to another question posed by Mr. Hart, Mr. Van Dam said approximately 30 to 40 people visited once a week at the temple to offer prayers for their loved ones. He said the parking lot had been built and could accommodate them. He stated that the addition on the hcuse had not yet been built.

In response to Mr. Beard's question, Mr. Miller said he had inspected the premises as a result of two complaints, but under state FOIA law, he was precluded from identifying the complainants.

Mr. Hammack asked if the complainants fit the category of an aggrieved party. Mr. Shoup said the person does not have to be an aggrieved party to file a complaint; however, one of them was a nearby resident.

In answer to Mr. Hammack's question, Mr. Van Dam stated that no funeral services or weddings had taken place at the temple in the past year. Mr. Hammack confirmed with the appellant that the information contained in the staff report was not correct.

Mr. Hammack asked staff whether that would change their analysis or would they like time to think about what the appellant had said because it could change the nature of the violation. Mr. Shoup said he would like more time to think about that; however, his first reaction would be that there was more than just a miscommunication. Mr. Hammack said the point was that if they were not conducting funerals or weddings on a regular basis, which were prohibited under the special permit, he wanted to know if that was more like a

prayer/study group similar to the Thames Street group. He noted that if the violation had not been properly articulated, it should be changed.

Vice Chairman Ribble called for speakers.

John Murphy, 7321 Statecrest Drive, Annandale, Virginia, came forward to speak in opposition to the appeal. His main points dealt with the fact that for seven years the Meditation Institute had been holding religious services on-site on a weekly basis, sometimes with over 100 persons in attendance; there were traffic problems, specifically limited sight distance from Statecrest Drive that caused problems with exiting onto Annandale Road because cars were parked there on the weekends; enjoyment of his property was reduced; he had not opposed the special permit which had been granted with limitations; the limitations were not satisfied, so at no time had the appellant been holding religious services in compliance; many of his neighbors had opposed the special permit; the zoning laws were not being enforced; and RLUIPA was a red herring. He called attention to letters and photographs that had been submitted from the neighbors.

In answer to Mr. Hammack's question, Mr. Murphy said that in the summer of 2002, the appellant regularly had three dozen cars on-site and 40 cars parked on Annandale Road which he had personally counted. He also said that in the prior few years vehicles had not been parked on Annandale Road on a regular basis; however, every weekend they filled up the parking lot that held three dozen vehicles.

In response to Ms. Gibb's question, Mr. Miller said that on one occasion when he visited the property, he had witnessed a couple who appeared to be dressed in wedding garb, and when he asked what they were there for, he was told that it was for a blessing of the marriage. He said he did not observe any vows being exchanged, and there were less than 10 people in attendance.

In his rebuttal statement, Mr. Van Dam stated that some Buddhist families have weddings for their children in their homes, and on occasion he was invited to perform the ceremony. After the ceremony, he said they went to the temple for prayers, at which time he signed the marriage documents. He reassured the Board that they no weddings were conducted on-site.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on A 2005-PR-008 to November 29, 2005, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel, briefings by staff members and consultants regarding litigation including the McCarthy case, the Lancaster case, RLUIPA, the Lee case, and the issuance of a subpoena in the Lane case, pursuant to Virginia Code Sec. 2.2-3711 (A) (7) (LNMB) Supp. 2002. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 11:12 a.m. and reconvened at 12:11 p.m.

Mr. Hammack moved that the members of the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that Mr. McCormack be authorized to take the actions discussed in the Closed Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that the Board request that in the Lane case Mr. Shoup issue a subpoena to the fence contractor to appear at the next hearing of the case. Mr. Pammel seconded the motion, which carried by a

vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

Mr. Hart moved that Ms. Gibb, as secretary, be authorized to send the letter to Mr. Griffin that was discussed in the Closad Session. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:30 A.M. ANN HUFFMAN, A 2005-DR-002 Appl. under sect(s). 16-301 of the Zoning Ordinance. Appeal of a determination that the minimum required front yard of the subject property is in compliance with Zoning Ordinance provisions thereby allowing construction of a single family dwelling to continue on property located at Tax Map 7-4 ((1)) 2B. Located at 10501 Milkweed Dr. on approx. 2.98 ac. of land zoned RE. Dranesville District. Tax Map 7-4 ((11)) 2B.

Mr. Hammack made a disclosure and indicated that he would recuse himself from the public hearing.

Mr. Hart racused himself from the public hearing.

Vica Chairman Ribble called the appellant to the podium. Ann Huffman, 10701 Creamcup Lane, Great Falls, Virginia, came forward.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the staff report dated May 15, 2005, regarding an appeal of a determination that the minimum required front yard of the subject property was in complianco with Zoning Ordinance provisions, thereby allowing construction of a single-family dwelling. The property which was the subject of the appeal was not owned by the appellant, who resided on Creamcup Lane approximately one-half mile from the subject property.

The appellant presented the arguments forming the basis for the appeal. She said her appeal was based on the Zoning Administrator's decision to permit construction of a residence at 10501 Milkweed Drive in what she considered to be violation of the zoning setback regulations. She quastioned staff's determination with respect to compliance with a 50-foot minimum front yard regulation in an R-E District. She explained how the Zoning Administrator's determination was detrimental to her Woodsfield Subdivision that had been created in 1975. She said the original owner of the subdivision property had drawn up a Declaration of Restrictions for the subdivision and called attention to Items 6 and 7 in Attachment 3 of the staff report. Ms. Huffman said their specific conditcn was referenced in Part 7, Article 2 of the Zoning Ordinance that addressed common open spece and common improvement regulations that were applicable to all lands to be deeded or conveyed for public use. She noted that their subdivision and streets were consistent with the general requirements, specifically that covenants were created describing and identifying location, size, use, and control of their commonly-owned streets. She disagreed with the Zoning Administrator's determination in Item 16 that applied to their private streets because the subdivision had been created in 1975, and the interpretation reflected Chapter 112 of the 1976 Code, and the interpretation was dated March 7, 1979. She asked how the landowners in the subdivision would know if that interpretation had not been modified, overturned or still applied because there was no specific case to compare it to, and the interpretation applied to the realm of pipestem driveways, not private streets. Ms. Huffman stated that the interpretation dealt with access easements, and by Code definition, an easement was a grant by a property owner of the use of his land by another party for a specific purpose. She pointed out that their streets were deeded common space, intended specifically to be conveyed into the public system at a future date. She pointed out that a curb line was not equivalent to "edge of pavement." It was equivalent to the subdivision's shoulder and ditch condition.

Ms. Huffman said she had signed statements from 70 property owners stating that preserving their right to dedicate their private streets into the public system was important to them and so was the right to subdivide their properties. She said that could be done when the streets were dedicated and referred to the added market value that would come with the ability to subdivide. She stated that the property owners did not want to go on the public record at this time since it was not up for an actual vote. Ms. Huffman went on to explain the adverse effect the subject property would have on the Woodsfield homeowners. She said that the violation for the minimum yard requirement at 10501 Milkweed was a threat to their deed-given right. She

stated that the Zoning Administrator had allowed the house to be built too close to the right-of-way. Ms. Huffman said it was foreseeable that owners of the subject property, either now or in the future, would not go along with dedicating the right-of-way. She contended that the street would have to be widened at least two more feet to be taken into the public system, and all new traffic from subdivided lots would go past the subject property, headlights would shine in their back windows, and there was no benefit to the subject property because it could not be subdivided. She said the Zoning Administrator's determination regarding the edge of right-of-way was in error and that he did not have the authority to approve the distances referenced in the staff report. Ms. Huffman stated that she had hired a land surveyor who disagreed with staff's calculations and read a portion of the report. She said she wanted an explanation from staff as to why they did not stop construction until the matter was resolved. She explained why she was in disagreement with the Administrator's determination concerning the areaway and patio. Ms. Huffman also said the grade at the rear of the referenced property was too high and could cause runoff. With respect to the fire escape, she said it could only extend five feet into the minimum front yard. She submitted to the Board copies of the letters from the property owners, an e-mail expressing support of the appeal from the vice president of the Great Falls Citizens Association, and the plats from the surveyor that she had hired. She advised the Board that the property owner's surveyor had a recent violation.

In answer to Mr. Ribble's question, Ms. Huffman said the property line went to the middle of the right-of-way.

Mr. Pammel asked Ms. Huffman whether it was her position that the owner of the lot in question that now had a dwelling on it should demolish the structure because it was in violation of the Ordinance for the reasons stated so that the rest of the community would have the opportunity to dedicate the right-of-way to enable them to subdivide their lots and create an additional buildable lot. Ms. Huffman said that was not her position; however, errors such as this had to be stopped. Mr. Pammel stated that the only way the issue could be resolved was to demolish the structure because of the irregular shape of the lot and the fact that the drainage field was in the front, which reduced any flexibility. Ms. Huffman said that she was not suggesting demolition, but she was challenging the measurements and believed the patio and fire escape were in violation.

Ms. Gibb asked staff if the definition of street line was always how the measurements were taken. She said she did not remember measuring from the edge of pavement nor did she remember the issue of a curb line coming up before. Ms. Collins said that when there was no curb line, the measurements were taken from the edge of pavement. Ms. Gibb asked if the owner of Lot 2B could chip off .05 feet of pavement and be in compliance. Ms. Collins responded that the property owners owned to the center line of the rights-of-way in the subdivision. Ms. Gibb again asked if the subject property owner would be too close if the paved portion of the driveway was in the easement and the house was located within .05 feet of the curb line. Ms. Collins' answer was that theoretically the property owner could cut off .05 feet of the pavement as it ran through their property and be in compliance.

Vice Chairman Ribble called for speakers.

Farzad Ghassemi, the owner of the subject property, 12515 Ridgeway Drive, Herndon, Virginia; and Keith Martin, Mr. Ghassemi's agent, Sack, Harris & Martin, PC, 8270 Greensboro Drive, McLean, Virginia, came forward to speak.

Mr. Ghassemi said he had done everything according to County regulations and thought that the measurements had to be taken from the middle of the property line, which was in the middle of Milkweed. He stated he had been told that it was to be 50 feet, and he and his advisors had decided to put it within seven feet of the cushion because of possible construction problems. He said staff had informed him that the measurement should have been taken from the edge of the pavement, and when they calculated that, they determined that he was 49.94 feet from the pavement. The Zoning Administrator had allowed a 10 percent administrative reduction, so he had continued with the construction. He said that he would like to move in soon, and he agreed to remove .05 feet of pavement if the Board requested that he do so. Mr. Ghassemi indicated that he had met with Ms. Huffman, his surveyor, construction manager, and builder to discuss the measurements, and he would do whatever was required of him.

Mr. Martin stated that it had been determined by County staff that Milkweed, since it served more than four lots, was most akin to a private street and, therefore, the interpretation of edge of curb, and when there was no edge of curb, the edge of pavement was applicable in this case. He said numerous inspectors had resurveyed the property. Mr. Martin indicated that the appeal was one in a series of abuse of the County process by Ms. Huffman in harassing her neighbors. He said the appeal was frivolous and had cost his

client thousands of dollars and mental anguish. He asked that the Zoning Administrator's determination be upheld.

Ms. Collins said the minimum yard setback was always measured from the nearest wall to the edge of pavement. She noted that the Department of Public Works and Environmental Services' Engineer of the Day may not have had the most up-to-date information and suggested that information be obtained from the Zoning office. She said staff had relied on formal Interpretation 18 for many years with respect to minimum yard setbacks.

In her rebuttal statement, Ms. Huffman said she thought the measurement was supposed to be taken from the edge of the right-of-way and referenced Illustration 3 from the Zoning Ordinance Appendix that showed the front lot line. She stated that she had built her house, and she knew what it was like to have a violation brought against someone by the County. She said this was another mansion that was stretching the limits of the width of the lot. She addressed Mr. Pammel's earlier comment that the house could not have been sited differently, saying that it was her opinion that it could have been sited on an angle. She indicated that there were two drainage fields currently on the subject property, and the house could have been moved forward only enough to not have the problem. Ms. Huffman said now there would be someone who would always be in total opposition to having the streets go into the public system, which meant they would have to be convinced either by persuasion or payoff. She said she was not concerned about the .05 feet, but by the point of measurement because the edge of pavement could be changed, and that was a problem for everyone. She stressed that the mansions that were being built were bursting the limits of the minimum front and side yards. She stated that her appeal had been based on what she had been told by several engineers, and that was that Zoning Administration expected them to submit their plats based on the edge of the right-of-way. She suggested that the Board request that the engineers come before them to discuss their findings. Ms. Huffman said she had learned that violations had to be addressed up front, and that was what she had tried to do.

Vica Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said that based on the staff report, there was a thorough analysis of how the measurement was done for the setback and that it was accurate and consistent with past practices and formal Interpretation 18, and she believed Ms. Huffman's rationale for the appeal might have been a little bit misguided because she could not see how you could get 22 homeowners, their lenders, and trustees to dedicate a street in order to get into the state system. She stated that she also believed it was speculative whether this homeowner would not want to join in. Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Hart and Mr. Hammack recused themselves from the hearing. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:30 A.M. VINCENT A. TRAMONTE II, LOUISE ANN CARUTHERS, ROBERT C. TRAMONTE AND SILVIO DIANA, A 2002-LE-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7909 and 7915 Cinder Bed Rd. on approx. 7.04 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 1 and 2. (Admin moved from 12/10/02) (Deferred from 4/15/03, 10/14/03, and 1/6/04). (Deferred from 4/13/04, 9/28/04, 1/25/05 and 4/19/05 at appl. req.).

9:30 A.M. SILVIO DIANA, A 2003-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that there are improvements and uses on property located in the I-6 and R-1 Districts which are in violation of Zoning Ordinance provisions. Located at 7901 and 7828 Cinder Bed Rd. on approx. 10.33 ac. of land zoned I-6 and R-1. Lee District. Tax Map 99-2 ((3)) 3A and 3B. (Deferred from 4/15/03, 10/14/03, and 1/6/04) (Deferred from 4/13/04, 9/28/04, 1/25/05 and 4/19/05 at appl. req.).

Vice Chairman Ribble called the appellants to the podium.

Jerry Emrich, the appellants' agent, Walsh, Colucci, Lubeley, Emrich & Terpak, PC, 2200 Clarendon Boulevard, Arlington, Virginia, presented the arguments forming the basis for the appeal. He said there were a number of alleged violations that had been appealed by the appellants, and he acknowledged that some of

them had merit in terms of there being violations. He stated that the appellants had done many things in an attempt to bring the property into conformance, including that they had removed everything from the floodplain with the exception of an on-site road and a portion of a retaining wall, which would ultimately be removed. He said there was one tenant located in the floodplain who refused to move, and the appellants had taken him to court to evict him. He stated that the eviction order had been obtained in General District Court and was being appealed to the Circuit Court, and a trial had been set in the Circuit Court to evict the tenant.

Mr. Emrich said the appellants had attempted to obtain special exceptions from the Board of Supervisors to correct the violations, and the Planning Commission had recommended denial. He said that it was clear that on June 6, 2005, the Board of Supervisors would deny the applications. He said the result of that would be that American Stone would have to leave the property because they could not work out the details by which they could remain. Mr. Emrich said the appellants had been working with staff, the Office of the County Attorney, and the Zoning Administrator in an attempt to work out a consent order that would specify the terms under which American Stone would be leaving the property and what they would have to do before leaving. He said a date by which they would leave had been identified, and they were working on dates by which other things would have to be done in order to bring the property into compliance. He said drafts of the agreement had been exchanged with the County and been discussed with the staff, and there were a few outstanding issues with respect to the Diana appeal that the appellants hoped to have an opportunity to discuss and work out the decree.

Mr. Emrich said that on the Tramonte property, although terms had been talked about previously, he had received the County's specific proposal May 23, 2005. In terms of the complete draft order, he had not had an opportunity to get that to the Tramontes with respect to the other two parcels, and he would do that and attempt to work things out. He said he had suggested that the matter be continued for approximately 30 days to give the appellants the opportunity to work out the court orders that would be entered in the cases that would specifically address the issues. He said the County was opposed to that, but he thought it would be appropriate. Mr. Emrich said American Stone would have to leave the property, but had some contracts they had to perform on before leaving and were attempting to work something out. He said many things had recently happened, and things had been brought into fruition the previous day. He said he knew that both sides had worked very hard and very diligently in an attempt to work out the special exceptions, which did not work, and, therefore, he requested the Board of Zoning Appeals grant a deferral to allow the appellants time to work out the final details of the orders, noting that at that time they would be moot.

Mr. Beard asked what the status of the Campbell's Gas Company was. Mr. Emrich replied that they had been given notice to leave, they refused, the appellants received an order from the General District Court to evict them, which the gas company then appealed to the Circuit Court, which stayed that order, and a trial date had been set. He said it was his understanding that the gas company was working very diligently to relocate, and he thought they had received approval from the City of Manassas to move there; however, the appellants were continuing to process the eviction. Mr. Beard asked if the appellants were in an adverse situation with Campbell's Gas. Mr. Emrich stated that they communicated with their attorney with respect to what they were doing and had been informed that they were attempting to obtain zoning approval for some property in Manassas, and it was his understanding that had obtained approval.

Mr. Pammel asked who would be responsible for removing the abandoned propane tanks. Mr. Emrich replied that Campbell's Gas Company had that responsibility. He said he didn't think they had been abandoned because the company was still in operation. Mr. Pammel noted that staff had indicated that the propane gas tanks had been abandoned and remained in the floodplain on Lot 3B. Silvio Diana, 7901 Cinder Bed Road, Newington, Virginia, stated that Campbell's Gas was an ongoing operation. He said they had tanks there that they reused as well as tanks that were obviously not in use that were on their site, and he thought they were the tanks referred to by staff. Mr. Emrich stated that if a court order was obtained and Campbell's did not honor it, it was his opinion that the sheriff would be responsible for the enforcement.

In answer to Ms. Gibb's question, Mr. Emrich said there were three special exception applications submitted to the Planning Commission that contained approximately 35 conditions. He noted that the appellants had resolved all except three of the conditions, and one of the more significant ones was that the only user of the property could be American Stone. He said that would be an economic impossibility for American Stone to deal with, so they were not able to work out a complete agreement, and, therefore, the Planning Commission recommended denial.

Ms. Gibb asked how large the American Stone Company was and if they were trying to relocate. Mr. Diana stated that his company employed approximately 60 people, they had been in business for over 40 years,

and they made precast cement. He explained that his company had not done the exterior of their building, but that was an example of what his company did.

In response to Mr. Hammack's question, Mr. Emrich said the trial would take place in early June. Mr. Hammack asked if the request for an additional 30-day deferral would be sufficient and would issues be resolved within that timeframe. Mr. Emrich replied that he was not sure that 30 days would be sufficient because Campbell's Gas Company had the right to appeal the court's decision; however, he thought Campbell's was conducting a holding action until they could relocate. He said he was not sure that 30 days would allow the appellants to reach a final agreement with the staff on a consent order, but they hoped to be able to do that and to move on. Mr. Hammack asked if the litigation would impact the appellants' ability to work out an agreement with staff. Mr. Emrich said he did not think so because there was a provision in the draft agreement that stated that the appellants must diligently pursue the eviction of Campbell's Gas Company, and that would be an exception to the other requirements to bring them into compliance by stated deadlines.

Mr. Hart asked whether the tenant that was the subject of the eviction notice before the Circuit Court had appealed the violation. Jayne Collins, Zoning Administration Division, said the notices of violation had been sent to the property owners, not the tenants. Mr. Hart said he thought that if the notice was not sent to the tenant, that the process would have to begin again if they refused to leave. William Shoup, Zoning Administrator, replied that because of the nature of the violations, the strategy on Cinder Bed Road was to send the notices to the property owners. He said that in many cases tenants were on and off the property, and after having consulted with the Office of the County Attorney, it was believed that staff could pursue the violation by citing the owners only. Mr. Hart said that a request for a 30-day deferral could work procedurally if the owner of the property was cited and not the tenants. He said he wanted to know if a deferral of 30 days would matter in the case when a tenant had a physical presence, was somewhat entrenched, was represented by counsel, and was actively resisting the owners' attempts to remove him from the property through the court.

Elizabeth Teare, Office of the County Attorney, said the County had similar situations in other cases that the County Attorney had litigated to conclusion in the Circuit Court where they had noticed the owner, the violations were lodged against them, and they had tenants on-site. She explained that what had been done in the context of the orders was to find the owner in violation for permitting the violations to occur on his property, and that was the issue in the cases before the Board. She said the owner would be directed to diligently pursue those eviction proceedings, and the violation would be resolved because if the tenant was evicted, his unlawful uses went with him. She said that was the mechanism by which the County had been addressing the issue of a tenant on these particular sites, and it had been very effective. Ms. Teare said that even though they just cited the owner, which the County was lawfully entitled to do, the County had been able in all of the cases to get the tenants off at the same time by directing the owner to pursue eviction proceedings against that tenant.

Mr. Hart said he did not have a problem with a strategic decision to pursue 15 owners instead of 150 tenants; however, in a situation where it was the last tenant who was more substantial and entrenched than someone working on a car in the midst of many junk cars, if a judge found a reason why the landlord was not entitled to possession, the tenant's presence would continue. He noted that the appeals had been deferred several times and asked if it was true that 30 more days would not make a difference because the tenant was still there and a violation was never issued to him. Ms. Teare said it would make a tremendous difference if the Board of Zoning Appeals proceeded because the violations that existed on the site were not only those of the tenant, they were also attributed to the owners. She said that if the Board would proceed with upholding the Notices of Violation, that would allow the County Attorney to go into Circuit Court on an enforcement action, where presumably the issues pertaining to the tenant and the eviction proceedings would have been heard, and everything could proceed in tandem. She stated that there was nothing in the Zoning Ordinance that required the County to issue a Notice of Violation to the tenant, and, therefore, there was no legal reason why the Board could not proceed to hear the violations and act effectively to remedy the problems that existed that had been created directly by the owner. Mr. Emrich said that what he anticipated would happen in the next 30 days was that the appellants would have a court order which would resolve the issue so the Board would not need to hold a hearing, which could result in someone appealing the BZA decision and then going to court against the appellants. He said they were trying to work it out, it could be done, and it appeared that the appellants were getting close to a conclusion.

Mr. Hart stated that in staff's memorandum dated May 16, 2005, Attachment 4, there were new photographs that had been taken by Joe Bakos, Zoning Enforcement Branch, of what appeared to be a silt fence failing, erosion, and a pipe full of mud. He asked if that was something new and if there was some immediacy to the

situation that would do more damage if they waited 30 days. Mr. Bakos stated that the photograph had been taken of Lot 4, and there was now an erosive gully that was four feet deep that had been eroded from the runoff that had been diverted from the subject site. Mr. Hart asked whether something had changed or it was how it had been. Mr. Bakos said that what had changed was that previously in the void was the stockpile of concrete and other products, and the drainage ran between the materials down to Longbranch, and because the precast materials had been removed and the area reworked with a grader, the land was soft enough to allow the recent rains to form the gully and change the direction again, crossing the width of Lot 4 and into Longbranch, rather than proceeding down Lot 3B to Longbranch. Mr. Bakos said that if the appeal was not decided, there would be continuing erosion and sediment loss from Lot 4 directly into Longbranch. He said the area of erosion had already been restored based on a court order against the owners of Lot 4, and except for the damaged area, the site was already being reforested.

Mr. Emrich explained that what had happened was that cleaning debris out of the floodplain, as they were required to do, helped open the channel, and at one point Lot 4 was higher and had been graded lower, but it was not part of a Notice of Violation, so it was not before the Board. He said his clients would address the problem regardless of what happened with the Board.

Mr. Beard asked what the overall condition of the situation was and how many years he had been involved. Mr. Bakos stated that in this particular case he had been involved with the appellants for the prior three years, significant progress had been made on Lots 1, 2, 3A and 3B, and they were the last four lots on Cinder Bed Road on which Zoning Enforcement was resolving problems. He said that what remained in the floodplain was the tenant on Lot 3B, some of the tanks which he believed had been abandoned and projected beyond the tenant's fence line between the rear fence line and the stream, a significant concrete block wall that ran across Lots 3A and 3B, and the fill material behind the wall. Calling attention to a photograph, Mr. Bakos said that as close as he could guess, the concrete mass was the beginning of the floodplain on Lot 3B. He said there had been a lot of work done to remove the material out of the floodplain, but it did not solve the lack of site plans, building permits, Non-Residential Use Permits, or diverting drainage that ran between Lots 3A and 3B. Mr. Bakos stated that the previous site plan that had been approved in the 1960s for the site had runoff that ran along the north lot line of 3A down to Longbranch. He said the material which had been removed had previously been acting as a dam, which changed the course of the drainage by diverting it 90 degrees so that it ran across the back of Lot 3B, and that was noted on the zoning violation. Mr. Bakos pointed out on photographs the material which had been removed from the floodplain, the remaining retaining wall that was approximately 10 to 14 feet in height, and the fill located behind it. He said the abandoned tanks were located behind the fence that divided Campbell's Gas perimeter from Longbranch, and at Mr. Beard's request, he pointed out the outline of Campbell's perimeter and where the tanks were on Lot 3B which were protruding from the rear perimeter fence. Mr. Bakos said that some of the removal had happened within the prior year, the erosion problems had been happening within the prior few months, and he did not know when the tanks had been abandoned behind the perimeter of Campbell's Gas; however, he indicated that they had been there since Zoning Enforcement inspectors had been walking the site.

Mr. Emrich stated that the wall he mentioned had been installed when the property was developed approximately 35 to 40 years prior, and that issue would have to be addressed in the consent agreement if a consent order was entered. He said the problem was that the way the site was designed and operated, the wall had to remain until American Stone vacated the property because if it was torn down now, they would be out of business.

Mr. Beard asked Mr. Emrich if it was his contention that the court case would have no effect on working with County staff. Mr. Emrich said the court case would go forward, the order that was entered would have a provision to that effect, and the appellants were proceeding on that. He said that what the appellants were attempting to do was to get a 30-day continuance to enable them to bring the situation to a close; however, that was not the reason they asked for a stay because that could take some time. Mr. Emrich said the appellants were asking for the deferral because they had received a draft of the consent order that would say what had to be done within specified periods of time and what would happen if they didn't reach an agreement. He pointed out that the deferral would be an opportunity for the appellants to try to work the agreement out, and then they would not have to worry about any other remedies because everything now before the Board would have been resolved, the court order would be entered and in effect, and things would be done pursuant to it.

Responding to Mr. Beard's question, Ms. Teare said there were two different legal proceedings. She said Mr. Emrich was talking about an eviction proceeding against Campbell's Gas which would be going into a de novo appeal to the Circuit Court sometime in June of 2005. She stated that the outcome of that litigation

would decide whether Campbell's Gas needed to vacate the premises. She said the litigation Mr. Beard was speaking of that may be resolved by consent decree if the Board upheld the Notices of Violation was the prospective litigation that would occur between the County and the appellants. She said that what Mr. Emrich was talking about was fast forwarding and settling that potential litigation by consent decree now, which would give the County the relief that it was seeking as part of the Notices of Violation. Ms. Teare indicated that 30 days would not help or change anything insofar as the County was concerned, except to further delay the proceedings and allow the property owner to continue to violate the Zoning Ordinance during the interim. She said that when the appellants appeared before the Board 30 days prior, the same suggestion was made, and the first anyone gave the County any substantive interaction with respect to that decree was at 10:45 a.m. on May 23, 2005. She said that at that point various iterations of a draft were going back and forth with insufficient time to work out their provisions, the draft consent decree for Parcels 1 and 2 had not been shown to the client, everything had been done at the eleventh hour, and at the eleventh hour at the Board of Supervisors meeting there was a representation that the affidavit was insufficient for proceeding with the hearing, resulting in a deferral of the special exception again. Ms. Teare said the County was unfortunately tangled up in an ongoing delay of the proceedings. She suggested that if the Board of Zoning Appeals proceeded with a ruling on the violations, it would do nothing to impede a potential settlement. All it would do would be to hasten it because at that point the County was on the road to Circuit Court, and there was every incentive for those people to settle with the County, if they were going to, and the pressure would be on.

Mr. Hammack asked whether a suit had been filed. Ms. Teare said the suit had not been filed because the County was stayed in its enforcement proceedings while they were pending in the Board of Zoning Appeals. She said that as soon as the Board decided the matter, then the County Attorney could proceed to file suit in Circuit Court. She said what she had been talking about was entering into a consent decree before the suit was filed, and that was why this case was so confusing. Ms. Teare said the County Attorney had done some of the drafting on the proposed consent decree.

Mr. Emrich stated that there was a contract purchaser who had negotiated a contract for all of the property, and it had been signed at the end of April of 2005. He said the affidavits for the rezoning had been prepared some time ago for the rezoning, and he noticed on the day before the hearing at about 2:30 p.m. that he had not identified the contract purchaser, so he brought that to the County's attention. He stated that with respect to the issue of when the drafts were submitted, when the purchaser approached the appellants, he had advised them that he had contacted Supervisor Kauffman's office. At that time the appellants had been advised that the Zoning Administrator had agreed that much of the remediation the appellants had agreed to do could be done by the purchaser when he took title because he would come in with a different use of the property, and much of what the appellants did would have to be redone because it would cause a second disturbance of the floodplain. Mr. Emrich said that on May 23rd, he had received a series of e-mail exchanges between the representative of the purchaser and the Supervisor's office with the last one stating that the Zoning Administrator had not agreed to any remediation being done by the contract purchaser. Ms. Teare confirmed that statement. Mr. Emrich said that this was not a case of people waiting until the last minute. It was one of too many people talking about the same property.

Mr. Hammack moved to defer the hearing for 30 days. The motion failed for lack of a second.

Jayne Collins, Zoning Administration Division, made staff's presentation as set forth in the memorandum dated May 16, 2005. Staff continued to recommend denial of all three special exceptions because the appellants were clearly in violation of the Zoning Ordinance for years; they have had almost three years since the Notices of Violation were issued to comply by submitting site plans and building permits for the leased tenant spaces. Staff felt that those things would not have been cured by the special exceptions, yet the appellants did nothing in the three years to remedy the situations. The appellants requested an additional 30 days to work out an agreement, and they had yet to reach an agreement with the Office of the County Attorney. Staff strongly urged the Board to uphold the Zoning Administrator so staff could take legal action and gain compliance.

Mr. Emrich said that when the appeal was filed, the appellants had stated that they would attempt to work things out, but they questioned some of the allegations that were made in the Notices of Violation, including that staff did not notify all of the necessary parties, the allegations in the Notices were not clear to them, and they did not believe there was anything in the floodplain. He said that subsequently they had determined that staff had been correct.

Vice Chairman Hammack assumed the chair.

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

Mr. Beard moved to uphold the determination of the Zoning Administrator regarding A 2002-LE-031.

Vice Chairman Ribble resumed the Chair.

Ms. Gibb seconded the motion.

Mr. Hart stated that he thought the Board needed to put some findings on that record that based on the analysis in the staff report and the record before the Board that the Zoning Administrator's determination was correct, and that had been in large measure conceded by Mr. Emrich.

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

Mr. Beard moved to uphold the determination of the Zoning Administrator regarding A 2002-LE-001 for reasons noted earlier by Mr. Hart, based on the record before the Board, and the fact that the appeal had been deferred some nine times. Mr. Pammel and Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, Scheduled case of:

9:30 A.M. MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2025 Franklin Av. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2.

Vice Chairman Ribble noted that A 2005-DR-009 had been administratively moved to June 28, 2005, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Approval of March 2, 2004; April 27, 2004; October 19, 2004; and November 2, 2004 Minutes

Mr. Beard moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Request for Additional Time
Vale United Methodist Church, SPA 73-C-187 and VC 2002-SU-123

Mr. Hart moved to approve 30 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was October 30, 2007.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Request for Additional Time
Jerold and Nancy Jurentkuff, VC 99-H-191

Mr. Hart moved to approve 30 months of Additional Time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was September 14, 2007.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Request for Additional Time
Greenbriar Civic Association, Inc., Agape Christian Fellowship Church, and
Pleasant Valley Preschool, SPA 78-P-192-02

Mr. Pammel moved to approve 12 months of Additional Time. Ms. Gibb and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was February 13, 2006.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Request for Intent to Defer Decision
Betsy Boyle, A 2005-BR-005

Mr. Hart moved to approve the request for an intent to defer decision to June 28, 2005, at 9:30 a.m. Ms. Gibb and Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Request for Reconsideration
Recycle America Alliance LLC, A 2005-BR-004

Mr. Hammack moved to approve the request for reconsideration. Mr. Pammel seconded the motion, which carried by a vote of 4-2. Mr. Ribble and Mr. Hart voted against the motion. Chairman DiGiulian was absent from the meeting. The new hearing was set for July 12, 2005.

//

~ ~ ~ May 24, 2005, After Agenda Item:

Approval of May 17, 2005 Resolutions

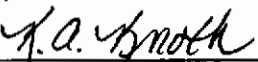
Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

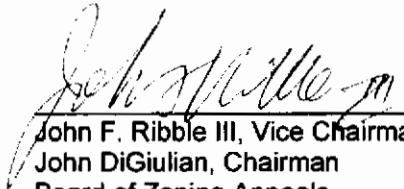
As there was no other business to come before the Board, the meeting was adjourned at 1:35 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: June 3, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 7, 2005. The following Board Members were present: Chairman John DiGiulian; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

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

~ ~ ~ June 7, 2005, Scheduled case of:

9:00 A.M. WINCHESTER HOMES INC., SP 2005-SU-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a subdivision sales office. Located at 12861 Sunny Fields La. on approx. 37,200 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((25)) 1. (Admin. moved from 3/15/05 at appl. req.) (Decision deferred from 3/22/05 and 5/17/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Kinney, 1751 Pinnacle Drive, McLean, Virginia, the applicant's agent, replied that it was.

Mavis Stanfield, Senior Staff Coordinator, reminded the Board that this case had been deferred for decision only. The applicant had submitted revised development conditions with minor changes which addressed how the lots were released, so that they would be released off-site and not at the sales trailer, an issue that had been brought up at the previous hearing. Ms. Stanfield stated that staff had no objection to the applicant's changes.

Mr. Kinney thanked the Board for the previous deferral in order to allow the Sully District Transportation and Land Use Committee to review the proposal. Upon review, the Committee had no issue with the application. Mr. Kinney said that his client had developed new procedures regarding the release of lots which would eliminate people waiting in line or camping out on site. He said it would be along the lines of a lottery. In summary, Mr. Kinney respectfully requested approval of the application.

Chairman DiGiulian called for speakers.

Sue Bartee, 12807 Rose Grove Drive, Herndon, Virginia, came forward to speak. Ms. Bartee said the property was not adjacent to the model home. Winchester Homes annexed the homes and added them to their homeowners association. They were concerned about the model homes being in the neighborhood due to traffic and objected to a business being run out of the home.

Mr. Kinney said the temporary special permit for the office use in the model was issued in December of 2002 and expired in December of 2004. The pending application was filed prior to the expiration.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2005-SU-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WINCHESTER HOMES INC., SP 2005-SU-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a subdivision sales office. Located at 12851 Sunny Fields La. on approx. 37,200 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((25)) 1. (Admin. moved from 3/15/05 at appl. req.) (Decision deferred from 3/22/05 and 5/17/05) 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 7, 2005; and

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

1. The applicant is the owner of the land.
2. Subdivision sales offices are fairly routinely approved because it is recognized in the County that most large subdivisions are entitled to have a model home or maybe more than one.
3. There was opposition at the previous public hearing; however, a letter with proposed solutions was submitted by the applicant which addressed the problems raised, which included traffic congestion, stacking of cars, noise, and allegations of public urination.
4. The property is in compliance with the applicable standards.

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

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

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

1. This approval is granted to the applicant, Winchester Homes, only and is not transferable without further action of this Board, and is for the location indicated on the application, 12861 Sunny Fields Lane, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by David R. Wheeling, dated June 21, 2002, revised through February 11, 2004, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The hours of operation for the subdivision sales office shall be limited to a maximum of 11:00 a.m. to 6:00 p.m., daily. Winchester Homes shall establish and follow a procedure whereby prospective buyers register to purchase a new home via an off-site internet registration. Prospective buyers shall be notified at the time of the registration that if they attempt to meet with sales representatives at the sales office for the purpose of securing a sales release during hours not approved with this condition, the prospective buyer will, to the extent permitted by applicable laws, be removed from the registration list of potential buyers.
5. The maximum number of employees associated with the subdivision sales offices shall be two on site at any time.
6. This Special Permit shall expire automatically, without notice, on June 6, 2007, or upon settlement of the last lot to be sold among the lots identified as Tax Map Numbers 35-4 ((26)) 1 through 11 and 13 through 21, whichever occurs first.
7. If the area being used for the sales office is in the garage, it shall be converted back to garage space upon cessation of the sales office use, or no later than June 7, 2007, whichever occurs first.
8. All signs shall comply with the requirements of Article 12 of the Zoning Ordinance. No temporary signs, including "Popsicle" style paper or cardboard signs, shall be placed on or off-site to assist in the sale of homes in the subdivision. All agents and employees involved in the marketing and sale of the residential units in the subdivision shall be directed to adhere to this condition.

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

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. *This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 15, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:00 A.M. ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 17.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.) (Continued from 2/1/05) (Decision deferred from 2/15/05) (Reconsideration granted on 3/22/05) (Admin. moved from 5/24/05 at appl. req.)

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

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Ms. Langdon said the variance request had previously been denied, but then was granted reconsideration by the BZA on March 22. She noted that the applicant was requesting a variance to permit the construction of a dwelling 19 feet from the front lot line, with an eave 17 feet from the front lot line. A minimum front yard of 50 feet is required; however, eaves are permitted to extend 3.0 feet into the front yard; therefore, variances of 31 feet and 30 feet respectively, were requested.

Ms. Langdon noted that the applicant had submitted a revised plat which staff had distributed at the hearing; however, the variance request, the distance to the front lot line, had not changed.

Grayson Hanes presented the variance request as outlined in the statement of justification submitted with the application, stating that he believed this case met Cochran's strict ruling and complied with Section 15.2, 2309. He noted that the plat had been revised and now represented an exact footprint of the existing non-conforming house.

Mr. Hanes said the applicant merely wanted to reside in the house; however, a structural engineer had reported that the house was failing, having split beams, the foundation was poor, and there was a failed septic field. He continued that there was black mold under the house, the floors were sinking, the walls had cracked, and there was pending water on the property. Mr. Hanes said that, in light of the report by the structural engineer, there was no reasonable beneficial use of the property, which constituted an unnecessary and unreasonable hardship, complying with the Cochran requirement. He noted that the Pulaski, Bratti, and Virginia Beach cases all had other possibilities of reasonable use of the property. Mr. Hanes discussed other cases in Virginia which were negated by the Cochran ruling, but felt the applicant met the variance standards required by the Supreme Court.

In response to a question from Mr. Hammack, Jane Kelsey, Jane Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, consultant for the applicant, went over the revised plat. She pointed out the original footprint of the house and noted where the revisions had been made to return the house size to its original dimensions.

Mr. Hart discussed the case of Packer v. Hornsby, wherein the Supreme Court ruled that past use of the property was a reason to find that there was no hardship. He noted that in the Hickerson case, Mr. Hickerson could not add or modify plumbing, upgrade the electrical system to safety standards, add heating or air conditioning, make structural modifications for safety reasons, or otherwise make additions. Mr. Hart said the argument was made that those restrictions made it a hardship, but noted that the Court pointed out that Mr. Hickerson did not experience an undo hardship since he had enjoyed the use of his home since 1964. He felt that argument was also being made for this variance application, in that there was an obsolete, perhaps dangerous structure that could not be fixed under the current constraints. Mr. Hart asked Mr. Hanes to address the "past use" concept as it pertained to the applicant's variance request.

Mr. Hanes said it was puzzling to him why the courts in Packer v. Hornsby and Hickerson talked about the owners having some prior reasonable use of the property. He felt it was almost as though the courts were determining that since they had earlier use of their property, they were not really injured by not allowing them to make some reasonable use of the property now. Mr. Hanes said it made no sense how that tied in with a variance request. He did not think that past use of the property had anything to do with whether or not there

was an unnecessary hardship. Mr. Hanes stated that the applicant was only asking for the right to use what she had now and be safe.

At the request of Mr. Hart, Mr. Hanes distributed copies of the Salem case to the Board.

Chairman DiGiulian called for speakers; there was no response.

Mr. Pammel moved to defer decision on VC 2004-MV-112 to June 14, 2005, at 9:00 a.m. Mr. Hart seconded the motion.

Ms. Gibb stated her opposition to another deferral, noting that if the deferral was so that the Board could read the Salem case, she would rather take the time now to read it and make a decision today.

The Board took five minutes to review the Salem case.

Mr. Pammel withdrew his motion to defer decision and moved to approve VC 2004-MV-112 for the reasons stated in the Resolution.

Ms. Gibb seconded the motion and stated her support of the motion. She disagreed with the premise that if someone had enjoyed previous use of their home, that they had no right to utilize the same building envelope in the future.

Mr. Hammack said he would support the motion, stating his agreement with the points raised by Mr. Pammel and Ms. Gibb. He felt the subject property met all the required standards for a variance to be granted and noted that the applicant was not seeking any greater variance than building in the same footprint.

Mr. Hart noted the footprint of the proposed house had been reduced so there was no increase between what the owner currently had and what was being requested. Mr. Hart said the Hickerson case was identical to this case in one aspect. They were both old houses that were falling down and could not be fixed up absent some relief from an ordinance provision. He felt they were dissimilar in that the applicant in this case was requesting the placement of a structure in exactly the same place, wherein Hickerson had requested to fix up the ramshackle house, and as a result, it also would have resulted in a second buildable lot. Mr. Hart said future cases would have to be reviewed to deal with the problematic issue of whether past use of the property sufficed as a reasonable beneficial use so as to preclude a variance. However, in the case at hand, he felt there was no reasonable beneficial use of the lot absent a variance. For those reasons, Mr. Hart said he would not oppose the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELSIE D. WEIGEL, VC 2004-MV-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of dwelling 19.0 ft. with eave 17.0 ft. and stoop 17.0 ft. from the front lot line. Located at 11317 River Rd. on approx. 15,000 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 34. (Deferred from 10/26/04 at appl. req.) (Admin. moved from 12/7/04 at appl. req.) (Continued from 2/1/05) (Decision deferred from 2/15/05) (Reconsideration granted on 3/22/05) (Admin. moved from 5/24/05 at appl. req.) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 2005; and

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

1. The applicant is the owner of the land.
2. The facts set forth in Mr. Hanes' presentation were the primary basis for the motion to approve the application.
3. Since the Ccchran decision, the Board had been in a position where it is unable to move in any

direction, but the Board feels there is a conflict with the decision that was formulated by Justice Russell.

4. It is a sad testimony that the Board is saying, in effect, through the Cochran decision, that if the owner had prior beneficial use of the property, they do not meet the standards for a variance.
5. No one acquires property to live in who does not anticipate that they will be able to live in the property to the time they either pass on or are able to sell the property, with the furthest from their minds being the thought that they would lose the property through the inability to bring the property, or reconstruct it within the existing envelope, up to current standards.
6. If the Board denied the variance request, it would be taking an action that would, in effect, confiscate the property owner's property, leaving her with no other option than to live in it until it collapses and then leave the property, with the ultimate beneficiary to be Fairfax County or the State, who would get the property for a fire sale.
7. For years the County has zoned property in categories uniformly regardless of lot sizes, existing development subdivisions and the like because that was what it was felt the zoning and the development of the property in the future should occur at, with little or no thought given to the existing development there.
8. In the subject case, it is a subdivision that has individual lots that are probably not more than a couple thousand square feet, and in most instances, lots down there with homes have been consolidated to at least meet the standards of the R-2 District, not R-E; therefore, the County has intentionally zoned these properties, irrespective of the lots sizes and development, to a zoning category which the standards therein cannot be met under any conditions by those folks who live on the lots or someone who would acquire one of the properties to build a house, rendering for the most part the properties for future use as useless.
9. There is little, if any, value to these nonconforming lots.
10. If favorable action was not taken by the Board, the only recourse would be for the County to zone the property to a zoning category that is consistent with the lot sizes of the properties therein, which would be unlikely.

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

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

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

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

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

1. This variance is approved for the location of a dwelling, as shown on the plat prepared by Laura L. Scott, dated April 22, 2004, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

The motion carried by a vote of 5-0-1. Mr. Hart abstained from the vote. Mr. Beard was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 15, 2005. This date shall be deemed to be the final approval date of this variance.

//

Susan Langdon, Chief, Special Permit and Variance Branch, introduced Cathy Belgin, a new staff member in the RZ and SE branch of the Zoning Evaluation Division, who would be assisting with BZA cases for the next few months.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 35 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, and 4/19/05 at appl. req.)

Chairman DiGiulian noted that SPA 75-S-177 had been administratively moved to June 14, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. EUGENE J. OLMI, JR. AND NENITA CASTILLO OLMI, A 2005-MV-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have installed a concrete wall which is interfering with natural drainage on abutting property in violation of Zoning Ordinance provisions. Located at 2100 Windsor Rd. on approx. 14,287 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(21) 610.

Chairman DiGiulian noted that A 2005-MV-010 had been withdrawn at the applicants' request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. BATAL CORBIN, LLC, A 2005-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of the order contained in a February 10, 2005, Notice of Violation directing the

appellant to immediately cease all development activities until such time as legislative action is secured from the Board of Supervisors to resolve the violation. Located at 2346 Gallows Rd. on approx. 7.69 ac. of land zoned R-2. Providence District. Tax Map 39-4 ((1)) 26.

Chairman DiGiulian noted that A 2005-PR-007 had been administratively moved to September 20, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales office in a model home without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 13534 Lavender Mist La. on approx. 2,546 sq. ft. of land zoned PDH-8 and WS. Sully District. Tax Map 55-1 ((27)) 128. (Admin. moved from 2/15/05 and 4/26/05 at appl. req.)

Chairman DiGiulian noted that A 2004-SU-044 had been withdrawn at the applicant's request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. WINCHESTER HOMES, INC., A 2004-SU-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a sales office in a model home without a valid Temporary Special Permit in violation of Zoning Ordinance provisions. Located at 13539 Lavender Mist La. on approx. 1,938 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 55-1 ((27)) 65. (Admin. moved from 2/15/05 and 4/26/05 at appl. req.)

Chairman DiGiulian noted that A 2004-SU-045 had been withdrawn at the applicant's request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-087 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7331 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-8 ((53)) 4. (Deferred from 4/19/05 at appl. req.)

Ms. Gibb made a disclosure, but indicated she did not believe her ability to participate in the case would be affected.

Chairman DiGiulian called the appellants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Moretti, the appellants' agent, replied that it was.

Mary Ann Tsai, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the appellants had paved approximately 80 percent of the front yard, in excess of the allowable 30 percent surface coverage area. Ms. Tsai said inspection of the site showed concrete paving of a circular driveway in excess of the approved grading plan for a 1,375 square foot driveway. She noted that the concrete driveway area had been expanded and now totaled approximately 3,663 square feet. Ms. Tsai stated that the appellants' attorney had submitted a letter to staff that morning dated June 6, 2005, from a certified engineer which alleged that a house location survey he conducted on May 3, 2005 showed a surface area of 70 percent. However, the June 6, 2005 calculations contained in the letter did not match the May 3, 2005 house location survey; therefore, a revised plan by a certified engineer was needed. Ms. Tsai stated that although the appellants were currently removing portions of the concrete surfaced area, the sections to be removed and total square footage of the front yard have not yet been indicated on a certified plat. She asked that the Board uphold the Zoning Administrator's determination.

Mr. Hammack asked why Salem Khoury, one of the property owners, had not been served with a Notice of Violation (NOV) and was not present for the appeal hearing. Antoine S. Khoury, one of the appellants, said he had been drafted to go to Iraq; therefore, for estate planning purposes, he put his son on the deed.

Mr. Hart did not think the Board could proceed with the hearing when only two of the three owners had been notified. Mavis Stanfield, Senior Staff Coordinator, said since Antoine and Hiam Khoury lived in the home and had been the actual violators of the Zoning Ordinance, staff felt the case could go forward. In response to a question from Mr. Ribble, Ms. Stanfield said she had not checked with the County Attorney to substantiate staff's opinion.

Mr. Hammack said although two of the owners were present, he felt all three needed to be in attendance for a final determination to be rendered. He wanted staff to check with the County Attorney and defer the hearing to allow enough time for Salem Khoury to be present.

Ms. Gibb reminded the Board that this appeal was similar to the Cinderblock Road appeal, where the NOV had been issued to the owners of the property, not the tenants who were violating the Zoning Ordinance. She stated her concurrence that all owners needed to be present for the hearing to continue.

Ms. Stanfield said staff was amenable to a deferral, but noted that there were people present that wanted to speak to the appeal. She suggested that the Board go ahead with the hearing and then defer the decision.

Mr. Hammack said staff ought to have an opportunity to check with the County Attorney. He was inclined to defer the hearing until Salem Khoury could be present or until a NOV could be issued to him. Mr. Hammack also mentioned that the staff report alleged other violations which were not present before the Board. He said if staff was of a mind to issue additional NOVs, a deferral would provide the additional time to do so and the issues consolidated.

In response to a question from Mr. Hammack, Ms. Stanfield suggested a deferral date of June 28, 2005. Mr. Hammack pointed out that Salem Khoury was entitled to a thirty day appeal time, so he felt a later date would be necessary.

Mr. Moretti said that the homeowners were making an effort to bring the property into compliance. He said based on the time necessary for the contractors to complete the work, the appellants would prefer a date no earlier than July 15, 2005. Mr. Moretti said by that time, the Zoning Administrator and the owners may have reconciled the matter, and it might be able to be dismissed.

In response to a question from Mr. Hart, Mr. Moretti said he was only representing Mr. and Mrs. Khoury and had not been formally engaged by Salem Khoury.

Mr. Hammack moved to defer the appeal to the end of the agenda in an effort to reach the County Attorney for their input on the matter. Ms. Stanfield said she would make the call. She noted that it was usually difficult to reach the County Attorney and asked if Bill Shoup, Zoning Administrator, would be an acceptable alternative. Mr. Hammack asked that Ms. Stanfield try to reach both of them.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. EXPRESS TINT, A 2004-SU-030 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is occupying the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-3, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04, 3/8/05, and 5/10/05 at appl. req.)

Chairman DiGiulian noted that A 2004-SU-030 had been withdrawn at the appellant's request.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. DENNIS O. HOGGE AND J. WILLIAM GILLIAM, A 2004-SU-031 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a tenant to occupy the site as a vehicle light service establishment without an approved Special Exception and without site plan, building permit, Non-Residential Use Permit and sign approvals, all in violation of Zoning Ordinance Provisions. Located at 13900 Lee Hwy. on approx. 6,334 sq. ft. of land zoned C-8, S-C, H-C and WS. Sully District. Tax Map 54-4 ((1)) 53. (Deferred from 12/14/04, notices not in order) (Deferred from 3/8/05 and 5/10/05 at appl. req.)

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

Mary Ann Tsai, Staff Coordinator, said the appeal was being withdrawn and that Mr. Sanders had submitted a withdrawal letter and staff had accepted it.

//

~ ~ ~ June 7, 2005, Scheduled case of:

9:30 A.M. MRS. BETSY BOYLE AND MRS. DEMETRA MILLS, A 2005-BR-005 Appl. under sect(s). 16-301 of the Zoning Ordinance. Appeal asserting that the Zoning Administrator made a verbal determination on January 26, 2005 not to issue a Notice of Violation at that time for operating a place of worship without special permit approval on property located at Tax Map 70-3 ((4)) 113. Located at 8434 Thames St. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-8 ((4)) 113. (Decision deferred from 5/10/05) Intent to Defer to 6/28/05 approved on 5/24/05

Chairman DiGiulian noted that the Board had issued an Intent to Defer on May 24, 2005 for A 2006-BR-005, to defer decision to June 28, 2005, at 9:30 a.m., at the appellants' request.

Mr. Ribble moved to defer decision on A 2005-BR-005 to June 26, 2005, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ June 7, 2005, After Agenda Item:

Request for Additional Time
Trustees of Mount Pleasant Baptist Church, SPA 75-M-060-2 and VC 2002-MA-060

Mr. Pammel moved to approve twenty-four (24) months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was March 25, 2007.

//

~ ~ ~ June 7, 2005, 2005, After Agenda Item:

Request for Additional Time
Cub Run Baptist Church/Cub Run Primitive Baptist Church, SP 97-Y-029 and VC 97-Y-056

Mr. Hart moved to approve seven (7) months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was September 12, 2005.

//

~ ~ ~ June 7, 2005, After Agenda Item:

Request for Additional Time
St. James Episcopal Church Trustees, SPA 86-V-052-2

Mr. Ribble moved to approve twelve (12) months of additional time. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was April 23, 2006.

//

~ ~ ~ June 7, 2005, After Agenda Item:

Request for Additional Time
St. Francis Episcopal Church of Great Falls, SPA 82-D-037-4

Mr. Pammel moved to approve six (6) months of additional time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was October 16, 2005.

//

~ ~ ~ June 7, 2005, After Agenda Item:

Request for Reconsideration
Ann Huffman, A 2005-DR-002

Mr. Hart and Mr. Hammack recused themselves.

No action was taken; therefore, the request for reconsideration was denied.

//

~ ~ ~ June 7, 2005, Scheduled case of (Continuation of Public Hearing):

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-037 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7381 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((53)) 4. (Deferred from 4/19/05 at appl. req.)

While awaiting further information from Mavis Stanfield, Senior Staff Coordinator, Ms. Gibb asked about the restriction regarding paving no more than 30 percent of a driveway and an approximate date for its enactment. Ms. Tsai answered that the Ordinance had been amended approximately three years ago and that any paving before that time would be grandfathered.

Chairman DiGiulian called for a brief recess at 10:33 a.m. to await staff's answer from the County Attorney. The Board reconvened at 10:34 a.m.

//

Mr. Hammack moved that the Board enter into a Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Demetriou appeal, McCarthy appeal, West Lewinsville subpoena, and the letter to the County Executive, Anthony Griffin, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

The meeting recessed at 10:36 a.m. and reconvened at 10:55 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the hearing.

//

~ ~ ~ June 7, 2005, Scheduled case of (Further Continuation of Public Hearing):

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7381 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((53)) 4. (Deferred from 4/19/05 at appl. req.)

Mavis Stanfield, Senior Staff Coordinator, explained that Bill Shoup, Zoning Administrator, had spoken to an Assistant County Attorney who said the BZA was not barred from proceeding with the hearing and that any combination of landowners could be noticed. However, if this case went to court, all of the property owners would be required to be noticed.

Mr. Hammack asked if that changed staff's position with regard to a deferral or to proceed with the case. Ms. Stanfield answered that it was the BZA's decision, but noted that there were citizens present who wished to speak to the appeal.

In response to a question from Mr. Hammack, Mr. Moretti said the appellants would like the appeal to be deferred. He questioned whether the citizens in attendance wanted to speak on the matters they presented in a letter to the Board, which were outside the scope of the appeal. Mr. Moretti felt it was in everyone's interest to defer the matter.

Chairman DiGiulian called for speakers to address the question of a deferral.

Anthony Ruth, 3912 Lincolnshire Street, Annandale, Virginia, came forward to speak. Mr. Ruth said he represented eight other homeowners that were not in favor of an increased concrete walk or any concrete area on the property.

Mr. Hammack thought that by going forward with the case, the County risked having future procedural problems in enforcement. He pointed out that there were a lot of factors out of the BZA's control. For instance, the Board could not force the County to issue zoning violations or have Salem Khoury brought in as a party. Mr. Hammack stated that he did not want to end up hearing this case again, noting that the best option would be to defer the appeal in order to give the County more time to review the case, time to notify Salem Khoury, and to decide if there would be any other zoning violations.

Mr. Hammack moved to defer A 2004-MA-037 to July 26, 2005, at 9:30 a.m. Mr. Ribble seconded the motion.

Mr. Hart brought up the Citcc gas station case, which went on for nine years, where the BZA finally upheld the Zoning Administrator. Although it did not go to court, the County Attorney's Office opined that the NOV was not valid because the County had proceeded against just the tenant and not the owner. Mr. Hart felt the cases were similar and stated that if there was a possibility of this appeal going to court, then all the appellants needed to be parties to the NOV.

Ms. Gibb pointed out that Seville Estates, LLC, the homeowners association, was copied on the NOV. Due to her prior representation of Seville Homes and Seville Estates, she asked the appellants' agent if she should recuse herself. Mr. Mcretti answered that there might be a potential conflict because the building permit under which the house was built had been pulled by Seville Homes, and the driveway was under contract through the homeowner who purchased it from Seville Homes.

Mr. Hammack said perhaps the homeowners association needed to be issued an NOV if it owned the driveway.

Mr. Hart referred to a certified plat dated May 3, 2005, that showed the driveway extending onto Lot 5, which was not part of the property, but which was different from the grading plan in the staff report. He stated that the paved area was located on two lots.

Chairman DiGiulian called for the vote. The motion carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Beard was absent from the meeting.

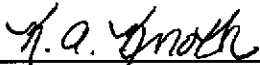
Mr. Pammel noted that the side yard coverage needed to be looked at to see if it was in compliance or not.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:07 a.m.

Minutes by: Vanessa A. Bergh / Suzanne Frazier

Approved on: November 3, 2010



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 14, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble, III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ June 14, 2005, Scheduled case of:

9:00 A.M. DOUGLAS A. SMITH AND CHARLOTTE LEE SMITH, VC 2005-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 10 ft. for Lot 43C. Located on the W. side of Gambrell Rd. S. of Fairfax County Pkwy. on approx. 27,349 sq. ff. of land zoned R-3. Mt. Vernon District. Tax Map 89-3 ((1)) 43C.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William C. Thomas, Jr., Esquire, Fagelson, Schonberger, Payne & Deichmeister, P.C., 11320 Random Hills Road, Suite 325, Fairfax, Virginia, agent for the applicant, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit a lot width of 10 feet where 80 feet is required by the Zoning Ordinance. The applicants proposed to construct a single-family home on Lot 43C. The lot was created with a rezoning in 1986 that allowed the subdivision of one lot into a maximum of four lots. The property was divided into three lots rather than the four approved in the rezoning, though the staff report noted that a variance would be necessary to make the subject lot buildable. Staff believed that the subject application did not meet all the applicable Zoning Ordinance provisions, specifically Standards 4, 5, and 6, and, therefore, recommended denial of the application.

Mr. Thomas presented the variance request as outlined in the statement of justification submitted with the application. He submitted that in all respects the subject lot appeared to be a buildable one, but for the lot width requirement. The property was rezoned in 1983, and although approved for four, it resulted in the creation of three lots, with one lot notated to require a minimum lot width variance for development. In 1986 a subdivision plat was approved for two buildable lots, currently Lots 43A and 43B, and an Outlot A, the subject lot, Lot 43C. Mr. Thomas said the applicants relied on the County's 1963 recommendations and approvals, and they did not realize there could later be a problem with obtaining the necessary variance. He pointed out that the applicants were not savvy land developers and would suffer an undo hardship if the variance was not approved because the property would be considered a total loss if it could not be developed. Mr. Thomas said he disagreed with staff's analysis that Standards 4, 5, and 6 were not met because, without a variance, it was an unreasonable use of the property because no reasonable use was available, and the hardship was not shared by anyone else. Mr. Thomas noted that the rezoning proffers indicated that this was a project that could move forward with a restriction stipulating that the lots created by the rezoning could only be subdivided provided that there be two access points to Gambrell Road and that the clearing and grading be limited.

Ms. Gibb clarified that, as she understood it, what originally was anticipated was four lots, which was what had been presented at the rezoning; and the current proposal was to create three lots out of what was presently two lots. She asked Mr. Thomas why the applicants decided to create two lots as they already had three lots with one outlot that required a variance. Mr. Thomas explained that Lot 43B, the larger lot, was occupied by one of the applicants who chose to maintain the lot as it was. He noted that the plan was not proffered, but was supported by the County for up to four lots. The house on the larger lot, which would have provided the fourth lot in the subdivision, was located in a place that was unfeasible for division. The applicant opted to reside on the property instead of dividing the lot and selling off that portion of the parcel. Mr. Thomas concurred with Ms. Gibb that the applicant made the choice to retain and maintain for himself the one larger lot instead of two that were approved.

Discussion followed between Mr. Hart and Mr. Thomas concerning the property's conveyance to the individual owners after the subdivision. Mr. Thomas called attention to Note 3 on the recorded plat, to which Mr. Hart said he believed it should have been a red flag to anyone acquiring Outlot A that it was an unbuildable outlot.

Mr. Hart asked Mr. Thomas to indicate how the subject lot was different than any other unbuildable cutlot shown on a subdivision plat that the Board of Supervisors approved. Mr. Thomas explained that in the Board of Supervisors' approval, the lot was contemplated as a buildable lot subsequent to its rezoning and subdivision, and since 1986 the County deemed it a buildable lot and had taxed it accordingly. He submitted that he had no authority for his proposition that the Department of Taxation Administration's treatment of a lot was binding on the BZA. Mr. Thomas said his clients were persuaded by the recommendations of staff and the Planning Commission and the Board of Supervisors' approval, although in hindsight, following the rezoning in 1983, they should have gone forward with the variance. He said the reason the subdivision plat existed with the outlot configuration was because it could not be approved any other way absent the variance. Mr. Thomas clarified that his clients no longer owned the lot to the left.

In response to a question from Mr. Hart concerning a use for an outlot, Susan Langdon, Chief, Special Permit and Variance Branch, explained that an unbuildable lot could be added to a buildable lot and a shed or accessory structure could be put on the lot, as long as it was accessory to the main lot.

Mr. Hart asked Mr. Thomas how it could be concluded that his clients were deprived, under the Ordinance, if they still had the use of the outlot because they also owned the adjacent buildable lot?

Mr. Thomas stated that his clients would not have been deprived, but would have been limited to only two lots under that scenario. He stated, however, that it was understood by the Planning Commission (PC), Board of Supervisors (BOS), and staff that the applicants could subdivide up to four lots. Mr. Thomas noted that even the PC staff report listed it as a conventional subdivision but for the need for a variance for a lot width.

In response to Ms. Gibb's question, Ms. Langdon said Lot 43A could be subdivided into two lots because the frontage and minimum lot size met Ordinance requirements.

Mr. Thomas informed the Board that the original idea of dividing the larger Lot 43A had proved impossible because of septic limitations, and that was the reason for the parcel's particular configuration. He said the septic on Lot 43A did not perk to allow a fourth lot, but the three other lots each perked for septic purposes.

Mr. Beard said that, as he understood it, it was an apparent assumption that attaining the variance was just a matter of procedure, and throughout the process it never was considered an issue.

Mr. Thomas restated that the owners had relied on the County's representation that the lot was buildable because of the reasonable use factor. He researched the PC and BOS records to find that the application had been unanimously approved without comments, and his clients had relied on conversations with the planning staff and the PC's and BOS's ultimate decision that a variance was not unreasonable. In response to Mr. Hart's question, Mr. Thomas clarified the sewer versus septic matter.

Chairman DiGiulian called for speakers.

Charles Morin, 7422 Scarborough Street, Springfield, Virginia, came forward to speak in opposition to the application. He concurred with staff's analysis that the applicants had not met Standards 4, 5, and 6. He added that he also believed the applicants had not met Standard 7 in that the lot was pristine, and to develop it would have a negative impact on the adjoining properties because currently it afforded a beautiful view. He stated that the lot should remain in its natural state. Mr. Morin submitted that the owners should have gone forward with their variance request back in 1986 because now it was unfair to the surrounding property owners who purchased their homes with the understanding that the parcel was an outlot and would not be developed. Mr. Morin voiced his concern about the request to waive stormwater management practices because his lot was located below the subject lot, and with the clearing and grading associated with development, he thought there would be a water runoff problem. Mr. Morin suggested that perhaps an alternative solution would be for the County to buy the lot and preserve it as a natural open space area.

Chairman DiGiulian noted that an opposition letter had been received from Randy Becker, and he gave a copy to Mr. Thomas for his information and comment.

Addressing Mr. Morin's comments, Mr. Thomas pointed out that since 1986 tax records had indicated that the lot was buildable, and most home purchasers research an area. He did concede, however, that although the information was available, most people would not know to look at subdivision plats to determine if there were outlots. Referencing Mr. Becker's opposition letter, Mr. Thomas concurred that the Zoning Ordinance should be upheld, but reminded the Board that this lot had unusual circumstances with regard to Standard 4.

He pointed out that there was an extraordinary situation with how the lot was created as well as its odd topography. Also noteworthy, said Mr. Thomas, was the apparent willing participation of the County's planning staff, PC, and BOS to infer that, with a variance, the lot was buildable.

Chairman DiGiulian closed the public hearing.

Mr. Hammaok moved to deny VC 2005-MV-001 for the reasons stated in the Resolution. Mr. Pammal seconded the motion, noting staff's analysis, as contained in the staff report, that the applicants had not met Standards 4, 5, and 6 of the Zoning Ordinance and that they could not conclude that undue hardship would result from denying the variance.

Mr. Hart said he supported the motion and that he believed anyone reviewing land records would see that the lot was an unbuildable outlot. He said that since 1986 the plat clearly depicted the lot as an unbuildable outlot, but there had been a voluntary decision to divide the property in a different way than what had been recorded on the plat. The plat showed two lots and an outlot rather than three lots or, with a variance, four lots. Mr. Hart said he did not believe there was evidence of hardship because from the lot's creation it was recorded as an outlot. He said he found that the application had not met Standard 3 as he saw no difference between the subject lot and any other unbuildable outlot shown on an approved subdivision plat. He said it also had not met Standard 9 because a decision was made to section the lot's more steeply sloped area into an outlot and have fewer lots than what had been described at the time of the rezoning, and that was done without seeking a variance for the outlot.

Mr. Beard said he thought these circumstances were tantamount to a taking, and he could not support the motion because he did not believe that relegating the parcel for something like a shed was a reasonable use.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS A. SMITH AND CHARLOTTE LEE SMITH, VC 2005-MV-001 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit a lot width of 10 ft. for Lct 43C. Located on the W. side of Gambrell Rd. S. of Fairfax County Pkwy. on approx. 27,349 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 89-3 ((1)) 43C. Mr. Hammaok moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 14, 2005; and

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

1. The applicants are the owners of the land.
2. It is unfortunate that this application has no determining facts nor convincing explanation that can justify this Board to disallow the recorded 1988 plat identifying this as an outlot.
3. The testimony indicates that the applicants and property owners at that time, changed a three-lot subdivision with a variance into a two-lot subdivision with an outlot for reasons that made sense to them at the time.
4. The current Code requirements for variances and the Cochran decision as applied to this application do not warrant a hardship determination.
5. Other uses could be made of the outlot, perhaps consolidated, or perhaps now there are other ways to develop the property that would allow a three-lot subdivision.
6. The applicant has not satisfied the requirements for a variance to be granted.
7. The hardship is self-inflicted.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

Mr. Pammel seconded the motion, which carried by a vote of 5-2. Chairman DiGiulian and Mr. Beard voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 22, 2005.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-108 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, change in development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Leesburg Pl. on approx. 8.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9. (Admin. moved from 3/8/05 and 4/12/05 at appl. req.) (Decision deferred from 5/3/05 and 5/17/05)

Chairman DiGiulian noted that the application had been deferred from an earlier hearing for decision only.

The applicant's agent, Lynne Strobel, Esquire, with the firm of Walsh, Colucci, et al., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, acknowledged that the application was before the Board for decision only, but she wished to apprise the Board on what transpired since the last meeting. An on-site meeting was held with the staff coordinator, Mavis Stanfield, representatives of Urban Forestry, and a number of the church's neighbors. She stated that the applicant disagreed with the next-door townhome community over the impact of the church's proposed parking and acknowledged that that was the only disagreement. Ms. Strobel said the applicant had significantly compromised by limiting the number of parking spaces and by providing substantial landscaping, additional plantings, and a masonry wall. She pointed out that the power lines between the properties served both the church and the townhouse

community. Ms. Strobel referenced Ms. Stanfield's revised development conditions dated June 7, 2005, and suggested a change in Number 14's language concerning the interparcel connection. She responded to Mr. Hart's question concerning the possibility of access to Route 7.

Ms. Stanfield concurred with the applicant's revised language to Development Condition 14 as staff was in agreement to preclude possible access to Route 7.

Chairman DiGiulian pointed out that a petition and an opposition letter had been submitted.

Susan Langdon, Chief, Special Permit and Variance Branch, called the Board's attention to the staff pictures of the foliage along the buffer area between the townhouse community and church property in its leafed out condition.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 93-P-046-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SPA 93-P-046-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 93-P-046 previously approved for a church, nursery school and a waiver of the dustless surface requirement to permit building additions, change in development conditions and site modifications. Located at 7426 Idylwood Rd. and 7401 Leesburg Pi. on approx. 8.54 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 7A and 9. (Admin. moved from 3/8/05 and 4/12/05 at appl. req.) (Decision deferred from 5/3/05 and 5/17/05) 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 14, 2005; and

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

1. The applicants are the owners of the land.
2. The application as presented and subsequently modified, meets all the standards and requirements of the Zoning Ordinance.
3. The applicants have done their best to preserve the area adjacent to the townhouse community with pulling the parking back and by reducing it by a space.
4. The application fully meets, and actually exceeds, the transitional yard requirements as prescribed by the Ordinance.
5. The applicants have proffered to a transitional screen that consists of a masonry wall between their parking area and the townhouse community.
6. Most of the trees will be preserved and where the parking area is located, the foliage consists of small or scrub trees and underbrush, which will be augmented with additional plantings of evergreens and deciduous trees.
7. There is a save tree area on both sides of the parking area.

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

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

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

1. This approval is granted to the applicant, Trustees of St. Paul's Lutheran Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 7426 Idylwood Road and 7401 Leesburg Pike, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, LLC, dated November 11, 2004, and revised through May 16, 2005, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with the approved Special Permit plat and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity of the main worship area shall not exceed 300. The transept (future phase) depicted on the plat, shall not be approved for additional seats.
6. The maximum daily enrollment for the nursery school shall not exceed ninety-nine (99) children.
7. The maximum hours of operation for the nursery school shall be limited to 9:30 a.m. to 12:30 p.m., Monday through Friday.
8. All parking shall be provided on site, as shown on the development plan. However, parking spaces may be removed, if necessary (number to be determined at site plan review), along the western lot line in order to save the oak trees identified as "tree save" and "potential tree save" on the plat. Further, parking at the rear of the property in proximity to the proposed Family Life Center may be phased with the phasing of building construction. The minimum number of parking spaces will be provided in accordance with the requirements of the Fairfax County Zoning Ordinance with each phase of the development.
9. Interior parking lot landscaping shall be provided as depicted on the plat.
10. The barrier requirement shall be waived along the northern, southern, and eastern lot lines. The barrier provided along the western lot line shall be constructed of materials which will provide a solid and continuous barrier, without gaps or cracks.
11. Transitional screening shall be modified along all lot lines to allow existing vegetation supplemented with, at a minimum, the number of supplemental trees and shrubs as depicted on the plat. The final number, size and location of new plantings shall be determined in consultation with Urban Forest Management, DPWES.
12. The limits of clearing and grading shall be strictly adhered to and shall be no greater than depicted on the special permit plat. Trees along the western and northern lot lines will be preserved through the use of retaining walls, as depicted on the plat. The oak trees identified as "tree save" and "possible tree save" at the southwest site entrance shall be preserved unless deemed unsafe by Urban Forest Management, DPWES. Parking spaces shall be removed and/or the island expanded as determined necessary by Urban Forest Management to preserve the oak trees. The Applicant shall submit a tree preservation plan as part of the first and all subsequent site plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect and reviewed and approved by the Urban Forest Management Branch. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees that are ten (10) inches or greater in diameter, and twenty (20) feet to either side of the limits of clearing and grading shown on the special permit plat for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the special permit plat, to include the oak trees located northwest of the southern entrance of the site, and other areas in which trees can be preserved as a

result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including Urban Forest Management, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction. All trees shown to be preserved on the tree preservation plan shall be protected by a tree protection fence. Tree protection fencing four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading prior to any demolition/clearing on site.

Methods to preserve existing trees may include, but not be limited to, the following: use of super silt fence, welded protection fence, root pruning and mulching. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing, except super silt fence, shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the Urban Forest Management Branch shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

During any clearing or tree/vegetation/structure removal on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the tree protection fencing remains in place and the trees protected by said fencing are preserved. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by the Urban Forest Management Branch.

18. Stormwater management and Best Management Practices facilities shall be provided as determined by DPWES. Notwithstanding that which is shown on the plat, the applicant shall work with DPWES at site plan review to determine appropriate design elements that will result in the reduction in size of the stormwater management pond, such as moving the pond closer to the parking area and/or construction of retaining walls near the parking and driveway areas. In addition, the applicant shall utilize, if deemed appropriate by DPWES, low impact design elements, such as bioretention basins (rain gardens), infiltration trenches and/or cisterns for the purpose of reducing the size of the proposed dry pond. Any trees which are preserved as a result of the efforts to reduce the size of the pond shall be subject to the requirements of Condition #11, above.
14. Notwithstanding that which is shown on the plat, the area now depicted as a "possible interparcel connection" on the adjacent Lot 7 which terminates at Lot 6, shall be recorded as an access easement prior to site plan approval. If/or when development occurs on Lots 6 and 7, access for these two lots will be obtained either through the access easement to Idylwood Road or through some means other than Leesburg Pike (Route 7).
15. All signs shall be in accordance with Article 12 of the Zoning Ordinance.
16. Any replacement lighting or new lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no new up-lighting of the buildings. The lights shall be controlled with an automatic shut-off device and shall be turned off when the site is not in use, except for security lighting.
17. The church building construction shall be generally consistent with the architectural elevations provided on page 5 of the plat. The building materials for the proposed additions shall be similar to the existing sanctuary and education buildings.
18. All materials and equipment associated with the landscaping business operating on Lots 7 and 7A shall be removed within ninety (90) days of approval of this special permit.
19. The applicant shall dedicate right-of-way along Leesburg Pike as shown on the special permit plat for

the provision of a future right turn lane, to the Board of Supervisors in fee simple at the time of site plan review or upon demand, whichever occurs first.

20. The applicant shall construct frontage improvements along Idylwood Road with construction of Phase I and II of the buildings as shown on the special permit plat and as determined necessary by the Fairfax County Department of Transportation.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the Phase 1 use has been established or construction has commenced and been diligently prosecuted. Commencement of Phase I shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 6-0-1. Chairman DiGiulian abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 22, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 38 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, and 6/7/05 at appl. req.)

Chairman DiGiulian noted that SPA 75-S-177 had been administratively moved to August 9, 2005, at the applicant's request.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:30 A.M. MS. KAREN R. SMITH, A 2004-MA-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an addition which does not meet the minimum side yard requirement for the R-3 District in violation of Zoning Ordinance provisions. Located at 4203 Cordell St. on approx. 12,329 sq. ft. of land zoned R-3 and H-C. Mason District. Tax Map 71-2 ((20)) 66. (Admin. moved from 12/14/04 at appl. req.)

Chairman DiGiulian noted that A 2004-MA-032 had been withdrawn.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has

allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2882 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, 1/18/05, and 4/5/05 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-011 had been administratively moved to September 13, 2005, at the applicant's request.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:30 A.M. VIRGINIA EQUITY SOLUTIONS, LLC, A 2005-PR-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant purchased an affordable dwelling unit without obtaining a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and is not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 8054 Sebon Dr. on approx. 878 sq. ft. of land zoned R-12. Providence District. Tax Map 49-2 ((43)) 139.

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 7, 2005. This was an appeal of a determination that the appellant purchased an affordable dwelling unit (ADU) without obtaining a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and that the appellant was not occupying the dwelling as a domicile in violation of Zoning Ordinance requirements. She explained the restrictions and stipulations for the sale or rent of an ADU and quoted Ordinance language, Par. 8, Article 2, regarding the fact that an ADU's sale or rental price was controlled by the County Executive. It was in late 2004 that a neighbor notified the Department of Housing and Community Development of the sale of the subject property, and upon review of the County's tax assessment records, it was revealed that the subject property had been illegally sold to the appellant on December 13, 2004. The Housing Authority must first determine if the prospective buyer meets the criteria for low and moderate income persons before issuing the certificate, and it was determined that the purchaser was in violation because a Certificate of Qualification was not obtained before purchasing the unit. Ms. Tsai said the appellant was in violation of Par. 1, Sect. 2-813, of the Zoning Ordinance and also in violation because the ADU purchaser must occupy the unit as his domicile, and the appellant was not living in the unit. Staff recommended that the BZA uphold the Zoning Administrator's determination that the appellant purchased an ADU prior to obtaining a Certificate of Qualification and that the appellant was not occupying the subject property as his domicile.

Ms. Tsai responded to questions from Ms. Gibb regarding the recordation of the deed as an Affordable Dwelling Unit. In reply to Mr. Beard's question, Ms. Tsai said the resale control period for an ADU was 15 years.

Michael R. Congleton, Deputy Zoning Administrator for Zoning Enforcement Branch, pointed out that ADUs are listed on the site plans for subdivision plats as well as on rezoning applications and proffers. However, in this instance, he said the ADU language was noted only on the site plan and was not recorded on the pertaining subdivision plat.

Bonnie Conrad, Program Manager with the ADU Program, Department of Housing and Community Development, pointed out that ADU units are also noted on individual covenants as well as general covenants, and she listed specific pages to reference.

In response to Mr. Pammel's comment on why the seller of the unit was not included in the appeal process, Mr. Congleton said, to the best of staff's knowledge, the seller lived out of state and it was almost impossible to contact her. He said the Zoning Ordinance spoke to the purchaser of the affordable dwelling unit and that staff believed the purchaser, the appellant, was the responsible entity for the action.

Stephen K. Christenson, Esquire, 4015 Chain Bridge Road, Fairfax, Virginia, agent for the appellant, stated that the Zoning Ordinance required that the ADU covenants be recorded simultaneously with the recorded final plat, which was not done. He pointed out that the final plat was recorded in Deed Book 10405 at page 1349, and almost a hundred books later does one find a stand-alone set of covenants, also noting that

Article 3 of the covenants required that the deed, which conveys an ADU, specifically sets forth the ADU covenants. Mr. Christenson stated that the reason for that Ordinance language was to assure that prospective purchasers received constructive and record notice; however, in this case, the Ordinance was disregarded, and it did not protect his client. Mr. Christenson stated that it was wrong and unfair to have charged his client with a zoning violation, and, additionally, now his client was burdened with a problem with the title.

Chris Beatley, Esquire, 221 South Fayette Street, Alexandria, Virginia, came forward and explained his participation with the sales contract processing, informing the Board that he had practiced real estate law for 30 years and that his profession was real estate settlement work. At the request of his client, Camille Berry, he ordered a title examination, which produced no mention of an ADU. He pointed out that an ADU covenant should be recorded either in the deed and/or the subdivision plat, but it was not in either. The sale was closed. His client traded a check for the deed. He recorded the deed. Mr. Beatley explained that it was after the closing when he learned of the mistake, and he immediately tasked his title examiner to find the problem. A second title search was done, which again produced no information. Mr. Beatley, insisting that something was wrong, asked for a third title search, and the third search produced the ADU covenant, but only after cross-indexing the builder, Van Metre Land Limited Partnership, in a manner that was not normally done. He submitted that the covenants were found, but they were not related to any of the documents in the chain of title. He said he believed there was no way a lay person would have known as even a professional twice missed it even after being specifically tasked that there was apparently something to find. He said his client was now stuck with a property that she apparently could not sell and that she paid a fair market price for to a seller who was no longer available.

In response to Mr. Ribble's question of whether title insurance was issued, Mr. Beatley said that it was not because his client traded a check for a deed, and after he learned of that transaction, he knew he was unable to obtain title insurance because the property was uninsurable.

Ms. Gibb pointed out that the covenants were recorded on the page immediately prior to the deed and said she could not see how someone missed them if one cross-indexed the builder, Van Metre Land Limited Partnership.

Mr. Beatley said he respectfully understood what Ms. Gibb was saying; however, according to the Ordinance, the covenants should have been in the deed and attached to the plat, and he believed it unjust to hold the buyer responsible for the Van Metre Land Limited Partnership error to properly record the documents.

Mr. Pammel clarified that the covenants were recorded December 9, 1998. In response to his question of when the deed was recorded, Ms. Tsai said it was May 22, 1988. Mr. Pammel pointed out that the Residential Use Permit (RUP) to allow occupancy of the property was issued three months before the covenants were recorded, and he commented that there appeared to be a chain of events that defied logical sequence.

Ms. Gibb pointed out that it did not matter when the RUP was issued unless one was deeding the property to an individual. She said the deed to the ADU unit after the covenants were recorded was the important sequence.

Mr. Congleton stated that the RUP was issued in September 1998 and Van Metre Land Limited Partnership sold the property January 1999.

Discussion followed among Ms. Gibb, Mr. Christenson, and Ms. Tsai concerning the times of recordation of the deed and covenants.

After Mr. Beard's summation of the apparent sequence of events, as he understood it, and the fact that Mr. Beard felt that the Board was in the dark about what actually transpired, Mr. Beatley conceded that he, too, did not know the facts of the negotiations between and during the Van Metre Land Limited Partnership sale of the ADU and the ADU's initial purchaser. Mr. Beatley assured the Board that his client would never knowingly have purchased an ADU as he had apprised them previously concerning ADU matters.

In his summation, Mr. Christenson stated that this issue should not be considered a Zoning Ordinance violation because the Ordinance, which created ADUs and whose language was specific on the procedures for documentation of covenants, was not properly followed, and neither the recordation of the final subdivision plat, the contracts, nor the deed were specifically noticed of the ADU covenants. He maintained

that it was an innocent mistake of his client and should not be warranted a wrong-doing or an Ordinance violation.

Ms. Gibb asked Mr. Christenson if he thought none of the ADU units within the subject property's subdivision were subject to the covenant because he believed the declaration was not recorded simultaneously, and he submitted that it was a problem with the real title, with his position being that the subject unit was not bound by the ADU covenant because it was not recorded simultaneously and because the declarant produced a deed that gave no reference of it.

Discussion followed between Ms. Gibb and Mr. Christenson regarding Ordinance language interpretations, restrictive covenants, and compliance with the law.

There were no speakers, and Chairman DiGiulian asked staff whether they had closing comments.

Summarizing staff's position, Mr. Congleton stated his regret that the title search was insufficient to reveal the covenants, but he pointed out that the facts showed that the ADU covenants were recorded by Van Metre in September 1998 and re-recorded in January 1999 when the property transferred to Ms. Maples. He noted that the covenants were evidenced clearly in the land records and that the Ordinance stipulated that an ADU cannot be sold to someone outside of the program, that the buyer must be determined eligible, that the ADU price be established by the program, and that the buyer must reside in the dwelling. He said he was unaware of any facts or circumstances that would invalidate the subject property as an ADU because the covenants had not been recorded the same day as the subdivision plat. He stated that the appellant purchased the property; they were not eligible to purchase the property; they did not receive a Certificate of Qualification for the property; and they did not reside on the property, all of which were in direct violation of the Zoning Ordinance. Mr. Congleton pointed out that the facts of this case were fairly clear and almost identical to another case, the Heath-Mullenberg case, previously heard by the BZA, where an investor bought the property and claimed no covenants were recorded. He said the BZA upheld the Zoning Administrator's position, and the Circuit Court ruled in the County's favor.

Mr. Beard commented that he found the case troubling because he believed, for such mistakes, the consequences were severe, and he thought there should be more than only adequate notice of these restrictive covenants to assure no misconceptions.

Chairman DiGiulian closed the public hearing.

Mr. Ribble commented that the important fact to him was whether or not the covenants were indexed properly in the land records, and until that could be determined, he moved to defer the decision to July 19, 2005, at 9:30 a.m.

Mr. Beard seconded the motion. He said he would like the principals of Virginia Equity Solutions to address the Board with their comments on their contract and negotiations with the seller.

Ms. Gibb said she believed the answer was in the title search, and she wanted to see if there was record notice of the covenants prior to the time Ms. Maples took title and before the current owner purchased it.

Mr. Congleton said staff would try to contact Ms. Maples at the listed address in Kansas in order to get her recollection of the sale.

Mr. Pammel pointed out that, as he interpreted the facts, Ms. Maples had accepted an encumbrance when she made the initial purchase, and she had not disclosed the information/facts of those restrictive covenants to the purchaser; therefore, he believed that was an incident of fraud.

The decision to defer A 2005-PR-015, Virginia Equity Solutions, LLC, carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Hammack was not present for the vote.

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-012 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE

2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55.

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55.

Chairman DiGiulian announced that these two cases would be heard concurrently.

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 7, 2005. This was an appeal of a determination that the appellants must obtain site plan approval and complete construction of all required improvements, which included closure of the subject property's entrance from the Leesburg Pike service drive, relocation of the site's Downey Drive entrance, installation of landscaping along the lot lines abutting Leesburg Pike and Downey Drive, and the provision of additional parking, in accordance with Special Exception SE 2002-DR-011. The Non-Residential Use Permit (Non-RUP) issued December 7, 2004, to A-1 Solar Control for a vehicle light service establishment use was deemed issued in error because the vehicle light service use had not been established on the subject property and the site improvements and construction required to satisfy the special exception (SE) conditions had not occurred.

Ms. Tsai reported that the appellants claim the use of the subject property had changed since the SE was approved; and, therefore, the development conditions of the Non-RUP were not applicable. Staff had determined that the site would be used for minor automobile repairs, services by appointment only, and on-site vehicle window tinting, all of which were deemed a vehicle light service use establishment, and it was staff's position that the use had not changed. The appellants had submitted a request for additional time to legally establish the SE use, but staff understood the request would not be presented to the Board of Supervisors for decision until the BZA made its determination on the appeal application, and it was uncertain whether the appellants would be granted additional time for their SE use. The appellants were requesting to amend the development conditions to remove the road frontage improvement, which requires an SE amendment, and staff did not support it and understood that the Board would not support an SE amendment to remove the road frontage improvements. Ms. Tsai stated that it remained that the appellants had established a vehicle light service use on the subject property without site plan approval and had not completed the conditioned site improvements. She said that they were operating without a Non-RUP in violation of Zoning Ordinance provisions. Staff recommended that the BZA uphold the Zoning Administrator and find that the appellants must obtain site plan approval and complete construction of all required improvements in accordance with SE 2002-DR-011 prior to the issuance of a Non-RUP for the vehicle light service establishment use.

Mr. Hart posed the question to staff as to why the 60-day clause was not invoked, pointing out that 60 days had transpired since the Non-RUP was issued December 4th, but the letter informing the appellants that the permit was issued in error was dated February 14th.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she would research the 60-day clause issue and inform the Board accordingly. She submitted that the Non-RUP was issued because the SE conditions made no reference to required landscaping and road improvements, and perhaps only a cursory review of the plat was done, which appeared to have no new construction, and the Non-RUP was approved. Ms. Stanfield concurred with Mr. Hart's surmise that someone at the zoning counter was not as thorough as they should have been.

Chairman DiGiulian called upon the appellants.

Charles A. Lanaras, 10510 Leesburg Pike, Falls Church, identified himself as the owner of the property.

David James Bellinger, 24630 Nettle Mill Square, Aldie, Virginia, identified himself as the lessee of the property and operator of the business located on the property.

Mr. Lanaras said that when he had been presented with Mr. Bellinger's business proposal, he thought it a clean and appropriate use of the property. Through regular channels, the occupancy use permit was applied for and received, and then they proceeded to set up the business venture. When they received the County's

February letter informing them that the Non-RUP was issued in error, they were quite surprised since they had relied on the County in good faith that their procedures were legal and business legitimate. Mr. Lanaras maintained that he and Mr. Bellinger were forthright in their proceedings and put in a regrettable and unfortunate position with a request for the County's assistance in getting out of the situation. He assured the Board that they would again go through the normal special exception process and requested that the Board allow them the time to do so, which would probably take up to 18 months.

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

Mr. Hart moved to defer decision on A 2005-DR-012 and A 2005-DR-013 to July 19, 2005, at 9:30 a.m. He asked that both staff and the appellants address the applicability of the 60-day issue as there appeared to be the passage of more than 60 days from the issuance of the Non-RUP and the violation letter.

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

//

~ ~ ~ June 14, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((8)) 7. (Continued from 11/16/04) (Decision deferred from 3/1/05 and 5/3/05)

Chairman DiGiulian noted that the Board had received a decision deferral recommendation from staff.

Mr. Hammack moved to defer decision on A 2004-SP-025 to July 19, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 14, 2005, After Agenda Item:

Approval of June 7, 2005 Resolutions

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

//

Mr. Hammack moved that the Board recess and go into closed session for consultation, legal counsel and/or briefings by staff members and consultants regarding the Marec, Lancaster, and West Lewinsville cases, and the letter of the BZA secretary, Nancy Gibb, pursuant to Virginia Code Sec. 2.2-3711 A-7. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:16 a.m. and reconvened at 12:31 p.m.

Mr. Hart moved that the members of the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

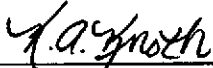
Mr. Hart moved to authorize Ms. Gibb to generate the letter discussed in the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

//

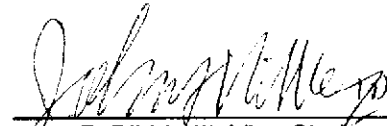
As there was no other business to come before the Board, the meeting was adjourned at 12:32 p.m.

Minutes by: Paula A. McFarland

Approved on: September 20, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 21, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; James D. Pammel; and Paul W. Hammack, Jr.

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

~ ~ ~ June 21, 2005, Scheduled case of:

9:00 A.M. SUE BENHUSSEIN, SP 2005-LE-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.4 ft. from side lot line. Located at 6007 Dinwiddie St. on approx. 8,447 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (12) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sue Benhusein, 6007 Dinwiddie Street, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an addition, specifically a brick archway 10.6 feet in height attached to the dwelling, to remain 0.4 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a reduction of 9.6 feet was requested.

In response to a question from Mr. Hart, Ms. Hedrick stated that the applicant had not obtained a building permit for the archway; however, a building permit had been obtained for the second-story addition. She said that, according to the applicant, the archway had been built at the time, but it was not depicted on the permit nor was it on the plat submitted with the permit.

Ms. Benhusein presented the special permit request as outlined in the statement of justification submitted with the application. She said the archway had been in place for 12 years, and she had been unaware that she was in violation of the Zoning Ordinance. She stated that the archway had been erected to enhance the look of her property, to help increase its value, and did not pose any adverse effect on the neighborhood because it was located away from the street.

The Chairman noted that the Board had received six letters in support of the application.

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

Mr. Hart moved to approve SP 2005-LE-016 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUE BENHUSSEIN, SP 2005-LE-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.4 ft. from side lot line. Located at 6007 Dinwiddie St. on approx. 8,447 sq. ft. of land zoned R-4. Lee District. Tax Map 80-8 ((2)) (12) 22. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony showing compliance with the required standards for a special permit.
3. The structure in question has been there for 12 years and does not seem to be hurting anything.
4. It is not particularly substantial in terms of the mass or anything else.
5. It is more of a decorative feature like someone might have in their garden.
6. There were six letters in support, and no one opposed the application.
7. It will not create any negative impact for anyone.

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

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

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

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

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

1. This Special Permit is approved for the location of the addition (brick archway), as shown on the plat prepared by Alexandria Survey International, LLC, dated January 12, 2005 as revised through March 1, 2005, submitted with this application and is not transferable to other land.
2. A building permit and final inspections shall be obtained within 30 days of final approval of this application for the addition or this Special Permit shall be null and void.

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

Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. 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 June 29, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:00 A.M. LISA M. MASCOLO, SP 2005-DR-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements basad on error in building location to permit accessory storage structure to remain 6.1 ft. with eave 5.1 ft. from rear lot line. Located at 10919 Belgravia Ct. on approx. 1.93 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((9)) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, the applicant's agent, Saok, Harris, and Martin, PC, 8270 Greensboro Drive, McLean, Virginia, stated that he had been retained by the applicant approximately two weeks prior, and on June 8, 2005, the November 19, 2004 affidavit had been revised and submitted to the Office of the County Attorney indicating that he and his firm were Ms. Mascolo's representatives.

Chairman DiGiulian indicated that the Board had not received a copy of the revisad affidavit, and Mr. Martin submitted a cepy to them.

Stephen Varga, Staff Ceordinator, made staff's presentation as contained in the staff report. The applicant requested a speeial permit to reduce minimum yard requirements based on an error in building location to permit an accessory structure to remain 6.1 feet with eave 5.1 feet from the rear lot line. A minimum rear yard of 13.5 feet is required; however, eaves are permitted to extend 3.0 feet into the minimum rear yard; therefore, reductions of 7.4 foet and 5.4 feet, respectively, were requested.

Mr. Hart noted that the property line ran along a road behind the applicant's property and asked why staff considered that area to be a rear lot line if there was a road on the other side of the fenca. He said the Board had heard similar cases where it had been determined that such an area was a front yard. Mr. Varga stated that staff had determined that Montpelier Road was a private road; therefore, tha area in question had been designated as a rear yard, not a front yard.

Ed Tobin, Zoning Enforcement Branch, Zoning Administration Division, stated that the determination had been made by the Zoning Administrator that because Montpelier Road was a private road, the lot was an interior lot, not a through lot.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicent had hired a reputable builder from Maryland to do some interior work for her, and because she was satisfied with his work, she had asked him to build a custom shed. He said the builder had recommended a location in the rear of the lot that was easily accessible to a nearby gate, and the applicant had relied upon the builder to know that the location was legal and did not ask him if a permit was required. Mr. Martin stated that the shed had been built on a concrete pad, drain tiles surrounded the shed to ensure adequate drainage, and landscaping had been added to enhance its appearance. He noted that two of the three adjoining property owners had provided letters of support, and the applicant owned the third lot. He stated that the shed backed up to Montpelier Road, which was very narrow and similar to a pipestem driveway, and only several persons owning homes down the road would pass by the shed, two of which had provided latters of support. Mr. Martin stated that the application met the standards of Sect. 8-914 because the error exceedad 10 percent and the noncompliance had been done in good faith. He said the reduction would not impair the purpose and intent of the Ordinance, would not be detrimental to the use and enjoyment of other properties along Montpelier Road, and would not create an unsafe condition. Mr. Martin said that to force compliance with the minimum yard requirements would cause great hardship because the shed was a substantial structure that would have to be demolished and rebuilt to be brought into compliance, and the reduction would not result in an increase in density or floor area.

In response to a question from Mr. Hammack, Mr. Martin stated that no dwellings were located directly across from the subject property. He noted that there was a long driveway a short distance up the road that led to a house, and that house was located several hundred feet away from the subject property with dense vegetation along the area.

In answer to Mr. Beard's question regarding whether the situation arose as a result of a cemplaint, Mr. Tobin said staff had initially received a complaint, but the application was not a result of the complaint. He stated that the applicant had never received a Notice of Violation from the Zoning Enforcement office. He said the proccoss had been lengthy to reach a determination concerning whether or not the lot was an interior lot or a

through lot. Mr. Tobin said that it was his understanding that the Department of Public Works had issued a notice to the applicant that had initiated the application.

Mr. Beard asked whether there were complaints in the file. Mr. Varga indicated that there were none.

In answer to Mr. Hart's question regarding utilities in the shed, Mr. Martin said there was an electrical line.

Mr. Hart asked why a condition had not been added that required the applicant to obtain a building permit since the shed had electricity. Mr. Varga stated that it was clear that the maximum use for the structure would be for storage purposes, and based on that, the need for a building permit was never questioned. Mr. Martin stated that the applicant would have no objection to the imposition of such a condition.

Mr. Hart said it was his understanding that when electricity was installed in a structure, an inspection would be required to ensure that it was wired safely. Cathy Belgin, Senior Staff Coordinator, stated that Mr. Hart was correct. She said typically a building permit was required if electricity was provided to the structure.

Chairman DiGiulian called for speakers.

Lisa Mascolo, 10919 Belgravia Court, Great Falls, Virginia, came forward to speak in support of the application. She stated that Mr. Martin had accurately summarized the situation, and she had the shed built in good faith. She said she would do whatever was required to bring the shed into compliance.

Michael McCabo, 10922 Thimbleberry Lane, Great Falls, Virginia, came forward to speak in opposition to the application. He said he had spoken to a Zoning Enforcement inspector approximately 18 months prior because of the location of the applicant's shed. He stated that he had been informed that a permit had not been pulled since 1998. Mr. McCabe stated that he had informed the inspector that a pool had been recently built on the property, and the applicant had made extensive exterior renovations and additions. He said he drove by the structure daily and was concerned that the location of the shed was more appropriate to an inner-city alleyway than to a semi-rural setting. Mr. McCabe said he was concerned that his property value would be negatively affected by the location of the shed because prospective buyers would have to drive by the structure.

Mr. Hammack asked Mr. McCabe to show the location of his property on the overhead viewer. Mr. McCabe complied. In answer to Mr. Hammack's question regarding what ingress/egress he used, Mr. McCabe said he used Montpelier Road to Thimbleberry Lane.

In his rebuttal, Mr. Martin stated that he appreciated Mr. McCabe's concerns; however, the two closest neighbors had expressed no objection to the structure, which was appropriately scaled and landscaped.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2005-DR-015 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LISA M. MASCOLO, SP 2005-DR-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.1 ft. with eave 5.1 ft. from rear lot line. Located at 10919 Belgravia Ct. on approx. 1.93 ac. of land zoned R-E. Dranesville District. Tax Map 3-3 ((9)) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 2005; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the required findings in order to grant the application, including that the error was done through no fault of the applicant.
3. The configuration of the applicant's property is such that the shed is in the rear yard and is a little larger than those normally purchased at a Home Depot or Sears, but it is located six feet off of the rear lot line.
4. There is some screening in place, and the trees will grow larger and shield the structure more from drivers that might use Montpelier Drive.

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

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

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

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

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

1. This special permit is approved for the location of a shed, as shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated March 17 revised through March 26, 2005, submitted with this application and is not transferable to other land.
2. The applicant shall obtain a building permit and approval of final inspections.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 20, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:00 A.M. TUCKAHOE RECREATION CLUB, INC., SPA 82-D-055-04 Appl. under Sect(s). 8-303 of the Zoning Ordinance amend SP 82-D-055 previously approved for community recreation facility to permit building addition and site modifications. Located at 1814 Great Falls St. on approx. 8.10 ac. of land zoned R-3. Dranesville District. Tax Map 40-1 ((1)) 1 and 2; 40-2 ((1)) 1B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, the applicant's agent, Sack, Harris and Martin, PC, 8270 Greensboro Drive, McLean, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 82-D-055, previously approved for a community recreation facility, to permit a 3,665-square-foot building addition and modifications to the entrance of the indoor pool and bathhouse. Staff recommended approval of SPA 82-D-055-4 with the adoption of the proposed development conditions.

Mr. Martin presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the addition was requested because many of the club members were elderly, and the applicant was attempting to make the indoor pool facility ADA accessible and to create better exercise equipment space. He said the applicant proposed to build a second story with an elevator, and less than 500 square feet for the ADA features was proposed to be the new footprint. Mr. Martin said the applicant planned to remove the sheds and revegetate so there would be less impervious surface on the site. He stated that the second story would sit below the roofline of the interior pool, and there would be no visual impact. He stated that the club would not seek additional members, so there would be no additional traffic impact.

Mr. Martin said the applicant agreed to the reaffirmation of Development Conditions 1 through 13 and agreed to new Development Conditions 14 and 16 through 18, but asked that Development Condition 15 be deleted because an island would create additional impervious surface. He said he thought the entire site was considered to be a resource protection area, and he didn't think the applicant would need to go through the site plan process because the proposal was for less than 500 square feet of new footprint. He stated that the problem with adding the island would be that it would exceed 500 square feet of disturbed area, and the proposed location of the island between the front door of the outdoor pool and the parking lot would squeeze the wide travel area that currently existed to accommodate the dropping off and picking up of passengers, including small children. He said Condition 15 was unnecessary and could send the applicant into an expensive site plan process by exceeding 500 square feet of disturbed area.

Mr. Hammack asked why staff thought an island was needed. Mr. Varga said staff had discussed the possibility of consolidating the ingress/egress to one driveway; however, in lieu of the options explored, staff believed the island would make onsite transportation as sensible and considered that to be a way to address the issue without having to consolidate the driveway.

Mr. Hammack asked if there had been complaints about traffic flow or anything that caused staff to think there should be a change. Mr. Varga stated that staff had not received any negative comments from citizens or club members regarding transportation either into or on the site.

Mr. Hart asked whether Mr. Martin had seen the June 20th letter from Mr. Duff. Mr. Martin said he had not. A copy was then provided to Mr. Martin.

Mr. Hart said that it was difficult to determine from the photographs where the area referred to by Mr. Duff was located, but he assumed that it was the area behind the houses and not located along the street. Mr. Martin said he thought the club would be agreeable to additional landscaping there, although he said the proposed improvements had nothing to do with the tennis courts that had been in existence for a long time.

Mr. Hart asked if staff had evaluated whether the white pines located in the area had thinned out or whether it was fine as it was. Mr. Varga said staff had taken a look, and there was no question that over the years they had aged; however, staff felt they still served their purpose as transitional screening between the housing development and the club's use.

At Mr. Hart's request, Cathy Belgin, Senior Staff Coordinator, indicated the proposed site of the island on the drawing shown on overhead projector, which was not located at the entrance to the site, but internal to the parking lot.

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

Mr. Ribble moved to approve SPA 82-D-055-04 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TUCKAHOE RECREATION CLUB, INC., SPA 82-D-055-04 Appl. under Sect(s). 3-303 of the Zoning Ordinance amend SP 82-D-055 previously approved for community recreation facility to permit building addition and site modifications. Located at 1614 Great Falls St. on approx. 8.10 ac. of land zoned R-3. Dranesville District. Tax Map 40-1 ((1)) 1 and 2; 40-2 ((1)) 1B. 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 21, 2005; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Tuckahoe Recreation Club, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 1814 Great Falls Street, 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 Terrance Anderson (Walter L. Phillips, Inc.) dated 3/10/05 through 3/23/05, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Transitional Screening 1 shall be modified as shown on the special permit plat. All plant material shall be maintained in a healthy condition and any dead, dying or damaged plant material shall be replaced with like kind.
6. The barrier shall be as shown on the plat submitted with this application.

7. The hours of operation for the facility shall be limited to the following:

Indoor Pool Hours	8:00 a.m. to 10:00 p.m.
Outdoor Pool Hours	9:00 a.m. to 9:00 p.m.
North Tennis Courts	9:00 a.m. to 10:00 p.m.
South Tennis Courts	9:00 a.m. to 9:00 p.m.
Backboard	9:00 a.m. to 8:00 p.m.

No loudspeakers shall be used in conjunction with swimming meets or practices prior to 9:00 a.m. or after 9:00 p.m.

8. All loudspeakers, noise and lights shall be confined to the site. The lights for the northerly tennis courts shall be on an automatic timer which turns off at 10:00 p.m. The lights for the southerly tennis courts shall be on an automatic timer which turns off at 9:00 p.m.
9. The minimum number of parking spaces shall be 125. The maximum number shall be 230 including the grassed overflow parking area.
10. After-hours parties for each swimming pool shall be governed by the following:
- Limited to six (6) per season.
 - Limited to Friday, Saturday, and pre-holiday evenings.
 - Shall not extend beyond 12:00 midnight.
11. There shall be a maximum of four swimming meets a year which shall be allowed to begin at 3:00 a.m.
12. The grass over the gravel in the overflow parking area shall be maintained to prevent the emission of dust from the surfaces.
13. The maximum number of memberships shall be 3,250 individuals.
14. The barbed wire fence shall be removed by the applicant and replaced with traditional 6 foot fencing.
15. The club sign shall be relocated so that it meets Zoning Ordinance requirements and a sign permit shall be obtained.
16. Stormwater Management/Best Management Practices facilities shall be provided if determined necessary by DPWES, provided, however, no additional vegetation shall be cleared over that which is shown on the plat.
17. An RPA Exception shall be obtained if determined necessary by DPWES or this special permit shall be 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:30 A.M. ESTATE OF SCOTT P. CRAMPTON, A 2003-MV-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot width requirements of the Zoning Ordinance when created, does not meet current minimum lot width requirements of the R-E District, and is not buildable under Zoning Ordinance provisions. Located at 11709 River Dr. on approx. 29,860 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((3)) 3. (Admin moved from 12-2-03 and 6/29/04 and 12/21/04 at appl. req.)

Chairman DiGiulian noted that A 2003-MV-032 had been administratively moved to September 13, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:30 A.M. OAKWOOD ROAD ASSOCIATES, LLC, A 2005-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5404 Oakwood Rd. on approx. 16,778 sq. ft. of land zoned I-I. Lee District. Tax Map 81-2 ((3)) 36A.

Chairman DiGiulian noted that A 2005-LE-016 had been administratively moved to June 28, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:30 A.M. ANDREW CLARK AND ELAINE METLIN, A 2005-DR-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 1905 Rhode Island Av. on approx. 24,457 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (1) 36B.

Chairman DiGiulian noted that A 2005-DR-017 had been withdrawn.

//

~ ~ ~ June 21, 2005, Scheduled case of:

9:30 A.M. SIDDARTH GOVINDANI, A 2005-PR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 8611 McHenry St. on approx. 31,866 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (4) 33. (Decision deferred from 5/17/05)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in a memorandum dated June 14, 2005, from Cynthia Porter-Johnson, Assistant to the Zoning Administrator. Ms. Stanfield stated that at the May 17, 2005 public hearing on this application, the Board of Zoning Appeals had requested additional information to include a deed to the subdivision and the maintenance agreements, and the information had been provided in the status update.

The appellant, Siddarth Govindani, presented the arguments forming the basis for the appeal. He said he had reviewed the updated staff report, and according to the exhibits and the memoranda, it was clear to him that Patrick Street was to be maintained as a private driveway. He said he thought there was an agreement in 1949 or 1972 where the owners agreed not to petition the County or State for maintenance of the driveway until such time as Patrick Street had been constructed to its full width in accordance with County and State standards. He stated that in the previous package he had provided to the Board, it showed there was a large portion of the area that did not intersect McHenry Street. He noted that the staff report had repeated that the

subject property was a corner lot located with front yards facing McHenry and Patrick Streets, and he said he thought that point had been disproved at the previous public hearing. Mr. Govindani stated that a corner lot would be located at the junction of two or more intersecting streets, and the two streets did not intersect, so there could only be one front yard, not two. He stated that he had 13 letters of support from his neighbors and several photographs he had taken which showed the two streets did not intersect.

Mr. Govindani stated that when his family was exiting the auditorium after the previous public hearing, someone in the complainant's party had repeatedly called them liars and asked what country they were from. He said other discriminatory insults had been directed toward his family, and he assumed the comments had no bearing on the case, but wanted to give the Board an idea of the type of people his family had to deal with.

Chairman DiGiulian called for speakers.

Bill Handforth, 2505 Patrick Street, Vienna, Virginia, came forward to speak. He said his gravel driveway that abutted the appellant's property could not be used because line of sight was impaired by the fence, many vehicles used Patrick Street thinking it was a through street and had to turn around, and the fence at its height was also a hazard to others who had to walk into the street to get around it.

In response to a question from Mr. Beard, Mr. Handforth indicated that he had been referring to the fence in the rear of the appellant's property that was seven feet tall, had a solid bottom with pickets on the top, and came to the end of his gravel driveway.

Kathy Handforth, 2505 Patrick Street, Vienna, Virginia, came forward to speak. Using the overhead projector, Ms. Handforth identified the locations of the fence and gravel driveway and said the driveway was approximately two feet from the fence. She said the appellant had done a lot of beautiful work on his yard, but she was concerned about the safety issue and her children. She stated that the fence went 12 feet beyond the appellant's property line and into the right-of-way, and she had only five feet to back out to the edge of the road and could not reasonably back out without being hit. She showed photographs of Patrick Street and said it was a one-lane road that had a lot of traffic.

Mr. Hammack asked whether the private maintenance agreement and the additional information provided to the Board changed staff's position with respect to the violation. Ms. Stanfield said no, it was a street as far as staff was concerned, and there was a clear desire on the part of the neighbors to eventually build the street to State standards so they would no longer have to maintain it.

Mr. Hart asked whether the subject Lot 33 was the same Lot 33 that was reflected on the 1949 plat. Ms. Stanfield said it was.

Mr. Hart read from page 112 of the Deed of Dedication that stated, in part, "plat hereto annexed and made a part hereof to be known as the subdivision of McHenry Heights and the streets designated on the said plat are hereby dedicated as public streets." He said the plat referred to in the deed was the 1949 plat, and he asked the appellant if he was saying that because there was a later maintenance agreement among neighbors, that diminished the earlier dedication. Mr. Govindani replied that if Patrick Street was ever fully constructed, intersected McHenry Street, and there was no maintenance agreement, it would no longer be a private driveway, and he would have no problem with taking the height of the fence down, but not as long as a large portion of the street was unpaved, trash was frequently there, and it was not taken care of by the County. He stated that he had taken the height of the fence down on the entire side of his house.

Mr. Hart asked the appellant if he was disputing that the land was dedicated as a public street in 1949, regardless of whether the street was currently maintained by the Virginia Department of Transportation (VDOT) or whether the pavement extended all the way through the intersection. The appellant stated that he could not dispute that, but he disputed what had occurred after that. He said it was not being and could not be used as a street because there was no through street and it did not intersect any other street, so that side of his home could not be considered a front lot.

Mr. Hart asked whether it was true that the existing pavement extended past the dividing line between Lots 33 and 36, north of that point and past the fence and the appellant's driveway, regardless of whether the pavement connected at the intersection or not or whether it was a through street or a dead-end. Mr. Govindani said that was true. He said that according to the staff report, the definition of a front yard as defined in Article 20 was the area that extended across the full width of the lot, and the pavement did not extend across the full width of the lot. Mr. Govindani said there had to be a front lot line, and the front yard

was located between that line and the principal structure, but there was no front lot line there because the street was not fully constructed.

Mr. Hart asked staff whether it would still be considered a front yard between the house and the street on the Patrick Street side if McHenry Street was not there and the only street in the area was Patrick Street. Ms. Stanfield said it would.

Mr. Govindani stated that he had been told by a zoning inspector that the lot located at 2506 Patrick Street was in violation. He said he did not want to file a complaint, but it was clearly in violation where there was an intersection, and the neighbors remained silent regarding that lot and had singled him out. He said a lot of the people on McHenry Street supported his appeal.

Mike Adams, Zoning Enforcement Branch, Zoning Administration Division, stated that there was a house that had a fence taller than four feet in the front yard, but Zoning Enforcement worked on a complaint basis, so he had told Mr. Govindani that staff would investigate and cite the owner if Mr. Govindani entered a complaint.

Mr. Govindani confirmed that he had been so advised by Mr. Adams, but had no intention of filing a complaint because the fence did not bother him. He said he objected to being singled out when he suspected that one of the people who had complained about him lived next-door to the house on Patrick Street with the violation.

Chairman DiGiulian closed the public hearing.

Mr. Beard said he was sympathetic to Mr. Govindani's situation and had seen that the appellant kept his property up nicely and the fence was beautiful. He said there were lots of issues that could be discussed at length, but he thought it came down to the issue of safety. He said he was concerned about the fence exceeding the height, especially in the driveway area and with the traffic, in spite of the designation of the road, and along with other issues that had been brought up by the Zoning Administrator, that led him to move that the Board uphold the determination.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Mr. Ribble seconded the motion.

Mr. Hart said he would support the motion. He stated that regardless of whether the subject property was a corner lot, he had concluded that the yard between the structure and Patrick Street was a front yard under Ordinance definitions. He said he thought it was the yard that had to extend across the front of the lot and not necessarily the pavement that had to extend, and whether Patrick Street was ever fully constructed to VDOT standards or whether it was in the VDOT maintenance system, the Ordinance did not speak to that. Mr. Hart said he thought it was clear from the record before the Board that the land that is Patrick Street had been fully dedicated for public use in 1949 as a public street, and from the testimony and evidence the Board had, Patrick Street was constructed to a point intermediate between the fence and the McHenry Street pavement. He said there was a driveway for entering Patrick Street from the property, and even if the street did not extend across the whole frontage of the lot, there was a street there. He said vehicles were using it, the neighbor across the street was using it, and it would satisfy the definition under the Ordinance. Mr. Hart said the interaction between paper streets and the Ordinance was often confusing, and the Board had previous cases where it was not clear whether something was a front yard or not under the Ordinance. He said that using the plain language of the Ordinance, the space between the house and Patrick Street was a front yard, the fence was in excess of four feet in a front yard, and the Zoning Administrator was correct.

Mr. Hammack stated that he supported the comments made by Mr. Hart and made the observation that nothing in evidence had shown that the street had ever been vacated. He said it may be privately maintained, but it had been dedicated as a public street originally.

Chairman DiGiulian called for the vote. The motion carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

//

~ ~ ~ June 21, 2005, After Agenda Item:

Request for Intent to Defer
James I. Lane and/or Joan C. Toomey, A 2004-SP-023

Mr. Pammel moved to approve the request for an intent to defer to August 2, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ June 21, 2005, After Agenda Item:

Approval of June 14, 2005 Resolutions

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

//

Presentation to James D. Pammel

Chairman DiGiulian announced that Mr. Pammel had decided not to accept reappointment to the Board and this was his last meeting. The Chairman then read a Resolution of the Fairfax County Board of Zoning Appeals into the record as follows:

"IN RECOGNITION of Dedicated Service from James D. Pammel as a member of the Fairfax County Board of Zoning Appeals from February 5, 1991, to June 21, 2005.

"WHEREAS, he has faithfully and impartially discharged all of his duties of the Board of Zoning Appeals and assisted any citizen or Board member who requested his assistance and guidance; and,

"WHEREAS, the members of the Board of Zoning Appeals want to express our appreciation for his service, for his thoughtful input into our cases, for his diligence in attendance, and for bringing a broad background into his service which has helped the Board make more balanced decisions.

"NOW, THEREFORE, BE IT RESOLVED that the members of the Board of Zoning Appeals do hereby thank James D. Pammel and express our sincere appreciation for his service."

Mr. Pammel thanked the Board. He said he thoroughly enjoyed the experience of working with each and every member of the Board over the prior 14 years.

Mr. Hammack said the resolution was general in terms, but all the members of the Board had greatly benefitted from Mr. Pammel's experience and knowledge, particularly his knowledge of the Fairfax County Zoning Ordinance which he attained when he worked as a member of the County planning staff. Mr. Hammack commented on Mr. Pammel's patience in dealing with citizens and his sincere desire to assist citizens, staff, and the Board in arriving at the correct decisions in cases which were sometimes complex and the Board did not always have all of the evidence it would have liked to have. Mr. Hammack said Mr. Pammel's contributions to the Board were appreciated.

Mr. Ribble said he had always been quick to second Mr. Pammel's motion regarding the approval of minutes and resolutions because the Board knew Mr. Pammel had thoroughly read them and they were proper. He said he had enjoyed and appreciated Mr. Pammel's input and everything he had done for not only the Board, but for the citizens of Fairfax County. Mr. Ribble thanks Mr. Pammel for his service.

Mr. Hart said he concurred with the other Board members' comments. He said Mr. Pammel had started on the staff in 1956 when Fairfax County was still using the 1941 Ordinance and had used and worked with the '41 Ordinance every day, and the Board still had cases where it had to interpret something under that Ordinance, so that unique dimension would be missed. He said the Board may have to call on Mr. Pammel as a resource and hoped to hear from him on issues of concern.

Mr. Pammel expressed his appreciation to staff for their help over the years, who he said had been a great resource.

Mr. Beard said he concurred with all the comments, and it was indeed a significant loss for the good citizens of Fairfax County.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and briefings by staff members and consultants regarding the McCarthy petition, the letter to Tony Griffin and follow-up letter to Tony Griffin involving RLUIPA and the easement, and the Demetriou case, pursuant to Virginia Code Sec. 2.2-3711. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting was recessed at 10:12 a.m. and reconvened at 11:25 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

Mr. Hammack moved that the Board resolve to have Mr. McCormack file a mandamus action according to guidelines that the Board agreed to in Closed Session. Mr. Ribble seconded the motion, which passed by a vote of 6-0. Mr. Beard was not present for the vote.

//

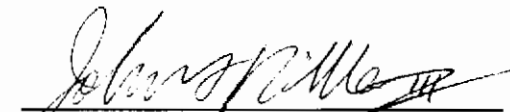
As there was no other business to come before the Board, the meeting was adjourned at 11:27 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: May 20, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



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



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 28, 2005. The following Board Members were present: Vice Chairman Ribble; V. Max Beard; Nancy Gibb; James Hart; Norman Byers; and Paul Hammock. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals and introduced Norman Byers as the newest member of the Board. Vice Chairman Ribble called for the first scheduled case.

~ ~ ~ June 28, 2005, Scheduled case of:

9:00 A.M. MARIA L. GALDO, SP 2005-LE-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain such that side yards total 17.4 ft. Located at 7002 Cold Spring La. on approx. 8,833 sq. ff. of land zoned R-3 (Cluster). Lee District. Tax Map 92-2 ((22)) 330.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Calhoun, the applicant's agent, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit an addition, specifically an enclosure of an existing carport, to remain 17.4 feet from the side yard lot lines. A minimum total side yard of 20 feet is required; therefore, a modification of 2.6 feet was requested.

Mr. Calhoun presented the special permit request as outlined in the statement of justification submitted with the application. He referred to page 13, appendix 3 of the staff report for the letter of explanation and justification. Ms. Galdo had the carport enclosed by a contractor that did not get the proper building permit. The County let her know a special permit was needed, which she filed, but some of the paperwork was incomplete. Mr. Calhoun agreed with staff's development conditions and asked that the request be approved.

Mr. Hart asked if there was a written contract between the client and contractor. Mr. Calhoun answered that there was no contract.

Mr. Hart said that a contract would say who was responsible for acquiring the building permits. Mr. Calhoun said it was standard for the contractor to secure all permits required by the local governing body, which was not done.

Mr. Beard asked about the wheelchair. Ms. Galdo answered that her mother was handicapped and used the wheelchair. She said she enclosed the garage to allow her mother entrance into the house.

Mr. Hammack asked about a letter from the Department of Public Works and Environmental Services (DPWES), a corrective work order. Ms. Hedrick answered that the process began with zoning inspector, Roy Biedler, of Zoning Enforcement Branch, and proceeded with DPWES to stop the work because a building permit had not been obtained. At the time it was not known that Ms. Galdo did not meet the minimum required total side yards, so a notice of violation had not been issued. Then it went to DPWES because of the building code issue on the building permit, so a notice of violation had never been issued. Once Ms. Galdo began the process with DPWES, it was determined that she did not meet her total side yard requirement so she had to go through the process to obtain a special permit.

Mr. Calhoun explained that the work was completed before Ms. Galdo received the corrective work order.

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

Mr. Hammack moved to approve SP 2005-LE-017 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARIA L. GALDO, SP 2005-LE-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain such that side yards total 17.4 ft. Located at 7002 Cold Spring La. on approx. 8,833 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-2 ((22)) 330. 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 28, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for granting a special permit.
3. Under Section B, the noncompliance was done in good faith or through no fault of the property owner.
4. The applicant satisfied Section B based on the explanation presented at the hearing and meets the other requirements.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the garage addition as shown on the plat prepared by Dominion Surveyors, Inc., dated May 18, 2004, submitted with this application and is not transferable to other land.

2. A building permit and final inspections shall be obtained within 30 days of final approval of this application for the addition or this Special Permit shall be null & void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 7.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/06, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05 and 4/26/05)

Stephen Varga, Staff Coordinator, said the applicant's agent requested a 60-day deferral, and staff recommended a deferral to September 13, 2005.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, recommended a 90-day deferral so that the applicant could modify and amend the application in order to move the temple to the lot that staff had recommended.

There were no speakers to address the question of a deferral.

Mr. Hammack moved to defer decision on SP 2004-SP-052 to October 11, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hart asked that information be provided regarding whether a similar sanitation system with a holding tank used as an intermediate staging point prior to the sewer had been previously approved in the R-C District within the proximity of wells and whether it had worked.

//

Since it was prior to 9:30 a.m., Vice Chairman Ribble took up the after agenda items.

//

~ ~ ~ June 28, 2005, After Agenda Item:

Approval of January 13, 2004 Minutes

Mr. Hart moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ June 28, 2005, After Agenda Item:

Request for Additional Time
Trustees of the Church of Apostles, SPA 99-Y-946

Mr. Hart gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mr. Hart moved to approve 24 months of Additional Time. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The new expiration date was April 18, 2007.

//

~ ~ ~ June 28, 2005, After Agenda Item:

Approval of June 21, 2005 Resolutions

Mr. Beard moved to approve the Resolutions. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 and 5/17/05 at appl. req.)

Vice Chairman Ribble noted that A 2004-DR-040 had been administratively moved to September 20, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 8 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 96-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 and 5/17/05 at appl. req.)

Vice Chairman Ribble noted that A 2004-DR-040 had been administratively moved to September 20, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05 and 5/17/05 at appl. req.)

Vice Chairman Ribble noted that A 2004-DR-040 had been administratively moved to September 20, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of

Zoning Ordinance provisions. Located at 2025 Franklin Av. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. (Admin. moved from 5/24/05 at app. req.)

Vice Chairman Ribble noted that an indefinite deferral had been requested by the appellants' agent.

Keith Martin, agent for the appellants, said that discussions with the Zoning Administration Division staff indicated to him that there was a pending Ordinance amendment before the Board of Supervisors (BOS) which would create the vehicle of a special permit to rectify situations similar to theirs.

Ms. Gibb asked about the status of the Zoning Ordinance amendment. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that she was not sure. She said it was thought there would be a development review committee of the BOS sometime in July and hopefully direction would be received at that time.

Ms. Gibb asked if there was a pending proposed amendment. Ms. Stanfield answered that there was a form of an amendment which would allow fences six feet in height in a front yard with a special permit.

Mr. Hart also replied to Ms. Gibb's question and said that the Planning Commission had a public hearing scheduled on phase one of a multi-part process in which there were several pieces, one being to allow applications for a special permit for front yard fences up to six feet. The Planning Commission recommended an indefinite deferral of the Zoning Ordinance amendment public hearing. The public hearing had not been rescheduled, as Ms. Stanfield explained. Staff would review it in the wake of the legislation in the general assembly that would allow the Zoning Administrator to make certain modifications to the Zoning Ordinance or entertain applications for modifications of what used to be a variance. There would be no public hearing, and it would be done administratively by the Zoning Administrator. Mr. Hart said it was his understanding that it would be considered by the development process committee over the summer. He said he assumed it would be after the break because of the Planning Commission's schedule, but no dates had been set for it.

Ms. Gibb said she did not know that she was ready to defer the subject application when there was no definite prospect as to when the hearing would take place, what was proposed, and whether it would resolve the issue or not.

Ms. Stanfield responded to the question of staff's position on the deferral request and said it was seven feet, not six feet, so even if the Ordinance amendment was adopted, the application would not meet the requirements for the special permit; therefore, staff recommended that it be heard.

Vice Chairman Ribble asked whether there were any speakers to address the question of the deferral request.

Donald Cochran, 2023 Franklin Avenue, McLean, Virginia, came forward to speak in opposition to the deferral request. He said the proposed zoning law approval may not be so lenient as to allow an eight- to nine-foot high fence in place of a four-foot high fence. Mr. Cochran presented photographs of the fence on the overhead projector. The photographs showed that the fence on Virginia Avenue exceeded what the Zoning Ordinance would allow. The appellants had not both signed the request for the first delay of the appeal.

Mr. Hart asked about a case in Providence where there was a pool with a fence, whether it had been deferred, and what the fence height was. Ms. Stanfield replied that it had been deferred. She said she did not recall the height. She said that staff recommended that all fences six feet and under be administratively deferred so as to be consistent with the Zoning Ordinance.

Mr. Martin explained that the Brattis were prepared to bring the fence to six feet high immediately. He said he just had been retained recently and needed at least a two-week deferral to visit the property in preparation for representation of his clients.

Ms. Gibb asked what the reasons were for the previous deferrals. Cynthia Porter Johnson, Zoning Administration Division, responded that it had been administratively moved back in May at the appellants' request while they were out of town.

Mr. Hammack said that this type fence did not fit in the same category of the six-foot fences being

administratively deferred by staff, but Mr. Martin would need at least two to three weeks to prepare and adjust the height of the fence.

Ms. Gibb asked whether the case would have to be readvertised. Ms. Stanfield answered that it would not.

Mr. Beard said he could not support a motion in which the fence remained at the current height. Mr. Martin responded that he would bring the fence into compliance immediately. Mr. Beard said he would then support the motion.

Mr. Hammack moved to defer A 2005-DR-005 to July 19, 2005, at 9:30 a.m. Ms. Gibb seconded the motion.

Mr. Hart made an amended motion to include notification to those that had written or e-mailed regarding the case to let them know of the new date. Ms. Stanfield answered that signs could be reposted and letters sent out first class mail.

Mr. Hammack and Ms. Gibb accepted Mr. Hart's amendment to the motion.

Mr. Hammack stated that when Mr. Martin returned in three weeks, he could then request an indefinite deferral because it would then fit within the six-foot fence Zoning Ordinance amendment.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 5-1. Mr. Byers voted against the motion. Chairman DiGiulian was absent from the meeting.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. OAKWOOD ROAD ASSOCIATES, LLC, A 2005-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5404 Oakwood Rd. on approx. 16,778 sq. ft. of land zoned I-I. Lee District. Tax Map 81-2 ((3)) 36A. (Admin. moved from 6/21/05 at appl. req.)

Vice Chairman Ribble noted that A 2005-LE-016 had been administratively moved to October 11, 2005, at 9:30 a.m., at the applicant's request.

//

~ ~ ~ June 28, 2005, Scheduled case of:

9:30 A.M. MRS. BETSY BOYLE, A 2005-BR-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal asserting that the Zoning Administrator made a verbal determination on January 26, 2005 not to issue a Notice of Violation at that time for operating a place of worship without special permit approval on property located at Tax Map 70-3 ((4)) 113. Located at 8434 Thames St. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 113. (Decision deferred from 5/10/05 and 6/7/05)

William Shoup, Zoning Administrator, stated for clarification for the record that the case was to be heard only in the name of Betsy Boyle. Mr. Shoup referred to a memorandum dated June 21, 2005, that he had sent to the Board of Zoning Appeals (BZA) that summarized what had previously occurred in the case. May 10 was the public hearing, and at that point the BZA deferred the decision. Staff had viewed the videotapes taken of the activity at the subject property and found them to be consistent with his findings of not a significant volume when he conducted inspections of the property. He had conducted further inspections of the site on May 15, June 5, and June 19. June 19 had the heaviest volume of the three dates, which was 26 people. Mr. Shoup referred to a handout from the Department of Public Works and Environmental Services (DPWES) in which the issue of building code compliance was addressed, and it was determined that such a gathering was not in violation.

In reference to the public hearing, Mr. Shoup stated that the case was about the Zoning Administrator's authority and the right to exercise prosecutorial discretion for the reasons stated in the staff report. The circumstances did not warrant the issuance of a notice of violation according to Mr. Shoup, and he referred to the June 21 memorandum. The issue, prosecutorial discretion and the consideration of the Religious

Land Use and Institutionalized Persons Act (RLUIPA), would be a consideration of the Zoning Administrator, and the BZA had no authority to order the Zoning Administrator to issue a notice of violation, as the appellant requested.

Ms. Gibb asked what the neighbors' option was to the noise.

Mr. Shoup answered that the neighbors could pursue it as a public nuisance and take whatever action they deemed necessary subsequent to the outcome to the appeal decision, but it did not constitute a zoning violation.

Mr. Byers asserted that the Zoning Administrator had discretion, but along with that was the issue of fairness, and he asked whether there had been other similar cases in which the Zoning Administrator had judged it differently, and if so, how many and were they given notices of violation. Mr. Shoup answered that prior to RLUIPA, there had been a few cases, and there were notices of violations, but since RLUIPA, there were none.

Mr. Hammack asked if Mr. Shoup considered the case on Annandale Road to be similar. Mr. Shoup answered he did not.

Ms. Gibb asked if RLUIPA was the basis of Mr. Shoup's decision not to issue a violation. Mr. Shoup answered that it was.

Cynthia Bailey, County Attorney's Office, said that the BZA's jurisdiction did not extend to RLUIPA. She cited statute 15.2-2309. She said the BZA did not have the authority to reach and decide issues regarding that statute.

Mr. Hart asked if the BZA was exposed to liability if they violated RLUIPA. Ms. Bailey responded that an action could not be brought against the BZA for something that was not within their authority.

Mr. Beard asked if the Board was immune from RLUIPA. Ms. Bailey responded that the Board was not in jeopardy of being sued due to RLUIPA.

Mr. Byers stated that there was a broader issue, which was that the county was very diverse and becoming more diverse in its religions, which should be respected, but there should also be balance where the characteristics of the neighborhoods were maintained.

Mr. Hart stated that he thought the general assembly had said the Board had to hear those cases in which the Zoning Administrator relied on RLUIPA for the basis of a determination. Ms. Bailey responded that to do that would make everyone in Fairfax County a de facto Zoning Administrator, which would not be what the general assembly intended. The role of the BZA was not to look at whether or not RLUIPA was properly interpreted, but to determine whether under the Zoning Ordinance a notice of violation was proper.

Mr. Hart asked whether there was any case law in Virginia in which a BZA erred on an appeal from a decision of the Zoning Administrator by considering RLUIPA or some other federal or constitutional issue, and if that was the Zoning Administrator's articulated reason for the decision. Ms. Bailey answered that there was not. Ms. Bailey said the Board did not have authority when the Zoning Administrator did not act. It was the role of the judiciary, not the Board. She said the BZA's jurisdiction was limited to the Zoning Ordinance, and RLUIPA could not be considered because it was not part of the Zoning Ordinance. She said two cases framed the concept. *Holland vs. Johnson and University Square Associates* provided that what comes before the BZA was the Zoning Ordinance, not the validity of the Zoning Ordinance, not the constitutionality of the Zoning Ordinance, and not to consider other district property rights. She said that did not mean that individuals who took exception to decisions or determinations made by the Zoning Administrator that did not deal specifically with the Zoning Ordinance were without a remedy. Ms. Bailey explained that if the Zoning Administrator was unconstitutionally enforcing the laws, if the Zoning Ordinance was unconstitutional on its face, or if it violated a particular or federal or state statute, individuals had redress, but it was judiciary, not the BZA.

Mr. Hart asked if that meant that the neighbors could appeal the decision directly to the Circuit Court and skip over the BZA and state that the Zoning Administrator was wrong because he would not say it was a violation and sue the neighbor to stop the chanting. Ms. Bailey responded that the solution for the neighbors was a public nuisance action. It would be a private court action. She stated that if the Zoning Administrator

was blatantly not enforcing the Zoning Ordinance, then it would be taken up with the Board of Supervisors through a political remedy.

Ms. Gibb gave an example of a special permit for a church in which the church did not agree with the development conditions passed by staff and would not go along with them. She asked what the BZA was to do with that argument. Ms. Bailey responded that it was fact specific depending on what the proposed use and conditions were. She said you would need to look at the first condition that was objected to and review case law to determine whether the condition posed a substantial burden.

Ms. Gibb remarked that that would be interpreting RLUIPA. Ms. Gibb said she thought it would come up more and more where RLUIPA was used as a defense for a church, and she asked what the BZA was supposed to do if the BZA was not to interpret RLUIPA.

Mr. Hammack asked whether other jurisdictions had incorporated RLUIPA into their Zoning Ordinance so that the Boards of Zoning Appeals could be made proper parties. Ms. Bailey said she could not respond to what other jurisdictions did. She said that when the BZA acted in a quasi-judicial capacity, reviewing decisions of the Zoning Administrator, it would be no more a necessary party than the Circuit Court. She explained that the BZA was a hearing panel, and if further litigation was needed, the issue would go to the Circuit Court by staff and the property owner in interest.

Mr. Hammack commented that in the Tran case, the Supreme Court of Virginia asked that RLUIPA be briefed before it gave a decision. He asked why the Supreme Court would do that if it felt it was not a consideration for the BZA. Ms. Bailey said she could not speculate on what was on the minds of the justices in the Court, but added that Tran was decided just before RLUIPA went into effect.

Ms. Gibb asked if it were possible for the BZA to not have authority to hear or interpret an appeal case, but to have authority where special permits were concerned. Ms. Bailey answered that it might be possible, but that she was not at liberty to provide legal advice to the BZA regarding that issue.

Mr. Hammack asked if the Board could violate the RLUIPA statute if it did not consider RLUIPA arguments raised by an applicant or an appellant. Ms. Bailey said she did not believe so. RLUIPA was not something the BZA considered. The BZA only considered the Zoning Ordinance. She said the BZA should be immune from any prosecution under the RLUIPA statute if the BZA followed the Virginia Ordinance.

Mr. Hammack said he did not agree because the Zoning Administrator's memorandum stated that any person that violated RLUIPA could be subject to attorney's fees and compensatory damages. He noted that there were no asterisks that said except members of the BZA of Fairfax or Virginia BZAs because the Virginia Statute did not let them consider RLUIPA. Mr. Hammack said the BZA needed to know more than they did presently in order to act properly in the considerations of the cases that would come before them.

Vice Chairman Ribble said there needed to be a lot more study on RLUIPA.

Betsy Boyle, the appellant, came forward to speak. She cited Virginia Code 15.2-2309, which further stated that the BZA must interpret the Zoning Ordinance in a manner that upheld the Ordinance and "must consider the purpose and intent of the applicable ordinance, laws, and regulations in making its decisions." She said she thought it included RLUIPA and gave the BZA the authority. She said RLUIPA did not apply until a property owner raised it as a defense, which had not happened, and regarding the legislative history of RLUIPA, it did not provide religious institutions with immunity from land use regulation nor did it relieve them from applying for variances and special permits. Ms. Boyle said it had been three years since she filed her initial complaint, but the problems had spanned over 18 years, and if it had been taken care of before RLUIPA, they would not even have to be discussing RLUIPA. She said the situation had improved somewhat since the Zoning Administrator had spoken with the owner and essentially issued a special permit, although it was not in writing. She said there was nothing in writing. She referred to a letter from the resident that said they would move their services elsewhere as of August 5th. Ms. Boyle asked that it be put in writing that any continued worship activity must apply for a special permit as of August 5th. She added that there was no recourse, and they could add another 100 people there the next Sunday even though the special agreement they made with the Zoning Administrator was for 50 people. Ms. Boyle said she thought the BZA had the jurisdiction according to the Virginia Code.

Ms. Boyle noted that in the Executive Summary handout, Ms. Chopra stated that the addition was built for worship services, and there were 50 people that attended. Ms. Boyle said she thought that the Board had the authority to find the Zoning Administrator incorrect. She said she knew of a case in which the BZA

reversed the decision of the Zoning Administrator. She said she was not asking for a mandamus. She said she wanted to leave with the facts of the decision so that she and her neighbors could do whatever was needed to pursue it.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on A 2005-BR-005 to October 25, 2005, at 9:30 a.m.

Mr. Hammack said there were reasons to defer because of the arguments about the application of RLUIPA. He explained that a letter had been sent to the County Executive requesting funds to obtain counsel to advise the BZA on the application of RLUIPA since the County Attorney's Office was not in a position to do it. A follow-up letter had been sent, but there had been no response. Mr. Hammack asserted that he thought it was important for the Board to get its own legal advice concerning the application of RLUIPA. Given the significance of the decisions the Board would face not only with appeals, but on special permit applications, he said the Board needed some good independent legal advice. Mr. Hammack wanted to defer the appeal for 60 to 90 days in order to await word from the County Executive. He said a secondary reason was because Ms. Chopra, the property owner, would be moving in August, and the activity on the property might discontinue then.

Mr. Hart seconded the motion.

Mr. Beard said he did not believe that it was the BZA's position to run the zoning office by administratively directing the Zoning Administrator to make decisions. He said it was not the Board's place to manage or direct the Zoning Administrator's prosecutorial authority or discretion. He referred to Ms. Bailey's argument that if the BZA overruled the Zoning Administrator, in essence the BZA would be making every citizen a defacto Zoning Administrator. Mr. Beard said he could not support the motion to defer.

Vice Chairman Ribble called for the vote. The motion failed by a vote of 3-3. Mr. Beard, Mr. Hart, and Mr. Byers voted against the motion. Chairman DiGiulian was absent from the meeting.

Mr. Hart said it had been a very difficult case for the BZA due to the legal issues confounding them with the interaction between RLUIPA, their duties, and the Zoning Ordinance, but also on an individual level with respect to the players involved. Mr. Hart went on to say that the whole purpose of the Zoning Ordinance was to regulate uses, and non-residential activity involving groups of people in a residential district could have significant impacts, which was one of the reasons why the Zoning Ordinance regulated those uses. He said both sides had raised very complex arguments, and the bigger picture was yet to be determined and would perhaps be in a case other than this one.

Mr. Hart addressed the jurisdictional issue by saying that the Board had the jurisdiction to consider the appeal matter. He said it was clear to him that oral determinations of the Zoning Administrator were appealable. He noted that there was a case in which the Zoning Administrator answered a question in a public hearing, and the Supreme Court concluded that the answer to the question in a public hearing was a determination that had to be appealed and that started the 30-day clock running.

Mr. Hart stated that under 15.2-2309, Subsection 1, the scope of what the Board reviewed included any decision by the Zoning Administrator or some other administrative officer in administering or interpreting the Ordinance, and there would be no exception for RLUIPA or anything else. It would include all decisions in administering and interpreting the Ordinance. Mr. Hart said he was astonished by the assertions that the BZA was immune or exempt from RLUIPA. He said it was to the contrary, and Congress specifically intended Boards like the BZA to be bound by RLUIPA because the BZA was the one dealing with places of worship or making those kinds of governmental decisions on appeals that might be regulated or constrained by the terms of RLUIPA. He said he could not imagine that there was any specific exemption prohibiting suits against the Board.

For the purposes of the Board's consideration of the subject case, Mr. Hart said he agreed that someone could appeal an oral determination, and it was clearly within the scope of 15.2-2309 because there was no exception to certain topics being taboo if it was part of a decision of the Zoning Administrator.

In regard to prosecutorial discretion as to whether it was correct or an incorrect decision of the Zoning Administrator, Mr. Hart said there was disagreement, but it was probably a place of worship, and the use probably would require a special permit in a residential district. Mr. Hart said he saw inconsistencies between the Boylo case and others, and he referred to recent cases regarding the Hindu activity in Braddock

and the Buddhist activity in Providence. He said an objective standard was needed in the building code so that cases would be handled consistently.

Mr. Hart said it was generally the function of the Zoning Administrator to make decisions about what to and what not to enforce as a violation, and the Zoning Administrator makes decisions regarding who gets a violation letter. Mr. Hart said he disagreed with the staff report that the appellant was asking for a mandamus, because if the Board reversed the determination of the Zoning Administrator, it would lead nowhere, because the BZA was not able to issue a violation or order the Zoning Administrator to issue a violation. Mr. Hart said he believed that the Zoning Administrator had the authority to decide whether a violation was to be issued or not and that kind of a decision was not incorrect. It was for those reasons that Mr. Hart said the determination of the Zoning Administrator should be upheld.

Mr. Hart moved to uphold the determination of the Zoning Administrator. Mr. Beard seconded the motion.

Mr. Hammack said the issue was narrow, to uphold the Zoning Administrator's discretion to not issue a notice of violation. Mr. Hammack said he did not think the decision got to the underlying reasons behind the Zoning Administrator's discretion.

Vice Chairman Ribble called for the vote. The motion carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Heisler and the Lancaster cases pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The meeting recessed at 11:02 a.m. and reconvened at 12:39 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

//

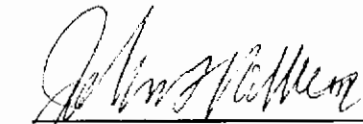
As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Vanessa A. Borgh

Approved on: November 15, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 12, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ July 12, 2005, Scheduled case of:

9:00 A.M. DWAYNE A. & LAURA L. CARABIN, VC 2004-MA-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. from rear and side lot lines. Located at 6234 Yellowstone Dr. on approx. 10,999 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (J) 6. (Decision deferred from 9/28/04)

Chairman DiGiulian noted that the application had been deferred for decision from September 28, 2004.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff supported a further deferral as requested by the applicants.

Mr. Hammack moved to defer decision on VC 2004-MA-101 to December 20, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:00 A.M. BRAD CZIKA, VC 2004-BR-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum rear yard coverage greater than 30 percent and fence greater than 7.0 ft. in height to remain in rear yard and side yards. Located at 10411 Pearl St. on approx. 10,739 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 77-2 ((2)) 222. (Concurrent with SP 2004-BR-020) (Admin. moved from 6/22/04 at appl. req.) (Decision deferred from 6/29/04, 10/5/04, and 3/8/05)

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant had requested an indefinite deferral, which staff supported.

Mr. Ribble moved to indefinitely defer decision on VC 2004-BR-063. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.) (Moved from 3/1/05 for notices) (Admin. moved from 4/19/05 and 5/24/05)

Chairman DiGiulian noted that VCA 2002-MA-176 had been administratively moved to August 9, 2005, at 9:00 a.m.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:00 A.M. FORREST & MARVA HATCHER, VC 2003-PR-194 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in front yard and 7.0 ft. in height in side and rear yards and storage structure exceeding 200 sq. ft. in

gross floor area. Located at 2747 Oldewood Dr. on approx. 27,921 sq. ft. of land zoned R-3. Providencia District. Tax Map 49-2 ((1)) 121. (Concurrent with SP 2003-PR-054). (Continued from 3/2/04) (Decision deferred from 5/4/04 and 11/2/04)

9:00 A.M. FORREST & MARVA HATCHER, SP 2003-PR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit deck and dwelling to remain 2.5 ft. with eave 1.5 from side lct line and accessory structures to remain 0.0 ft. and 1.0 ft. from side lot line. Lccated at 2747 Oldewood Dr. on approx. 27,921 sq. ft. cf land zoned R-3. Providenco District. Tax Map 49-2 ((1)) 121. (Concurrent with VC 2003-PR-194). (Continued from 3/2/04) (Decision deferred from 5/4/04 and 11/2/04)

Chairman DiGiulian noted that the two applications would be heard concurrently.

John E. Carter, Esquire, 4103 Chain Bridge Road, Suite 101, Fairfax, Virginia, identified himself as the Hatchers' legal representative.

Deborah Hedrick, Staff Coordinator, stated that the two cases were being heard for decision only.

Mr. Carter presented a brief history of the Hatcher property which involved filing a quiet title regarding a 25-foot easement, and request to take adverse possession (eminent domain) of a three-foot strip of Fairfax County Park Authority land adjacont to their property. The Ccounty Attorney's Office, cn behalf of the Park Authority, denied the Hatchers' request for adverse possession. The possibility of a land swap or purchase of the strip of land was also rejected by the Park Authority as the Park Authority could not find any public beneficial use by allowing the Hatchers to purchase the three-foot strip of land. The processing of a quiet title was slow due to the difficulty in finding the previous owners' heirs. Mr. Carter said the easement was created in the 1930s and '40s. It was anticipated that by the August 9th publication's return date, there would be no respnses, and the Hatchers would be decreed a quiet title on the property removing the 25-foot road easement. Mr. Carter requested a further deferral in order for the quiet title matter to be settled.

In response to Mr. Hart's question of whether the defendants to the quiet title were being served by publication because they were parties unknown or because their addresses were unknown, Mr. Carter said many heirs were deceased, some parties were unknown, and he knew of no guardian appointed for the unknown parties. He explained the disposition of the Hatchers' three sheds, one of which was on a concrete foundation and had not been mcvcd, and the smaller two which were moved.

Mr. Hart said the Hatchers' larger shed would have to be moved because a portion of it remained on Park Authority land, and the Board could not render a decision on property other than the applicants' property.

Mr. Carter said that Mr. Hatcher never received notice, through conversation or documentation, from the Park Authority that it objected to the larger shed remaining on a portion of its property.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that based on the adoption of the Zoning Ordinance Amendment concerning containment of golf balls, the amendment would not afford any relief for the Hatchers because the location of the proposed fence was on the Hatcher property, and it would be the Park Authority who must apply for something on its land while Mr. Hatcher was prohibited from applying for something on his own property.

Mr. Hart said he wanted to scrt cut a procedure for this matter's resolution and to determine whether or not there was merit for a further daferral. He said the varianca request was problematic because, although the recently adopted Ordinance amendment allowed for ball containment, its relief was not available to Mr. Hatcher. He said he found it unfair that the Park Authority was no longer willing to construct even a 35-foot high net fence although Mr. Hatcher had maintained that a 35-foot height was never sufficient for his situation, that a substantially higher fence was necessary. Mr. Hart said that unless advised otherwise, concerning the fence component of the case, he could see no merit for further deferring the decision.

Mr. Carter said he understood the Board's position. He requested a December deferral date until the quiet title decree could be recorded in the land reccrds.

Mr. Hammack moved to defer decision on VC 2003-PR-194 and SP 2003-PR-054 to December 6, 2005. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 12, 2005, Scheduled case cf:

9:00 A.M. ROBERT AND JOYCE HARRISON, SP 2005-PR-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.2 ft. from side lot line. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1. Providence District. Tax Map 58-2 ((4)) 76.

Mr. Hammack made a disclosure and indicated that he would recuse himself from the public hearing.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William B. Lawson, Jr., Esquire, agent for the applicant, 8045 Wilson Boulevard, Suite 100, Arlington, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Records indicated the dwelling was originally constructed in 1958, and the applicants requested a reduction to the minimum yard requirements based on an error in building location to permit the enclosure of an existing carport to remain 15.2 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 4.8 feet was requested.

In response to Mr. Hart's question concerning the confusion when the building permit was issued in error, Ms. Hedrick said the garage was closer to the side lot line than what was indicated on the plat. She explained the plat's dimensions, the discrepancy in measurements, and the sequence of the enclosure of the carport into a garage. Ms. Hedrick said the applicants were not at fault in the matter, and the violation was the result of an honest error during the processing of the permit.

Mr. Lawson said that, according to discussions with his clients, the confusion in obtaining the house location plat may have occurred when Mr. Harrison followed the procedure to obtain a copy of his house location plat as indicated in the County issued document *Carport Enclosures; A Guide for Homeowners in Enclosing a Carport*. The County staff person retrieved a copy of the old plat, which was created when the carport was constructed, and in error issued the building permit. Mr. Lawson stated that the neighborhood was long established with large lots, lush vegetation, and was heavily treed. He said that there was no negative impact on the closest neighbor. He said the Harrisons' carport was deemed sufficient at the time, but as they got older, they hoped to be protected from inclement weather and from an alarming increase in vandalism and crime in the neighborhood. Mr. Lawson stated that the Mantua Citizens Association supported the proposal, as did most of the neighbors.

Mr. Lawson responded to Mr. Hart's questions concerning construction progress and stated that the garage design was compatible with the house.

Chairman DiGiulian called for speakers.

Marim Burton, 8905 Glenbrook Road, Fairfax, Virginia, came forward to speak in support of the application. She stated that she was an adjacent neighbor to the Harrisons and approved of their garage upgrade.

Richard Young, no address given, identified himself as a neighbor and stated his support of the Harrisons' project as he believed it enhanced the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-PR-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT AND JOYCE HARRISON, SP 2005-PR-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15.2 ft. from side lot line. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1.

Providence District. Tax Map 58-2 ((4)) 76. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 12, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The Board has determined that the non-compliance was done in good faith, and was noted subsequent to the issuance of a building permit.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the garage addition, as shown on the plat prepared by Huntley, Nyca & Associates, Ltd., dated and signed April 7, 2005, submitted with this application and is not transferable to other land.
2. A revised building permit and final inspections shall be obtained within 30 days of final approval of this application for the addition or this Special Permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 12, 2005, Scheduled casa of:

9:00 A.M. REGENCY TALL OAKS VILLAGE CENTER, LLC, SP 2005-HM-019 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit a health club. Located at 12056 North Shore Dr. on approx. 19,033 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((5)) 8A1 pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Milone, the applicant's agent, Cooley Godward LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to establish a 2,623-square-foot *Curves* health club in a currently vacant building within the existing Tall Oaks Village Center. The 20-foot tall building was located on the eastern edge of the site. The site was accessed via a driveway located just south running from North Shore Drive directly into the shopping center. A parking area containing 363 parking spaces was located within the shopping center, of which the nearest 12 parking spaces to the building located immediately north of the entrance would serve as dedicated parking for *Curves* customers and employees. As represented by the applicant's statement of justification, Regency Tall Oaks Village Center had no plans to alter the façade of the building, the parking lot, or entryways into the site; the proposed health club's hours of operation would be between 6:00 a.m. and 9:00 p.m., 7 days a week; and, plantings of trees and shrubs of varying sizes would surround the site to screen and buffer. Staff recommended approval of SP 2005-HM-019 with the adoption of the proposed revised development conditions dated July 12, 2005.

Mr. Milone presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the proposed use was less intensive than the 7-11 that it replaced and that it would be a good addition to the neighborhood. Except for Condition 1, he concurred with staff's development conditions and suggested revised language that the special permit may be granted to successors or assigns instead of the applicant only. He said that the revised language ensured any future transfer of the property would not be encumbered or hampered.

In response to Mr. Hammack's question, Mr. Varga stated that staff had no objection to the change suggested by Mr. Milone.

Chairman DiGiulian called for speakers.

Melanie Shaengold, Fitness Management, LLC, 4827 30th Street North, Arlington, Virginia, said she was the owner and operator of the subject *Curves* facility, that she currently had five other *Curves* in the Arlington area which she owned and operated, and that *Curves International* had 9,000 facilities worldwide. Ms. Shaengold said she believed the community was anxious for a new healthcare facility as she had already received numerous phone calls inquiring about the opening date.

In response to Mr. Byers' request for clarification, Mr. Varga said the applicant's request to amend the language in Development Condition 1 was reasonable and that it would be an undue burden on Regency Tall Oaks Village Center, LLC, if at some time in the future administratively the ownership were to change, because it would require a special permit amendment to continue the use.

In response to Mr. Hammack's question, Mr. Varga noted that the language referencing construction which was stricken on page 2 of staff's July 12th development conditions was specific to this application only because this applicant proposed no additional construction, just a change of use for the building.

Chairman DiGiulian closed the public hearing.

Discussion followed between Mr. Hart and Ms. Gibb concerning the revised language of Development Condition 1 and who constituted "successors" and "assigns." Ms. Gibb stated that, as she understood it, the permit ran with the land. Mr. Hart said the language warranted clarity, and it should be addressed at a later time to assure generic continuity.

Mr. Beard said that the issue, in his opinion as he understood it discussed, dealt with transferability or meeting development conditions, and he thought that was the responsibility of the Zoning Administrator.

Mr. Hart moved to approve SP 2005-HM-019 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

REGENCY TALL OAKS VILLAGE CENTER, LLC, SP 2005-HM-019 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit a health club. Located at 12056 North Shore Dr. on approx. 19,033 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((5)) 8A1 pt. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 12, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. This is a sensible retrofitting or reuse of an existing vacant 7-11 building.
3. The proposal seems to have no opposition.
4. It has a favorable recommendation from staff.
5. It appears that there will be no negative impacts on anybody.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 6-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Regency Tall Oaks Village Center, LLC, and its successors or assigns only, and is not transferable without further action of this Board, and is for the location indicated on the application, 12056 North Shore Drive, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Theodore D. Britt, Tri-Tek Engineering, dated 3/11/05, 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 to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The hours of operation for the facility shall be limited to 6:00 a.m. to 9:00 p.m., seven days a week.
6. Parking shall be provided as shown on the special permit plat. All parking shall be on site.
7. All new or replacement outdoor lighting features shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.

8. All signs, existing and proposed, shall be in conformance with Comprehensive Sign Plan CSP-C-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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-1. Ms. Gibb voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:30 A.M. BROOKS H. LOWERY, A 2004-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 60-2 ((15)) 148 is in violation of Zoning Ordinance provisions. Located at 3212 Cofer Rd. on approx. 12,781 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 148. (Decision deferred from 11/9/04) (Decision deferred from 2/8/05 at appl. req.)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appeal concerned a fence and that the case had been deferred several times. The applicant requested an indefinite deferral, but staff supported a deferral date to December 13, 2005.

Mr. Beard moved to defer decision on A 2004-MA-023 to December 13, 2005, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:30 A.M. ENRIQUE LOPEZ, A 2005-MV-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and an accessory use (a fence) on property which does not have an approved principal use in the C-8 District all in violation of Zoning Ordinance provisions. Located at 10014 Richmond Hy. On approx. 23,311 sq. ft. of land zoned C-8. Mount Vernon District. Tax Map 113-2 ((1)) 65. (Admin. moved from 5/10/05 at appl. req.)

Enrique Lopez, 65409 Berkshire Drive, Alexandria, Virginia, identified himself as the appellant and stated that he was present for the hearing.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 30, 2005. This was an appeal of the determination that the appellant had established a storage yard and an accessory use, consisting of a 7-foot high fence, on property that did not have a principal use in a C-8 District in violation of Zoning Ordinance provisions. The property was wooded with no buildings, and the appellant's trucking company had utilized the site for storage of his trucks, of which there were approximately nine dump trucks parked on the site amongst the trees. Ms. Stanfield said she had met with and worked out a step-by-step process for Mr. Lopez to bring his use into compliance, but it would be a rather lengthy process because site plan approval was required. Staff recommended a three-month deferral to revisit the appeal and determine what progress had been made to bring the property into compliance.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer the decision on A 2005-MV-006 to October 25, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 12, 2005, Scheduled case of:

9:30 A.M. RECYCLE AMERICA ALLIANCE, LLC, A 2005-BR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is permitting outdoor storage in association with a recycling center which is operating on property located at Tax Map 77-2 ((1)) 58A in violation of Zoning Ordinance provisions. Located at 10400 Premier Ct. on approx. 4.02 ac. of land zoned I-5. Braddock District. Tax Map 77-2 ((1)) 58A. (Reconsideration granted on 5/24/05)

Mr. Hammack called attention to a letter from the appellant's agent, Frank Stearns, Esquire, requesting to withdraw the appeal.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant signed an agreement with staff stipulating the step-by-step process whereby they would come into compliance with the Zoning Ordinance. She noted that the appellant had a combination of things on-going, such as significantly reducing the amount of recycled materials received at the site, an attendant on-site who continuously cleaned up after the trucks, the establishment of a "butler" building, and in the near future, the expectation of reducing all services at the site because they were opening up several new facilities.

Mr. Hart suggested that the word "storage" be defined in the Ordinance, and Ms. Stanfield said she would convey his request to the Zoning Administrator.

The Board accepted the appellant's request to withdraw its appeal.

//

~ ~ ~ July 12, 2005, After Agenda Item:

Request for Additional Time
St. John's Lutheran Church, SPA 85-L-050

Mr. Hammack moved to approve 30 months of Additional Time. Mr. Hart seconded the motion, which carried by a vote of 7-0. The new expiration date was December 18, 2007.

//

~ ~ ~ July 12, 2005, After Agenda Item:

Request for Reconsideration
Mrs. Betsy Boyle and Mrs. Demetra Mills, A 2005-BR-005

Mr. Beard moved to defer the decision on the reconsideration of A 2005-BR-005 to September 27, 2005. Mr. Ribble seconded the motion.

Cynthia Bailey, Esquire, County Attorney's Office, said she reviewed the lengthy document submitted by Betsy Boyle and that her brief review revealed nothing that warranted changing the decision the BZA made. She said the case Ms. Boyle cited was one from out of state and was not relevant.

Mr. Hart concurred that the material submitted by Ms. Boyle was substantial and too much to read at the hearing. He said he thought the matter could be revisited after one week and that he did not support a deferral of several months. Mr. Hart made a substitute motion to defer the decision on the reconsideration of A 2005-BR-005 to July 19, 2005. Mr. Byers seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

//

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Demetriou case, the Sant Nirankari case, and the Board of Zoning Appeals' letter to the County Executive, pursuant to Virginia Code Ann. Sect. 2.2-371(A)(7) (LNMB) Supp. 2002. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The Board entered into Closed Session at 10:16 a.m. and reconvened at 11:08 a.m.

Mr. Hammack then moved that the Board of Zoning appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the closed session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

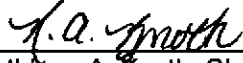
Mr. Hart moved that the Demetriou case be scheduled as an After Agenda Item for the July 26, 2005 meeting, and that staff prepare an information packet to include the staff report, all pertinent court documents and correspondence, and a video tape of the public hearing to be delivered to the Board members prior to July 26, 2005. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//


As there was no other business to come before the Board, the meeting was adjourned at 11:11 a.m.

Minutes by: Paula A. McFarland

Approved on: June 3, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 19, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. SUMAN CHOUDHARY TRUSTEE, SP 2005-DR-021 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6503 Anna Maria Ct. on approx. 23,395 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((4)) 118.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Suman Choudhary, 8503 Anna Maria Court, McLean, Virginia, replied that it was.

Peter Braham, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory dwelling unit within an existing dwelling unit. The accessory dwelling unit would not require new construction. The existing dwelling unit met the bulk requirements and, in the staff's evaluation, complied with the applicable special permit standards. Staff recommended approval of the special permit subject to the proposed development conditions. Mr. Braham noted that revised development conditions had been distributed to the Board. Mr. Braham said that with the exception of some interior finishing, the construction had been completed.

Mr. Hart asked what had happened to the second kitchen that had been built illegally and then removed. Mr. Braham replied that there had been a second kitchen, a zoning inspection had been done on the property, a violation was served, and the kitchen was removed from the property. The dwelling was then re-inspected and found to be in compliance with the Zoning Ordinance. Mr. Hart asked if there was a permit for the construction that referred to plans that did not include the second kitchen. Mr. Braham said he did not know.

Mr. Hart asked whether a complaint had been received by the County. Bruce Miller, Senior Zoning Inspector, Zoning Enforcement Branch, said his department had received a complaint about noise at the location, and during the course of their investigation, they had discovered three kitchens in the basement. He said he had checked the files and determined that no permits had been issued for construction of the kitchens. Mr. Hart asked for clarification as to how many kitchens were actually in the home when the inspector entered the property. Mr. Miller replied that there were three in the basement. Mr. Hart asked whether there were separate dwelling units for each of the kitchens. Mr. Miller said no. Mr. Hart asked whether the inspector had been able to determine if the permit was based on plans that showed something other than the three kitchens. Mr. Miller said there was a finished basement permit that specifically stated no second kitchen; however, it did allow a wet bar. He stated that there was a second dwelling unit in the basement found during the course of the first inspection, and the applicant had removed all of the kitchens prior to a subsequent inspection. Mr. Hart asked what had prompted the noise complaint. Mr. Miller said the applicant was having tile work done that was related to a deck, and the tenants who were renting the upstairs portion of the home called the complaint in.

Ms. Choudhary presented the special permit request as outlined in the statement of justification submitted with the application. She said she had been living in her home since 1981. She said that on several occasions she and her husband had lost their jobs, and in order to bring money into the home, they had thought about renting the basement out to tenants. She said she had applied for a zoning permit to do that and had been told that she would be allowed to have two boarders living in the home without a permit because that was permitted by the Zoning Ordinance. She said she had developed the property and submitted the plans to the County and had received the required permits that included wet bars. Ms. Choudhary said that in 1999 she had a fire in the upstairs kitchen, and the salvageable appliances had been removed and stored in the basement; however, they were not being used. Because of that, she said the inspector had determined that she had three kitchens. She said she was the only person living in the basement, and half of it was used for storage. With respect to a second kitchen, she said she had received a permit from the County when additional construction had been done on her home. She said that permit contained plans for a wet bar. Ms. Choudhary said she had applied for a building permit that included a wet bar because she had been told that the process for obtaining approval for a second kitchen was long and

drawn out. She stated that she had asked the inspector, Steve Claiborne, what she had to do to be in compliance with the Zoning Ordinance, and he had suggested that she should apply for a permit, and then she would be allowed to have electrical outlets installed for a cooking range. Ms. Choudhary said she thought she was in compliance; however, when Mr. Miller came to inspect the house, he told her that she was in violation. At that point she had the kitchen removed, and she applied for a permit for a second accessory dwelling.

Mr. Hammack asked why the applicant needed appliances for three kitchens to be stored. Ms. Choudhary said the appliances consisted of microwaves and a refrigerator. She stressed that she did not have a cooking range; therefore, the basement area could not be considered as having a working kitchen.

In response to Mr. Hammack's question, Ms. Choudhary said she had rented the upstairs out to tenants the prior year who had ruined her property, and there was no one currently living there. She said the damages amounted to over \$20,000, which she could not recoup because they were diplomats. She said that having to pay for those repairs had caused her great hardship.

In reply to Mr. Hammack's question, Ms. Choudhary said she had seen the letters written in opposition to her proposal.

Mr. Hammack asked whether the applicant had been renting her property for the past 20 years, and she replied that she had two boarders at one time. After the fire and the renovation of the property, she rented the upstairs out to three unrelated boarders. She said that if the application for an accessory dwelling unit was approved, she planned to rent it out.

In answer to Mr. Beard's question, Mr. Miller said he had determined that the applicant had three kitchens in the home because of the presence of countertops, sinks, cabinets, and cooking appliances. He had determined that one of them was not in operation and the items were just stored, but nevertheless he said that still constituted a kitchen. Mr. Beard asked why that would constitute a kitchen. Mr. Miller said that all of the provisions for cooking were present, and they did not have to be plugged in.

In answer to Mr. Hart's questions, Ms. Choudhary said there were two refrigerators and one dishwasher, which did not work, on the premises. Mr. Miller concurred. Mr. Hart asked how many stoves were there, and Ms. Choudhary replied that there was one. Mr. Miller said there were two ranges, and the third kitchen contained a microwave and a toaster oven. Ms. Choudhary said there was one kitchen range that was working, and the other one was unplugged and was being used for storage. With respect to sinks, Ms. Choudhary said there were two kitchen sinks, and both of them were used as bar sinks. Mr. Miller said he knew there were two sinks, but he was not sure about a third. Mr. Hart asked Mr. Miller what he used as a factor to determine that there were three kitchens. Mr. Miller replied that there were three separate combinations of appliances to include cabinets and countertops. Ms. Choudhary stated that the cabinets were used for storage only.

In response to a question from Mr. Hart, Ms. Choudhary confirmed that if the application was approved, she would live in the basement and rent the upper floors to three different professional persons. She also stated that there was one kitchen upstairs.

Chairman DiGiulian called for speakers

Thomas Moore, 6510 Anna Maria Court, McLean, Virginia, came forward to speak in opposition to the application. He stated that the neighborhood was comprised of many ethnic groups who were compatible, obeyed the law, and complied with the subdivision covenants. He said that, in his opinion, the applicant was attempting to secure a permit for improper prior illegal use of the property as an apartment building. He said the applicant had been doing that for the prior 22 years, and according to the homeowners association's records, the board of directors had tried at least four times to get the County's Zoning Enforcement Branch to look into the renting and the numbers of tenants the applicant had living in the home. He said the last attempt was made in August of 2000, when he had called the County because he had seen five people, who were not members of the applicant's family, leave the house every morning in five different vehicles, and he had been told that the County would only act if he provided copies of the leases, which the homeowners association (HOA) did not have. Mr. Moore said he had been very disturbed by that response.

Mr. Moore stated that when he learned that County staff was recommending approval of the application, he read the definition of the criteria in Appendix 5 of the Zoning Ordinance and was struck by the repeated use of the term "moderately priced, small dwelling unit housing" in the Board resolution contained in that

appendix, as well as in Criteria 7 and Criteria 8. Mr. Moore said the house was more than twice the area of the average house in Fairfax County and 25 percent larger than any home in the subdivision, and the published assessment information on the home in question was more than twice the County median. With respect to affordability, he said the tenant was paying \$4,900 per month, and by using the rule that housing costs should be not more than 36 percent of income, minimum income would be \$163,333 to enable anyone to rent the house. He said the average household income in the County was \$80,000, and that was above the assessed value of any home in the subdivision. Mr. Moore concluded that the applicant's property did not meet any of the criteria he had referenced.

Cheryl Gill, 739 Ridge Drive, McLean, Virginia, came forward to speak in opposition to the application. She stated that a friend of hers had rented an apartment on the first floor of the applicant's home. She described the floor plan and said the applicant had subdivided the family room so that the wet bar became her friend's kitchen. She stated that he had two rooms that were located on the left side of the home, but had to go across the communal hallway to access a half powder room in which the applicant had installed a shower. Ms. Gill said her friend's rent was between \$1,300 and \$1,500 per month. She said she objected to anyone being allowed to subdivide their home, make money, and increase the number of vehicles parked in the driveway and on the street. She stated that she had applied for a permit to build a shed, and her application had been denied. Ms. Gill said she was offended by the applicant's continuous requests for upgrades to her home, noting that she never adhered to the covenants running with the subdivision. Ms. Gill stated that she was aware that the applicant intended to rent out every bit of space in her home as apartments.

Neil Dellar, 6500 Anna Maria Court, McLean, Virginia, came forward to speak in opposition to the application. He stated that an extremely large addition to the property had been built without any zoning approval, and although based on representations to the HOA the additional space was intended for use by close family members, all indications were that the applicant planned to set aside a small area as her living quarters and rent out the majority of the extension to others. He said that given her tendency to follow only those laws that suited her, it defied reason to believe that she would not do as she had done in the past, which was to rent out the rooms in the home, thereby turning it into a rooming house. He said he and his neighbors had been subjected to five years of building which had been exacerbated by the applicant's behavior and total lack of consideration for her neighbors. He said she had consistently used laborers to work on weekends, which was in violation of the County's building codes. He said examples set forth by the speakers at the hearing were confirmation of the applicant's continued violations of laws and conditions that did not suit her.

Mr. Dellar said that the applicant had used her property for the commercial sale of furniture, had buried trash in her back yard rather than have it removed in the usual manner, and had consistently flaunted the HOA's approvals of her plans for construction by regularly building something other than that which had been approved. He stated that a three-story deck had been added to the rear of the property when permission had only been given for a deck of one level. She had installed five kitchens that he knew of, which had been temporarily removed and placed in storage and he felt would be reinstalled in due course. He stated that any conditions set forth for approval by the Board would be worthless given the applicant's proven record of ignoring the rules. He said it was inconceivable that the applicant would not use any approval granted by the Board as a license to rent the property to multiple individuals. Mr. Dellar said that given the applicant's numerous zoning violations, she should not be granted approval where the intent of the dwelling was to disrupt the character of the neighborhood. He said no zoning variances had been granted within the subdivision of the type requested by the applicant, and if the Board approved the application, the character of the neighborhood would be forever changed.

Ron Jarvis, 6506 Anna Maria Court, McLean, Virginia, came forward to speak in opposition to the application. He stated that the applicant's home had been expanded to twice its normal size. He said workmen were seen walking around at all the times of the day, and they had thrown beer cans in the rear of his yard. He said he doubted that the workmen were properly licensed because none of the trucks had company logos by which to identify them. He noted that every few weeks the applicant would bring copies of large plans to him and ask him to sign them, and then she would return at a later date and ask him to sign off on changes to the same plans. He asked the Board to look at the intent of the application because he thought it was to turn a single-family home in a small, quiet development into a commercial rental establishment for multi-family, unrelated people. Mr. Jarvis stated that the use was nonconforming and should not be allowed.

Douglas Goldhush, 6514 Sunny Hill Court, McLean, Virginia, came forward to speak in opposition to the application. He stated that the applicant's front yard was constantly littered with trash and construction materials, and there was a constant flow of laborers and/or tenants entering and leaving the house at all hours of the day and night. He said he was concerned about the safety of his children.

Andrew Hirsch, 906 Ridge Drive, McLean, Virginia, came forward to speak in opposition to the application. He said he represented the Langley Oaks HOA. He said the HOA board had submitted a letter requesting that the application be denied. He told the Board that Thomas Mocre, who had spoken earlier, was the chairman of the HOA's Architectural Control Committee, and Mr. Moore had amassed a very large folder of material related to the applicant's property that exceeded the amount of material on all of the 307 homes in the neighborhood combined.

Tom Thomas, Fagelson, Schonberger, Payne and Deichmeister, P.C., 11320 Random Hills Road, Fairfax, Virginia, came forward to speak in opposition to the application. He said he was present on behalf of the Langley Oaks HOA, and over a long period of time, the HOA had approached him with questions concerning fires, occupancy, and the Zoning Ordinance requirements for boarders. He said Standard 8, under 8-918, which had not been met by the applicant, clearly stated that an applicant could not change the character of the neighborhood, which was what the application before the Board would do. He said the request for a special permit did not fit the model the Board had adopted when they promoted and established standards for the approval of accessory dwelling units. He asked that the Board deny the application based on that standard and on the history of the applicant's violations of previous approvals; however, if the Board approved the application, Mr. Thomas asked that they consider several changes and modifications to the conditions as follows: Development Condition 5, "Accessory unit shall not contain more than two bedrooms and not be occupied by more than two persons not related by blood or marriage," add "and shall not be permitted boarders;" Development Condition 6, "The number of kitchens shall be limited to two; however, the existing wet bars may remain provided the full size appliances," add "microwaves and any other cooking appliances are not added to them;" Development Condition 8, "Provisions shall be made for the inspection of the property by County personnel during reasonable hours," add "and the main dwelling unit and grounds shall meet all applicable regulations for building safety, health, and sanitation;" Development Condition 12, "The lease for the unit not occupied by the owner shall be for a minimum period of one year," add "and shall be provided to the zoning office and to the homeowners association at lease inception."

Cathy Kirdassi, 6514 Anna Maria Court, McLean, Virginia, came forward to speak in opposition to the application. She said she thought the applicant had gone too far with respect to adding accessory units to the home. She said on one occasion her child had returned home stating that Ms. Choudhary was building a swimming pool because a big hole had been dug; however, the next day she saw that the hole had been filled with refrigerators, stoves, ovens, and garbage, and then covered with dirt. On a day following a time there had been several days of heavy rain, all the refrigerators and other debris, at least 40 objects, were floating to the top of the hole. Ms. Kirdassi stated that after the water had drained from the hole, it had been covered with cement, and that was the foundation of the unit in question today. She said that she had been told by a plumber that it would collapse one day, and her son had said that was not good for the ecology because all those appliances and debris would leech into the underground water table. Ms. Kirdassi also expressed concern about the number of people renting the property and for the children living and playing in the neighborhood. She stated that one of the applicant's tenants had run over her little girl's bicycle, which frightened her. Ms. Kirdassi said the applicant had a master's degree in architecture, was a brilliant woman, and didn't need to have tenants.

Mr. Hart asked Mr. Braham to show the photographs on the overhead projector because he could not correlate the photograph with the plat that had been submitted. He said it appeared to show on the left side of the house that the front part with the darker brick was the existing house, the middle part with the matched windows was the addition, and the deck was behind that. He said that between the door and the lot line, there appeared to be a brick wall and then a perpendicular wall that didn't appear to be on the plat. He said that on the plat the door appeared to be on the opposite side and was labeled "ramped access to accessory dwelling unit," but the other side looked like a flight of stairs.

Asking to see the next photograph, Mr. Hart said there appeared to be an extensive wall between the garage and the side of the dwelling, and he was not sure whether there were steps there or not. He noted that none of the extensions were shown on the drawing, nothing was dimensioned, and the existing garage was 15.6 feet from the side line, but the wall appeared to be closer. Mr. Hart asked whether what had been built was different than what was shown on the plat and whether the Board was being asked to approve what had been built or did the applicant need to dimension the extensions from the side line and show them on the plan because if there was an entrance on the left, only the walls were noted. Mr. Braham said the walls, except on the right-hand side next to the garage, were not attached to the dwelling unit. He said that wall was the main entrance from the driveway down to the proposed accessory dwelling unit and main entrance to that unit. The door on the other side of the garage was a secondary entrance to the unit downstairs. He said, to his recollection, the wall did not run up against the house. He said that when he was taking the photographs, he did not go down into the property to look. He stated that the first photograph referred to by

Mr. Hart was taken from the pipestem driveway that served two houses, the one that was adjacent to the applicant and the one that was next to it.

Mr. Hart questioned Mr. Braham about the garage side wall. He asked how close that wall could be to the side lot line. Susan Langdon, Chief, Special Permit and Variance Branch, stated that it depended partly on what it would be used for. She said steps and stairs could extend into the minimum yard; however, if it was a retaining wall, there was no minimum requirement or setback.

In answer to Mr. Hart's question, Ms. Langdon said an applicant should show and dimension the extension, but in this case for an accessory dwelling unit, there was no requirement that there be a certified plat; therefore, staff accepted the plat submitted by the applicant.

Mr. Hart asked how it could be determined if there were two doors in the basement, one on each side, because there were two apartments there. Mr. Braham responded that the space that was downstairs, depending on how the rooms were arranged, could be seen either way. There was no obvious split where a second dwelling unit would be if it was in the basement. He said that by closing off doors, a second dwelling unit could be created. He said the development conditions as well as staff's recommendation of approval were meant to preclude that because it was not allowed either with the accessory dwelling unit or as a house.

Mr. Hart noted that the application referred to six-car parking on the property and asked where it was located on the plat. Mr. Braham stated that there were two spaces within the garage and at least four spaces in front of the garage.

Ms. Gibb referred to a previous speaker's comment that the Zoning Enforcement Branch had informed the HOA that in order to file a complaint, they had to obtain copies of the leases signed by the applicant's tenants. She asked whether that was a requirement. Mr. Miller said he did not request copies of leases, and it was not a standard request. He said it was difficult to obtain such copies because staff depended on the owner of the property volunteering that information. He said there was no method of compelling an applicant to provide copies of leases, and staff was dependent upon an applicant's honesty when asked who occupied a dwelling. He said that when he had responded to a complaint at the applicant's property concerning a multiple occupancy issue, he did not find any evidence of that type of violation at the time; however, he said that did not preclude one from occurring prior to his investigation.

In her rebuttal, Ms. Choudhary stated that the dimension questioned by Mr. Hart was clearly stated on the plat as being 15 feet, 6 inches, and the line was as shown in the photograph. She said that there was a door on the left side of the property, and the dimensions concerning the three locations were noted where required. She stated that if any other information was required, she would be more than willing to provide it. She said she intended to use the home as it was originally designed, a single-family home. She noted that her home was smaller than those located in nearby subdivisions. She said that several years ago she had added a master bedroom in the rear that gave her five bedrooms, plus she had added a bathroom and a living and dining room. She said she had built recreational rooms in the basement. Ms. Choudhary said she thought her children would be living in the house with her; however, they were currently in college, and she had no immediate family in the area. She said she was attempting to earn money to live on as best she could. She said she did not bury anything in her backyard and had donated the refrigerators, appliances, and hot water tank to charitable institutions and had receipts to prove it. She said Mr. Claiborne had found that she was in compliance at the time.

Ms. Choudhary said that all of the work that had been done on her property had been approved by the County and met the regulations. She noted that the construction on her house was almost completed with the exception of a storage shed she planned to have built under the deck that was included in her current request for a special permit. She said parking on her property was adequate for six vehicles. With respect to the sale of furniture, after the house had been completed, she stated that she had removed the furniture in question from storage and sold it because she had intended to rent the house out. Ms. Choudhary apologized for the activities and debris in her yard that took place during the construction. She said the construction had been completed, the debris would be removed, and she wanted to be allowed to live peacefully in her home and hoped the Board would support that. She said she had only one kitchen on the first floor and that her tenant at the time had shared her wet bar and did not do any cooking. She said that she had studied the law, and it specifically allowed having a microwave in the house. Ms. Choudhary said she wanted to be permitted to rent her home out to four tenants, which she said the law allowed her to do. She noted that her previous tenants had lived in her home for seven and ten years, respectively, and had never posed any problems during that time.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny SP 2005-DR-021 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUMAN CHOUDHARY TRUSTEE, SP 2005-DR-021 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6503 Anna Maria Ct. on approx. 23,395 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((4)) 118. 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 19, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Notwithstanding the opposition in the neighborhood, which indicates some uses of the property in the past, when you look at the standards for special permit uses, the general standards are mandatory.
3. General Standard 1 says that the proposed use at the specified location shall be in harmony with the adopted Comprehensive Plan.
4. General Standard 2 says it shall be in harmony with the general purpose and intent of the Zoning Ordinance.
5. General Standard 3 says the proposed use will be such that it will be harmonious with and will not adversely affect the use or development of the neighboring properties.
6. General Standard 4 deals with the proposed use such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing or anticipated traffic in the neighborhood.
7. Under Section 8-006 of the Zoning Ordinance, there was testimony indicating use of the property in the past which raises some serious questions about the way the proposed use would be implemented.
8. Under Section 8-918 of the Zoning Ordinance, there are additional standards for accessory dwelling units, and it makes the approval discretionary in the BZA, but the BZA may approve a special permit for the establishment, but only in accordance with the conditions set forth.
9. The applicant has not satisfied the conditions in the application before the Board.
10. The Board was not satisfied that the accessory dwelling unit will not exceed 35 percent of the total gross floor area of the principal dwelling. Although there was an assertion by the applicant that it would not, the zoning inspector's testimony was that there were all kinds of configurations that could be used.
11. An actual floor plan was not submitted that designated the exact area in the dwelling that would be used as the accessory dwelling to know it was less than 35 percent and had the other requirements of net containing more than two bedrooms and met the other technical requirements.
12. All that was submitted to the Board were elevations of the exterior, but nothing involving the total gross floor or anything to show what part of the dwelling the applicant would use.
13. The occupancy of the accessory dwelling unit, which the applicant testified would be used by her, is to be used by a person who is 55 years of age or over or permanently disabled.
14. Although there was an assertion that the applicant was disabled under the Social Security Administration, there was no documentation.
15. The application could not be supported without specific information on exactly how the property would be used.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 27, 2005.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. LAWRENCE AND CHERYL RICCIARDI, SP 2005-SU-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition and deck 9.5 ft. from side lot line. Located at 15218 Philip Lee Rd. on approx. 12,575 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 290.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence Ricciardi, 15218 Philip Lee Road, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a modification to minimum yard requirements for certain R-C lots to permit construction of a sunroom addition and deck 9.5 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 10.5 feet was requested.

Mr. Ricciardi presented the special permit request as outlined in the statement of justification submitted with the application. He said he was requesting to enclose a structure that had already been approved by the Board and to extend it an additional 10 feet into the backyard while not encroaching on the 9.5 foot distance to the side lot line.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-SU-020 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE AND CHERYL RICCIARDI, SP 2005-SU-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition and deck 9.5 ft. from side lot line. Located at 15218 Philip Lee Rd. on approx. 12,575 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 290. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 19, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The present zoning is R-C, AN, and WS.

7. The area of the lot is 12,575 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-008, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is APPROVED, with the following development conditions:

1. This Special Permit is approved for the location of the sunroom addition and deck as shown on the plat prepared by Rice Associates, dated April 12, 1991, as submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 27, 2005.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. MAGGIE A. DEBOARD, SP 2005-SP-023 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of a second story addition 16.1 ft. with eave 15.3 ft. from side lot line and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.0 ft. with eave 0.5 ft. from rear lot line and 14.1 ft. from side lot line. Located at 10508 Clipper Dr. on approx. 21,404 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((3)) 117A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maggie DeBoard, 10508 Clipper Drive, Fairfax Station, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modifications to minimum yard requirements for certain R-C lots to permit construction of a second-story addition 16.1 feet with eave 15.3 feet from the side lot line; and to permit reductions to minimum yard requirements based on an error in building location to permit an accessory storage structure, which measures 10.2 feet in height, to remain 1.0 feet with eave 0.5 feet from the rear lot line and 14.1 feet from the side lot line. A minimum side yard of 20 feet and a minimum rear yard for the accessory storage structure of 10.2 feet are required; however, eaves are permitted to extend 3.0 feet into the minimum side and rear yards; therefore, modifications of 3.9 feet, 1.7 feet, 9.2 feet, 6.7 feet, and 5.9 feet, respectively, were requested.

Mr. Hart asked why the location of the shed was not considered to be a front yard. Ms. Hedrick said that because there was a road to the rear, it was a through lot, and the yards were set by Zoning Administration. Mr. Hart stated that he thought that a through lot had front yards on both streets. Ms. Hedrick responded that the yards had been set by the Zoning Administration Division during the acceptance of this application, and they had determined that one was a rear yard and not a front yard.

Ms. DeBoard presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition was requested because her family needed more living space. She stated that the second story was the most logical place to build additional living space because it was the least intrusive and would not disturb any other areas of her property. Ms. DeBoard said the addition would be harmonious with other homes in the neighborhood, and she had the support of her neighbors and the homeowners association. Referring to the error in building location to permit an accessory storage structure, she said she had been unaware that she was in violation. She noted that the shed had been constructed inside the fence line because there was a seven-acre property behind the house with a small, private road running behind it. She said there was a swimming pool in the backyard and the property sloped, so there was not a level area further up into the yard on which to set the shed without upsetting the useable area of the yard. Ms. DeBoard said the shed was used to store yard maintenance items, and she had received no opposition to its location. She requested a waiver of the eight-day waiting period if the application was approved.

In response to questions from Mr. Hart, Ms. DeBoard said there was no electricity or plumbing in the shed, and it had been in its location for approximately eight months.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2005-SP-023 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAGGIE A. DEBOARD, SP 2005-SP-023 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of a second story addition 16.1 ft. with eave 15.3 ft. from side lot line and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.0 ft. with eave 0.5 ft. from rear lot line and 14.1 ft. from side lot line. Located at 10508 Clipper Dr. on approx. 21,404 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((3)) 117A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 19, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 28, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant presented testimony showing compliance with the applicable standards for a special permit.
7. The lot was subjected to more severe restrictions in 1982 than when it was originally approved.
8. The addition at 16.1 feet with eave 15.3 feet would have been well in compliance at that point.
9. The addition is just a second floor on the existing structure and will not cause any negative impact on anyone.
10. The adjoining neighbor is in favor of the application and sent a letter of support.
11. The shed has been in its location for several months with no apparent complaint.
12. The shed is substantially concealed by the existing fence and backs up to a large pasture.
13. The property behind has a barn which is much larger.
14. When a Board member visited an adjoining property in regard to another application, the shed was not noticeable.
15. In the photographs, it appears that the shed will not affect anyone in its current location.

16. The existing swimming pool and deck substantially limit where a shed could be placed.
17. Based on the record before the Board, there will be no negative impact on anyone from the shed.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, of the Zoning Ordinance. The Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND,

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the second story addition and accessory storage structure as shown on the plat prepared by Dominion Surveyors, Inc., dated February 16, 2005, as revised May 4, 2005, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0. Mr. Hart moved to waive the 8-day waiting period. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 2005. This date shall be deemed to be the final approval date of this special permit.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. JANE TOROK (FORMERLY JANE VAN WAGONER) AND THOMAS TOROK, VC 2004-PR-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing 36,000 sq. ft. or less and to permit fences greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 2908 Westcott Straet on approx. 11,627 sq. ft. of land zoned R-4. Providenca District. Tax Map 50-4 ((16)) 65. (Decision deferred from 4/20/04, 5/25/04, 7/27/04, 2/8/05, and 2/15/05).

Chairman DiGiulian noted that a request for an indefinite deferral regarding VC 2004-PR-019 had been received.

Mr. Ribble noted that the applicants' letter requested an indefinite deferral until the laws changed to allow the Board of Zoning Appeals the latitude to rule on the application for a variance. He stated that the Board could rule on the issue now, but he moved to indefinitely defer VC 2004-PR-019 as requested by the applicants.

Ms. Gibb seconded the motion

Mr. Hart asked staff whether the applicants understood that accessory structures in a front yard were not a part of anything being proposed as part of the work program. Susan Langdon, Chief, Special Permit and Variance Branch, said she knew there was ongoing discussion concerning accessory structures, but she did not know what would happen with that part of the proposed Ordinance change. Mr. Hart asked if the applicant had been issued a violation for the sheds. Ms. Langdon said she did not have a copy of a violation, but she knew that the applicant had talked to the Zoning Enforcement Branch and was aware that there was a violation.

Mr. Hart said he understood the reason why applications that were subject to a potential Ordinance change would be deferred; however, there was no apparent amendment in the immediate future, and he wanted to know why there was a request for a deferral. Ms Langdon said the request would be approved at the Board's discretion. She said she had explained the issues to the applicants, and they had indicated that a deferral to the late fall or an indefinite deferral would allow them time to find out if there would be any changes to the Zoning Ordinance.

Mr. Hammack agreed with Mr. Hart's opinion that the fence was not a problem, but thought that the issue of accessory structures should be scheduled for a hearing.

Chairman DiGiulian called for the vote. The motion carried by a vote of 4-3. Mr. Hart, Mr. Byers, and Mr. Hammack voted against the motion.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.55 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 57. (Admin. moved from 5/17/05 at appl. req)

Chairman DiGiulian noted that SP 2005-SP-012 had been administratively moved to October 25, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:00 A.M. A. DANE BOWEN, JR., VC 2004-MA-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling 6.7 ft. with eave 6.3 ft. from the side lot line. Located at 6330 Hillcrest Pl. on approx. 10,515 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 74. (Deferred from 11/2/04 and 4/12/05 at appl. req.)

Chairman DiGiulian noted that a deferral request regarding VC 2004-MA-113 had been received.

Mr. Ribble moved to defer VC 2004-MA-113 to January 10, 2006, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:30 A.M. VIRGINIA EQUITY SOLUTIONS, LLC, A 2005-PR-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant purchased an affordable dwelling unit without obtaining a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and is not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 8054 Sebon Dr. on approx. 878 sq. ft. of land zoned R-12. Providence District. Tax Map 49-2 ((43)) 139. (Decision deferred from 6/14/05)

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing.

Mary Ann Tsai, Zoning Administration Division, stated that Cherrie Maples Fields, the previous owner of the property, wanted to speak before the appellant made its presentation.

Ms. Maples Fields read from a written statement. She stated that she was opposed to Virginia Equity Solutions being allowed to appeal the purchase of the affordable dwelling unit (ADU). She said she had informed the appellant that the property which had been owned by her was and still is an ADU through Fairfax County's first-time homebuyers program. She said that she had provided Rita Hockenbury (phonetic), a representative of the appellant, a copy of the ADU provisions and had also informed her of the home's status by telephone. Ms. Maples Fields said the company had offered her \$250,000 for the sale of her townhouse. She stated that she had advised Ms. Hockenbury that was not possible because the townhouse was an ADU, and Ms. Hockenbury had stated on several occasions that her company had purchased ADUs before and wanted to meet with her.

Ms. Maples Fields said she met with Ms. Hockenbury on November 13, 2004, signed a buyer/seller agreement to prevent the court from foreclosing on the property and to go to settlement on November 22, 2004. She said that she and Ms. Hockenbury had spoken by telephone on several occasions concerning her apprehension that the appellant could not receive a clear title and deed from the County. She stated that she had been assured that they could do that because they had done so on other occasions. Ms. Maples Fields said that she had waited for several weeks to go to settlement and had been subsequently informed by the co-owner of Virginia Equity Solutions, Camille Barry, that the mortgage lender would not approve the loan because of the property's ADU covenant, and they were concerned that they would not be able to receive a clear deed and title from the County. She said that Ms. Barry knew that she had financial problems and suggested that she deed the property over to her for \$50,000. She said she informed Ms. Barry that she wanted \$104,000 because that was the amount the County had stipulated that she could sell it for. Ms. Maples Fields said that when they met to sign the deed on December 11, 2004, Ms. Barry stated that she knew she would have to pay the County "a sweetener to sell the property." She said Ms. Barry had told her that she would have to pay the County at least \$50,000, so she was not in a position to pay Ms. Maples Fields \$104,000 because she would be incurring the first and second trusts on the property. She said she had been assured by the appellant that the house would be sold immediately. Ms. Maples Fields said that to date the only loan on the property was one that she owed to a loan company on the first and second trusts, and the property was still in her name. She told the Board that, as had been disclosed by her, the appellant and its representatives had full knowledge of her ADU status, and she had given them a copy of the ADU covenants.

Ms. Tsai presented staff's position as set forth in the staff report dated June 5, 2005. Staff recommended that the BZA uphold the Zoning Administrator's finding that the appellant purchased an ADU prior to obtaining a certificate of qualification from the Fairfax County Redevelopment and Housing Administration in violation of Paragraph 1 of Sect. 2-813 of the Zoning Ordinance and that the appellant was not occupying the subject property as its domicile in violation of Paragraph 5 of Sect. 2-813 of the Zoning Ordinance.

Referring to Ms. Tsai's report, Ms. Gibb stated that she wanted to correct a few things. She noted that in deed book 10477, page 1365, which Ms. Tsai had referred to as a correction, was a deed of resubdivision. Ms. Tsai agreed. Ms. Gibb stated that it did not correct Lot 139; therefore, if a title examiner were to examine the title to the property, they would not stop at the deed because Lot 139 was not in it. It was not

resubdivided, and it stayed the same. Ms. Gibb said that whether or not the ADU showed up on the deed of resubdivision, the certification was irrelevant because it was not in the chain of title to Lot 139. She stated that the crux of the issue was that the ADU covenants were not recorded simultaneously with the deed of declaration; however, if they were recorded anywhere in the chain of title and they were clearly enforceable by the Housing Authority, then the Board could find that it was an ADU. Ms. Gibb said the question was whether a reasonable, prudent title examiner would run across a declaration of covenant that clearly stated that Lot 139 was an ADU in the course of running the title to Van Metre. She said that was why she had requested that staff provide her with a copy of the actual index, not just a recap of the title examiner's notes of what was in the record. Ms. Gibb said staff had faxed the index to her, and she hoped the appellant had a copy as well. She said that what Escrow One had furnished to staff was an index showing "VanMeter," without a space between "Van" and "Meter." She said the correct way to spell it was "Van Metre," with a space and the E and R reversed. She said that when Van Metre was run, there were many deeds and covenants under both names, but not one showed Lot 139. She stated that the question was whether a reasonable title examiner would examine the title under Van Metre as well as Van Meter, as Escrow One had obviously done. She said that even though Ms. Maples Fields may have mentioned orally that the townhouse was an ADU, her comments would probably be disputed. Ms. Gibb said that what she considered to be important to this case was whether the information was contained in the land records and the covenant was an enforceable one. Ms. Gibb stated that she wanted to hear from the appellant whether a reasonable title examiner would run the title without a space between "Van" and "Metre."

Stephen Christenson, the appellant's agent, presented the arguments forming the basis for the appeal. He stated that he had handed the Board a recently ordered title examination done by a very reputable title insurance company, and he requested the company's name not be mentioned. He said that on the front page of the examination, there was no reference to the restrictive covenants creating the ADU status of the unit. He said he had brought rebuttal witnesses to address Ms. Maples Fields' testimony. Mr. Christenson said that, in his opinion, the Ordinance at issue was one that created a grave restriction on alienation of property, and as such, the framers of that Ordinance wanted to ensure that anyone who purchased an ADU would receive actual notice of the existence of the ADU, not record notice or constructive notice. He stated that the Ordinance required that the covenants creating the ADU status should have been recorded simultaneously with the final subdivision plat, not as a stand-alone document that was subject to indexing. He said the covenants themselves required that there be a reference in the deed from the declarant to the purchaser of the ADU that clearly and specifically referenced the fact that the unit in question was subject to the onerous restrictions on alienation. Mr. Christenson stated that in both instances in the case, there was a failure to comply with the Ordinance. He said there was a failure by the declarant to comply with the covenant and place in the deed to Ms. Maples Fields the ADU status of the unit. Mr. Christenson stated that the Zoning Administrator was attempting to enforce a violation of an Ordinance in which, by the Zoning Administrator's own negligence and that of his staff, the Zoning Administrator had failed to follow up and make sure that the covenants were properly recorded among the land records so as to give actual notice and improperly failed to follow up with the developer declarant to make sure the deed to the purchaser declared the reference to the onerous covenants. He said the Zoning Administrator would be well advised to perform title examinations on all the ADUs to see if the problem was persistent within the system. Mr. Christenson stated that under the circumstances of the case, the purchaser had not violated the Ordinance, and it would be inequitable to allow the Zoning Administrator to enforce a violation. He said the purchaser would have a large enough problem concerning the title of the unit in the future without having to deal with an alleged violation.

Ms. Gibb stated that she had a copy of the title examination from the time Ms. Maples Fields had acquired the property, and the title exam was not complete. Ms. Gibb asked what effect the covenants had that were recorded just prior to the deed and that were recorded in the chain of title to Lot 139, which clearly said they were enforceable by the Housing Authority. Mr. Christenson responded that the effect of recording the covenants just prior to the deed was a nullity. He said that when Ms. Maples Fields sat at the settlement table and received the deed, she had no constructive or record notice of the covenants.

Ms. Gibb disagreed that Ms. Maples Fields had no constructive notice. She said Ms. Maples Fields had notice because the information was contained in the land records for everyone to see. She said there were two places that clearly said the unit was an ADU.

Mr. Christenson stated that the first reference to the ADU had been recorded just prior to the deed, and he submitted that there was no reference in the land records to that effect when Ms. Maples Fields received the deed. He said it had not been recorded in the land records until after she had received the deed, and it had been recorded simultaneously with the deed, with no reference to an ADU in the deed. Mr. Christenson said the other recording of the covenants occurred 100 blocks later than the recordation of the final subdivision

plat, so it was obvious that it was not recorded simultaneously with the subdivision plat, but recorded as a stand-alone document in clear violation of the Ordinance.

Ms. Gibb asked Mr. Christenson whether he believed that restrictive covenants were not effective if they stood alone. He responded that under the circumstances of the case, the Ordinance required actual notice, not record notice, and he believed that if the County violated its own Ordinance, giving the right to create these types of units and place covenants upon them in order to enforce that Ordinance, then the County should be required to comply with it as well.

Ms. Gibb said she was not talking about the Ordinance and was referring to covenants in the land records. She said the covenants had been listed in the chain of title for Lot 139 twice and asked Mr. Christenson if the effect those had was a nullity. Mr. Christenson replied that under the circumstance of the case, he would say they were a nullity, but generally he would not say so. He said they had been created by statute, by Ordinance, not by private parties agreeing amongst themselves to encumber land with a covenant. He stated that when an Ordinance created a restriction on alienation and it stated how that restriction was to be placed among the land records, it was obvious that the intent of that Ordinance was to provide actual notice to people so they would not blunder into the type of situation in the subject case. Mr. Christenson said the difference between actual and record notice was that record notice provided constructive notice, and actual notice was notice imparted to the recipient of the notice. He said that was the key distinction between the Ordinance and the general restricting of deeds.

Ms. Gibb said she did not see the difference in the procedures as far as how one would have prevented notice being given and the other would have given notice. Mr. Christenson said the procedure he described would have given actual notice because the deed would have recited the existence of the covenants.

Ms. Gibb noted that only the seller signed a deed, not the purchaser. She said the Ordinance explained a procedure for recording, which had not been done, but one did exist. Ms. Gibb stated that under the real estate laws of Virginia, the purchaser had been twice afforded notice.

Mr. Christenson said that he and Ms. Gibb differed on the type of notice that the Ordinance required, and if the covenants had been recited in the deed from the declarant to Ms. Maples Fields, he would agree 100 percent. He said the problem would have been rectified, and there would have been actual notice by virtue of the deed, but the deed contained nothing.

A brief discussion ensued between Mr. Hammack and Mr. Christenson regarding legal authority for the arguments Mr. Christenson had made. Mr. Christenson stated that he did not bring legal authority and was just arguing the sense of the Ordinance and why the Ordinance stated that the covenants had to be recorded simultaneously with the final plat and why it required the covenants be clearly set forth in all the deeds.

Mr. Hammack stated that he did not disagree that the statute was not complied with, but that was not the issue before the Board. He said there might be a different remedy for that. He said he agreed with Ms. Gibb that there was notice in the covenants twice in the deed in the chain of title.

Mr. Christenson said his point was that the Zoning Administrator was attempting to enforce a violation of an Ordinance under circumstances where the County did not comply with the strict terms of the Ordinance, which was somewhat inequitable and arbitrary. He said the County should not be allowed to enforce a misdemeanor penalty, a penal fine penalty under circumstances where indexing created a record which was easy to miss and haphazard to find. He said there could have been a technical violation; however, the Board should not enforce the violation against the purchaser. He said there could be a quiet title suit and other legal arguments that could be made to a Circuit Court; however, he wanted to know who should bring that action to the Circuit Court. Mr. Christenson said that since the County did not abide by its own Ordinance and did not police the developers and declarants, the County should be forced to carry the burden forward, not the purchaser, under the very narrow circumstances.

John Foster, Office of the County Attorney, Counsel for the Zoning Administrator, stated that he had some legal authority to respond to the questions raised by Mr. Hammack and Ms. Gibb. He said that in response to the question about whether the covenants recorded in the land records provided notice, the Supreme Court of Virginia had twice spoken to the issue, most recently in 1992 in Porter vs. Wilson. He said the verbatim statement was, "Once a deed is recorded, the admission to record is in law notice to the entire world," and the Jones vs. Folkes case from 1927 was cited where the Supreme Court held the same decision. Mr. Foster said that was separate and apart from the testimony given by Ms. Maples Fields that on several occasions she had clearly stated to the representatives from Virginia Equity Solutions that it was an

ADU. Mr. Foster stated that even without Ms. Maples Fields' testimony, the case law was very clear that Virginia Equity Solutions was on notice of the ADU restrictions.

Mr. Foster cited a reference to "the time it is duly admitted to record" in Virginia Code Sect. 55-96, and he stated that recordation was what mattered. He said there was a general set of covenants that had been recorded by Van Metre in 1998 and a unit specific set of covenants that had been subsequently recorded. He said the appellant had been on notice of the restrictions.

With respect to the Zoning Ordinance requirement that seemed to require that the recordation take place simultaneously with the subdivision, Mr. Foster stated that an apparent failure to comply with that single provision did not void the applicability of the remaining sections of the Ordinance. He said the lawyers on the Board knew that when construing and applying an entire section of an ordinance or statute, the ordinance would be construed such that the remaining sections continued to have effect, and the violation of one provision did not void the entire section. He stated that the Ordinance at issue, 2-813, paragraphs 1 and 5, had independent significance and was very clearly violated by the appellant because paragraph 1 required that before an individual may purchase an affordable dwelling unit, he must obtain a certificate of qualification. Mr. Foster said that had not been done, and Virginia Equity Solutions could not ever qualify for a certificate of qualification because they did not qualify under the program. He submitted copies of the section of the Code he had quoted from to the Board.

Ms. Gibb said she agreed with Mr. Foster's statements, but that someone had to be able to find it if the title was searched. She said she wanted to know whether someone would be able to find it if they ran the name Van Metre and what a prudent title examiner would do. She asked Mr. Foster if he had any information on running the name VanMeter without the space. Mr. Foster said that he had looked at that issue, which was one of indexing. He said the Clerk's Office had apparently improperly indexed it and put VanMetre down as a single word as opposed to two separate words. He said that in the case of Jones vs. Folkes in 1927, cited with approval more recently in the 1992 case of Porter vs. Wilson, what the Supreme Court held was that the admission to record was equivalent to actual recordation for the purpose of notice. The admission to record was effectual even though the clerical act of spreading the instrument on the deed book was never performed. Mr. Foster explained that the situation in that case was that even though the statute required the Clerk's Office to maintain an index, the clerk failed to index it at all. Mr. Foster said the party in that case made the same argument that Mr. Christenson was making, that the failure to index voided the recordation and there was no notice, but the Supreme Court disagreed. Mr. Foster stated that mere recordation was sufficient to make the covenants binding and give notice to the world, and that failure to index did not affect that.

Ms. Gibb asked Mr. Foster whether he was saying that the Ordinance in totality was enforceable against the appellant and the previous owner. She said that if it was agreed that a prudent title examiner would have found it, one would be limited to what was in the covenants that had actually been recorded. She asked whether Mr. Foster agreed. Mr. Foster stated that he did not agree that it would be limited to what was in the deeds. He said he thought that the requirements of the Zoning Ordinance that the appellant had been cited with violating remained in full force and effect and must be complied with. Mr. Foster stated that the language of the deeds alone was very clear that the unit was subject to the ADU requirements, and there were holding requirements for 15 years before it could be sold. Ms. Gibb referred to Exhibit B, which she said was the Lot 139 reference, and she stated that there was missing language and that the top of page 2 in deed book 10733, page 1922, started in the middle of something.

Mr. Foster said that Attachment 6 of the staff report, page 2, paragraph R-5, went on to state in its entirety that "The Ordinance provides that no affordable dwelling shall be offered for sale to the general public until the availability date on which all the time period referenced in Sect. 2-810 of the Ordinance have expired and requirements therein have been fulfilled." He said that very clearly put anyone who was interested in the property on notice. Mr. Foster referenced paragraph R-6, "The Ordinance establishes certain conditions, limitations, and controls on the affordable dwelling that are to remain in effect with regard to resale and occupancy for a period beginning on the date the deed of conveyance from declarant to the first purchaser is recorded until 15 years thereafter." He said the appellant was clearly aware of the deed to Ms. Maples Fields and could have run a 15-year calculation from the date it went to her, which was in 1994 or later. He noted that the transaction from Ms. Maples Fields to the appellant took place in December of 2004. He said that even with the language of the deeds, the appellant had more than enough notice to know that it was a controlled unit with restrictions on sale, and they nonetheless proceeded with the transaction and were very clearly in violation of Sect. 2-813.

Mr. Beard asked for clarification of the 1927 Folkes case that Mr. Foster had quoted from. Mr. Foster said he

did not bring extra copies of the cases with him, but he would provide copies to the Board if they wanted them. He said the 1927 case was Jones vs. Folkos, 149 Virginia 140, 1927. Mr. Beard said that, as he understood it, the crux of the matter was that the mere handing over to the clerk constituted recordation. Mr. Foster said he did not read the case to hold that. He read it to say that mere recordation by the clerk in the land records was all that was required under the law to give notice to the world and to bind subsequent purchasers. He said he thought that the key holding of the Jones vs. Folkos case for the purposes of the subject case was that failure to index it or indexing it improperly, as had happened in the subject case, did not affect the validity or binding nature of the deed as to subsequent purchasers like Virginia Equity Solutions.

Mr. Beard asked whether the failure to index still constituted recordation. Mr. Foster responded that under Virginia law, recordation was a separate act from indexing, and under the Virginia Code Sect. 55-96, all that was required to give notice and bind subsequent purchasers was the recordation. He stated that indexing was not a requirement to make the deed binding on subsequent purchasers.

Mr. Christenson said the recordation necessary to give record notica was called due recordation, which meant all steps necessary to provide notice to any prudent examiner of the land records and meant that the deed had to be indexed so that prudent land examiners could find it. Mr. Christenson stated that to place the information among 2500 deed books and say that gave notica was a preposterous proposition of law. He said that although he wanted to review the information presented by Mr. Foster and address the distinction between record notice and recordation, he had not had an opportunity to do so, but he stated that due recordation required all steps necessary to bind it.

Ms. Gibb said that when something was recorded and indexed so that a prudent title examiner could find it, whether it was right after the deed of subdivision or not, it was notice to the world that the lot was bound by those covenants. She said no one had addressed the question of whether a reasonable, prudent title examiner would have found the information when it was incorrectly indexed. She explained that when she examined titles, she had been told to look at the deed right before, the deed right after, and to ignore middle initials in the index. Ms. Gibb said that if it was Mr. Christenson's position that it was incorrectly indexed or there was no notice, she wanted to hear why there was no notice.

Mr. Christenson stated that he had submitted another title examination from a reputable title insurance company going all the way back to the deed of dedication and the deed of subdivision, and no restrictions were found. Ms. Gibb stated that the examination just went to Maples Fields, not Van Metre, and the appellant had not provided the Board with the index. She said she wanted to see the actual index where it was not shown. Ms. Gibb said the Board had the information for Ms. Maples Fields and for Virginia Equity Solutions, but that was too late. She said the appellant needed to begin with Van Metre or go back 60 years. Mr. Christenson said the title examination had been ordered to go back 60 years and found no restrictions. Ms. Gibb stated that the indexes needed to be provided.

Mr. Hammack asked if the complete title examination that had been conducted when Virginia Equity Solutions purchased the property had been submitted to the Board. He said he was not interested in what a third party had done, but he wanted to know what was in the record at the time of the appellant's purchase.

Chris Beatley said he was the settlement attorney who had ordered the title examination. He stated that there had not really been a settlement because no lender was involved. He said he ordered the title examination from a company that he had used for approximately 20 years, and he would estimate that the examiner had done between 7,000 and 10,000 titles for him over the years. He stated that the examiner was very good and, to his knowledge, had never made a mistake. Mr. Beatley said he did not think that the examination before the Board was a mistake. He stated that he would provide the name of the examiner to the Board if they requested it. In answer to Ms. Gibb's question, Mr. Beatley indicated that the title examiner regularly examined titles in Fairfax County.

Mr. Beatley said he had read the title three times, found it to be good, and advised the purchaser to proceed with the purchase. He said he was asked by the purchaser whether the money that was to be expended in the purchase was going to be put at risk, and he had said no, the title had been checked three times and was fine. Mr. Beatley said Ms. Maples Fields was not accurate when she indicated that at some point a lender had told her that they could not loan her enough money to proceed because there was a title defect because it was an ADU. He said there was never a lender involved. He said everything had to be done very quickly because a foreclosure sale was about to occur within a matter of a few days. Mr. Beatley said a title examination was ordered, and there was not enough time to put a loan in place to acquire the property, so the purchaser paid with cash. He stated that if the language had been on the deed where it should have

been according to the Ordinance, he would have seen it when he reviewed the deed and would have advised the purchaser not to purchase the property.

Mr. Ribble asked whether there was ever a question of bankruptcy involved with Ms. Maples Fields, the prior owner. Mr. Beatley replied that no homestead deed had been filed, and if he had seen a homestead deed when he reviewed the title examination, that would have raised a red flag, and he would have gone to the Web site and indexed the name to determine whether there was a bankruptcy. He said that if there was a bankruptcy in place, approval might have been needed from the bankruptcy court judge to sell real estate or approval of the trustee in a Chapter 13 case.

Chairman DiGiulian called Ms. Maples Fields back to the podium to address Mr. Ribble's question regarding a bankruptcy. Ms. Maples Fields said that before she answered the question, she wanted to restate her previous testimony with regard to the sale. She said Ms. Barry was the one who had informed her that the lender would not allow the house to be sold because the lender could not get a clear title. Ms. Maples Fields said she felt she had been manipulated by Virginia Equity Solutions. In answer to Mr. Ribble's question, she said there was no bankruptcy, and she could sell the house clearly.

Mr. Christenson stated that in response to the Board's desire to speak with a principal from Virginia Equity Solutions, Camille Barry was present.

Ms. Barry stated that Virginia Equity Solutions and Beoren and Barry Investments bought and sold approximately 150 properties a year. She said that had she known the property in question was an ADU, she would not have gotten involved with such an onerous endeavor in trying to secure the property. She said she was in the situation because there had been some serious mistakes and inaccuracies. Ms. Barry said she had gone through her file and come up with the chronological order of events. She said Rita Hockenbury, who worked in her office, contacted Ms. Maples Fields regarding the possible purchase of her property, and at the time Ms. Hockenbury had been told by Ms. Maples Fields that the townhouse had been purchased through a first-time homebuyer program. Ms. Barry said that information had been placed in quotations in Ms. Hockenbury's notes. Ms. Barry stated that on two separate occasions Ms. Hockenbury had requested that Ms. Maples Fields provide any type of paperwork she had regarding her purchase, the closing, or the first-time homebuyer program, which she never did. Ms. Barry said that she had recently asked Ms. Hockenbury if Ms. Maples Fields had ever mentioned the ADU program, and her response was absolutely not.

Ms. Barry said that on Saturday, November 13, 2004, a contract was signed, authorization was secured to reinstate, and consent received to contact the lender for payoff statements. The status at the time was that there were three deeds of trust on the property. Ms. Barry said Ms. Maples Fields had taken the second deed of trust out for the purchase of an automobile, and it was in arrears by \$8,500. Ms. Barry stated that the third deed of trust had been in default for so long that the payment was due in full. She said the first deed of trust with Chase Manhattan, which needed to be reinstated, had been in foreclosure. Ms. Barry said that on Monday, November 15, 2004, a payoff request was sent to all the lenders as well as the reinstatement request to the trustee, which was the normal procedure with this particular type of purchase. On that date, she said she had faxed a request to start the title work to Chris Beatley's office. She said that because Ms. Maples Fields had told Ms. Hockenbury that the property had been purchased under a first-time homebuyer program, Ms. Barry had asked Mr. Beatley's assistant, Karen, to pay special attention to any restrictions that would prevent her from buying the property or selling it for market value. Ms. Barry said the title work had come back to Mr. Beatley, who faxed it on to her, and it had come back clear. She said the title researcher was ordered to go back and look at it again, and it again came back clear.

Ms. Barry reported that on Friday, November 19, 2004, she had sent the reinstatement by Federal Express to the trustee in the amount of \$10,751. She stated that the deadline for reinstatement was Monday, November 22, 2004, at 4:00 p.m. She said the scheduled trustee sale on November 23, 2004, was cancelled. Ms. Barry said the title work was then checked a third time, and it came back clear.

Ms. Barry said that on Friday, December 10, 2004, she gave Ms. Maples Fields a cashier's check for \$50,000, and on Monday, December 13, 2004, the deed was recorded. Ms. Barry said that the third deed of trust was so far in arrears that a payment in full was requested, and that trust in the amount of \$19,280 was paid off. Ms. Barry stated that she had also paid off the default to the Apple Credit Union in the amount of \$8,500, and the approximate balance that was due was \$24,166.

Ms. Barry said the property was refurbished and put on the market. She said they obtained a contract to sell the property and ratified it on January 30, 2005. She said Ms. Maples Fields' homeowners association

(HOA) liens, which were approximately \$1,800, and the second deed of trust were paid off. Ms. Barry said a telephone call was received a couple days later from Michael Congleton, Zoning Enforcement Division, who said it was an illegal sale. Ms. Barry stated that she then tried to stop as many payoffs as she could, but the only one she could stop was the payoff to the Apple Credit Union for the \$24,166.

Ms. Barry said she had received approximately 10 to 20 telephone calls from Ms. Maples Fields beginning in April of 2004 up to the present, wanting to buy the property back or to rent it. She said Ms. Maples Fields had made demands and openly veiled threats, wanting to get the property back. Ms. Barry said she had been told by Ms. Maples Fields that she was moving back to the area from Kansas, and she demanded that the property be rented to her.

Ms. Barry said that \$117,830 had been spent on the property. She also said that when the deed was transferred, the title for the property was subject to the three deeds of trust, so she was responsible for paying off Chase Manhattan Bank and Ms. Maples Fields' car loan and had already paid off the HOA liens and the third deed of trust.

Mr. Beard asked Ms. Barry whether she had ever bought an ADU, and she responded absolutely not.

Mr. Beard asked whether Ms. Hockenbury was present. Mr. Beatley indicated she was not.

Mr. Beard asked whether Ms. Barry's statement was that because the statement had been made that the property had been purchased through a first-time buyer program, she had the title examined twice. Ms. Barry said yes. She stated that her bottom line was that she wanted to sell the property. She explained that she had bought and sold approximately 1,800 properties and had only kept three rentals. Ms. Barry said if she was sitting on a property like the subject one and had money tied up, she could not invest the money elsewhere in order to make more money. She stated that she and her lawyer had done everything right, like they usually did.

Mr. Hammack asked whether Virginia Equity Solutions had ever purchased property in Providence Park. Ms. Barry replied no, never.

There were no speakers.

Ms. Tsai stated that this was an appeal of a determination that the appellant had not obtained a certificate of qualification from the Fairfax County Redevelopment and Housing Authority, and the appellant was not occupying the property as its domicile in accordance with Zoning Ordinance provisions.

Mr. Congleton said that if the BZA wanted to defer decision, staff would like to hear testimony from Ms. Hockenbury. He referred to Mr. Christenson's earlier comments concerning the language of the Ordinance that the deed needed to be recorded simultaneously with the covenants. He pointed out that the language in the Zoning Ordinance did not come into effect until July 1, 2002, and that at the time of the sale of the property, there was no requirement for simultaneous recordation.

Mr. Christenson stated that he had no objection to a deferral in order to hear from Ms. Hockenbury. He said he had not had an opportunity to read the cases as to constructive record and actual notice and wanted to do so.

Mr. Ribble requested that if Mr. Christenson wanted to submit additional information on the case, copies be submitted to the Board in advance of the next hearing.

Mr. Hammack stated that the decision should be deferred to allow Mr. Christenson an opportunity to present, in writing, his legal arguments in support of his position, and that information should be sent to the Board and County staff two weeks prior to the hearing so any necessary response could be made.

Mr. Ribble moved to defer decision on A 2005-PR-015 to September 13, 2005, at 9:30 a.m.

Mr. Gibb asked Mr. Christenson to provide the Board with copies of the index page used by the title examiner for the title report.

Mr. Hammack requested that Mr. Christenson provide copies of his brief and all the deeds in chain of title that were examined within the next three weeks and asked that the brief be sent to the County Attorney.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-012 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 6/14/05)

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 26,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 6/14/05)

Charles Lanaras, 701 Clear Spring Road, Great Falls, Virginia; and David Bellinger, 24630 Nettle Mill Square, Aldie, Virginia, came forward.

Mary Ann Tsai, Zoning Administration Division, presented staff's position as set forth in the staff report. She said that since the June 14, 2006 BZA meeting, staff had reviewed paragraph C of 15.2-2311 of the Code of Virginia with respect to the Non-Residential Use Permit (Non-RUP) and the applicability of the 60-day limitation period. In consultation with the County Attorney's office, staff maintained that the 60-day limitation period only applied when it involved discretionary action taken by the Zoning Administrator or his assigned. She said that an example would be that an interpretation by the Zoning Administrator or his assigned would be considered a discretionary action, unlike the approval of a Non-RUP, which was considered a nondiscretionary action. As such, the 60-day limitation period was not applicable, and the Deputy Zoning Administrator for the Zoning Permit Review Branch was within her right in issuing the Notice of Violation to the appellants which revoked the Non-RUP. Ms. Tsai said the appellants conceded in the appeal application that the Non-RUP had been issued in error for the existing use. In reviewing the road frontage improvements that needed to be completed by the appellants in accordance with the special exception, she said that staff believed the closing of the service entrance from the service road on Leesburg Pike and the relocation of the site's Downey Drive entrance were necessary to address safety concerns associated with the egress and ingress to the property, and staff believed that the installation of landscaping and providing additional parking were not onerous conditions on the appellants and may be only subject to a minor site plan application. Ms. Tsai said staff maintained that the appellants established a vehicle light service establishment without site plan approval; therefore, staff recommended that the Board uphold the Zoning Administrator, finding that the appellants must obtain site plan approval and complete construction of all required improvements in accordance with SE 2002-DR-011 prior to the issuance of a Non-RUP for the vehicle light service establishment use.

Mr. Hart asked whether the issuance of a Non-RUP that had been signed off by the Director of the Zoning Enforcement Branch involved a determination that the Non-RUP was available and appropriate for the property. He asked whether a staff member would be the one to determine whether or not a request for a Non-RUP was appropriate for a particular site. Mavis Stanfield, Deputy Zoning Administrator for Appeals, said staff in the Permit Review Branch looked at everything for appropriateness, even for a building permit; however, in this case, it was considered to be more of a clerical type determination rather than an interpretation which would require further analysis.

Mr. Hart said it did not appear to him that there was a distinction in the statute between a clerical error and a judgment call, and he did not know why this was considered to be a clerical error as it was not an error in a date or a misspelling of a name. He said it was that the use could not be allowed in the building without complying with the special exception conditions. He said staff was saying there was a distinction in the statute even though it said "in no event," and he asked staff whether they were stating that in this event it was all right because it was a clerical error. Ms. Stanfield said the statute did make a distinction between discretionary and nondiscretionary issues.

Mr. Hart asked where the statute made the differentiation. Ms. Stanfield read, "The 60-day limitation period

shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct the clerical or nondiscretionary errors." Ms. Stanfield indicated that sentence was applicable to the case before the Board.

Mr. Hart asked whether that meant a correction could be made after 60 days if the County Attorney was in agreement. Ms. Stanfield replied that the mistake could be corrected.

Mr. Hart asked whether there was any authority or cases the Zoning Administrator was relying on for the distinction between discretionary and nondiscretionary. Pamela Peltó, County Attorney's Office, counsel for the Zoning Administrator, stated that there had been no Virginia Supreme Court precedential case law on the particular section since it had been adopted in 1996 or 1997.

The appellants presented the arguments forming the basis for the appeal. Mr. Lanaras stated that A-1 Solar Control had been operating at its current site for seven months, having relied on the actions and discretion used by the County in permitting them to obtain an occupancy permit. He said that for the County then to say that it was not discretionary was like splitting hairs. He said they had employees working at the Leesburg Pike facility who were relying on the company for their livelihood, and the County's decision to shut them down was harsh, severe, and an undue hardship. Mr. Lanaras said he considered the decision to be unjustified and unreasonable.

In response to Chairman DiGiulian's question, Mr. Lanaras stated that he was also speaking to A 2005-DR-013.

Ms. Gibb asked whether it was staff's position that any time a building permit was issued, it did not fall within Sect. C of 15-2311 of the statute. Ms. Stanfield said it was her understanding that an approval of a building permit would be considered a nondiscretionary action of the Zoning Administrator.

In response to Ms. Gibb's question, Ms. Peltó said she understood the position of the appellants, but she did not agree with it. She said that the provision being focused on was intended for a situation concerning a nondiscretionary error. She said the permit transaction had taken place over the counter, and the permit technician had no authority or discretion to change the Ordinance, rezone the property, and forgo the development conditions that had been legislatively enacted. Ms. Peltó said that when someone had no authority to change the Ordinance, they had no discretion, and if the permit was issued and the property was effectively rezoned, it was a nondiscretionary error. She said the action by the Zoning Administrator was necessary in order to correct the error, and she concurred with what had been done. She said there was case law that stated that a County employee could not effectively rezone property by such a mistake if they did not have the authority to do so.

Ms. Gibb stated that Ms. Peltó was characterizing what had been done as a rezoning, but to her that was a conclusion of law. She said that when she heard of the statute, she thought that the classic case was issuing a permit and that once a developer had received a permit and started to build, the permit could not be pulled after the foundation had been poured if 60 days had passed. She said it was her opinion that the building permit was not what was at issue in this case, but it was that there were development conditions that the clerk didn't know about, and she assumed that the appellants did not know either.

Ms. Peltó stated that the Non-RUP that was issued contained specific information indicating that it was subject to a particular special exception. She said the law was that the clerk had no legal authority to issue the permit unless or until a site plan and all the special exception conditions, including Condition 3 which required the site improvements had been constructed, had been approved. She said that issuing the permit before all of the conditions had been met was the error.

Ms. Gibb asked how a special exception plat could be found. Ms. Stanfield replied that special exceptions were kept in the street file at the time of the permits or issuance of the Non-RUP. Ms. Gibb asked if the notation was on the plat and was included in the street file. Ms. Stanfield replied that it was.

Ms. Peltó stated that the special exception would also be shown on the tax map.

Ms. Gibb said she did not know what the term "per conditions of SE 2002-DR-11" meant.

Ms. Stanfield said the County would not shut the company down; however, they would require the appellants to construct the improvements which would require submission of a minor site plan and installation of road improvements, parking on site, and landscaping.

Ms. Gibb asked the appellants whether they had determined what the cost of doing those things would be and when they thought they could get them done. Mr. Lanaras stated that he did not have any information at the time, but he thought that their case was broader than the County's allegations. He said he did not like the appeal to be characterized as based on the 60-day limitation. He said that to argue that there was no discretion and that a specific person had not been given authority to do so was an abdication by the state of its responsibility. He said the appeal did not rest on what was considered to be a statutory bar. He said he would argue that their case was an equitable one of undue hardship. Mr. Lanaras said that Mr. Congleton's letter had stated that the County would shut them down. He said the letter specifically stated "vacate the property."

Ms. Gibb stated that Mr. Lanaras had not answered her question concerning how much the improvements would cost and how long they would take to get done. Mr. Lanaras said they would have to go through site plan, which could cost as much as \$40,000, as well as the special exception process, and improvements would be a very costly. Mr. Lanaras stated that he had been told by the previous owner of the property that he had been considering applying for a special exception; however, he had never done so, and the appellants had never pursued it until the issues raised by the Zoning Administrator came up.

Ms. Stanfield informed Ms. Gibb that the appellants had requested an extension of the special exception's time limitation. Mr. Lanaras stated that the point behind that was to keep their options open if they had to pursue it, but they had had no contact with the County. Ms. Stanfield stated that her office had attempted to contact the appellants to no avail and had stressed that they were open to discussion. Mr. Lanaras' response was that when staff had attempted to reach him on other occasions, they had called him on his cell phone.

Mr. Hart asked what the procedure was when an applicant approached the counter and requested a Non-RUP and whether they made the decision to issue one themselves or got approval from a supervisor. Ms. Stanfield stated that the clerk at the counter would know that the special exception was applicable to this piece of property and would make a determination as to whether or not the conditions of the special exception had been fulfilled. In this case, she said staff was unaware of the improvements associated with the special exception. Ms. Stanfield said she thought the request had also been checked by a planner in the branch.

Mr. Hart asked if the error that was made was because the clerk should not have given a Non-RUP until he was assured that the site plan had been approved. Ms. Stanfield said that was correct. Mr. Hart asked whether staff would have found it if all the required information had been included in the street file. Ms. Stanfield replied that if staff had carefully examined the plat associated with the request or had asked a senior staff member to look at it, they would have been able to determine that improvements needed to be made. She said that staff could refuse to issue a Non-RUP, and they would use the same procedure required to issue a building permit.

Mr. Byers suggested that the appellants and staff meet and discuss the procedure for the issuance of a minor site plan, which would not cost as much as Mr. Lanaras had stated. He said if the appellants submitted a minor site plan, the Dranesville Supervisor, Joan DuBois, would be able to rule on an extension of time, which would get the appellants into compliance with County regulations. He said it was his opinion that the County would be willing to work with the appellants and would not shut them down.

Mr. Lanaras stated that Ms. DuBois had refused to review the case. Mr. Byers said that Ms. DuBois had indicated that she would defer reviewing the case until the BZA had made its decision. Mr. Lanaras said that Ms. DuBois' letter specifically stated that she was not inclined to extend the special exception.

Ms. Stanfield stated that the submission fee for filing a minor site plan was \$1,400.

Mr. Byers said that Ms. DuBois' letter did not state that she would not consider a special exception from the standpoint of time, and what it said was that she would not support a special exception amendment to remove the road frontage improvements. He told the appellants that he was sure that Ms. DuBois would be willing to meet with them once the BZA had made a determination.

Mr. Lanaras stated that they were not unwilling to work with the County, but indicated that the case before the Board today was based solely on the statute or the special exception. He said he felt their argument was an equitable one, and they had a reasonable and proportional argument as well. He said it was his opinion that the County was insisting on technicalities, and they thought their case was stronger, more solid, more

common sense, and more reasonable given the circumstances. On that basis, Mr. Lanaras said they were requesting that the Board approve their appeal.

Mr. Hammack stated that it had been widely argued that the Board did not have equitable jurisdiction, and some people would disagree that the Board had any authority to grant equitable relief. He indicated that he had looked at the deed, which appeared to indicate that it was made subject to building and zoning ordinances as well as regulations, restrictions, and any governmental authority that would be applicable to the property. He asked Mr. Lanaras what his understanding was when the appellants accepted the deed. Mr. Lanaras said he and his attorney had not specifically addressed the issue of the special exception.

Mr. Hammack stated that the appellants had agreed not to restore gasoline for a period of seven years and that no part of the property could be used for automobile body or collision inspection with respect to repair restoration services or other minor vehicle damage inspection requiring repair services. Mr. Lanaras replied that the first issue raised by Mr. Hammack was one that had been instigated by Exxon when they initially sold the property, and the second was that the person they bought the business from had a body shop next door to the appellants' premises. He said it was his opinion that the seller had included that in the deed to avoid competition.

Chairman DiGiulian called for speakers; there was no response.

Mr. Lanaras stated that he thought his case was a strong one, that they had in good faith relied upon the County and its actions, and they did not agree with staff's conclusions concerning denial of the appeal.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said that she did not think the arguments had been fleshed out to her satisfaction and that neither equity nor common sense was the issue. She said the Board was confined by what was contained in the statutes and ordinances. Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said her motion was based on the staff report, the testimony of staff, and the testimony of Ms. Peltó regarding the 60-day time limitation period not applying in a case where, with concurrence of the attorney for the governing body, modification is required to correct a clerical or other non-discretionary error. Ms. Gibb stated that it was her opinion that this could be worked out.

Mr. Beard asked whether a vote to uphold the Zoning Administrator would preclude the appellants from working out the problems. Ms. Stanfield stated that if the appellants were willing to submit a minor site plan, the violation could be remedied. Michael Congleton, Deputy Zoning Administrator, Zoning Enforcement Branch, stated that typically he would seek compliance with the Ordinance; however, staff would be willing to work with the appellants to bring the property into accordance with the Ordinance. He said that it was usually when all efforts failed that his office would seek judicial remedy. Mr. Congleton said he would be willing to meet with the appellants to determine whether or not the modifications could be worked out.

Mr. Hart stated that he would not support the motion. He said he thought that it was an unfortunate situation, and he agreed with Ms. Gibb that the equitable side was beyond the Board's scope. He said the evil that the General Assembly had intended to address and prohibit in 15.2-2311 was exactly a situation like the one before the Board where there was some action by the Zoning Administrator which could not be changed after 60 days had elapsed. Mr. Hart said it was clear that the letter concerning the violation came approximately 69 days after the Non-RUP was issued, which was too late. He said there was abundant evidence on the record that the appellants relied upon the issuance of the Non-RUP to open their business, and they had continued to operate it. Mr. Hart stated that he thought that was unfortunate because the clear intent of the approval of the special exception was that the use at the location would be subject to the conditions, with the Non-RUP expressly referring to them, and there should have been site improvements before the Non-RUP was issued. Mr. Hart stated that he did not agree that it was a clerical error because there was nothing clerical about it, and it was purely discretionary. He said someone at the counter was supposed to have checked the file to make sure that everything pertaining to the application was in order, and for whatever reason that person had not done a good enough job and had issued the Non-RUP. He said that 15.2-2311 stated "in no event" and did not address situations where someone had not carefully reviewed an application. Mr. Hart said the notice of violation had not been received by the appellants until 69 days after issuance of the Non-RUP, which the General Assembly had determined could not be done, and the Board had to follow the statute even if it was not what was intended. He said he could have supported a motion to defer because he thought that ultimately the best result would be to work out something that was more involved in order to get the necessary improvements done, but with respect to the 60-day issue, he could not conclude that the Zoning Administrator was correct.

Mr. Byers seconded the motion, which FAILED by a vote of 2-5. Chairman DiGiulian, Mr. Hammack, Mr. Hart, Mr. Beard, and Mr. Ribble voted against the motion.

Mr. Hammack moved to defer decision to September 27, 2005, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 65-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,278 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 65-4 ((8)) 7. (Continued from 11/18/04) (Decision deferred from 3/1/05, 5/3/05, and 6/14/05)

Chairman DiGiulian noted that on June 21, 2005, the Board had issued an intent to defer A 2004-SP-025 to August 2, 2005, at the appellants' request.

Mr. Byers moved to defer A 2004-SP-025 to August 2, 2005, at 9:30 a.m., at the appellants' request. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 19, 2005, Scheduled case of:

9:30 A.M. MICHAEL BRATTI AND GINNI BRATTI, A 2005-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2025 Franklin Av. on approx. 20,471 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 2. (Admin. moved from 5/24/05 at app. req.) (Deferred from 6/28/05)

Keith Martin, the appellants' agent, Sack, Harris & Martin, PC, 8270 Greensboro Drive, McLean, Virginia, stated that at the June 28, 2005 public hearing, they had agreed to employ a contractor to bring the fence down to six feet in height. Immediately after the hearing, he said he had met on-site with Bruce Miller, Zoning Enforcement Branch, Zoning Administration Division, and they had measured six feet from grade on the fence. He stated that the week prior to this hearing, the fence had been brought to that height, as measured by Mr. Miller. Mr. Martin said Mr. Miller had visited the site July 18, 2005, and had taken photographs. He asked that the appeal be deferred to allow the pending Zoning Ordinance amendment to take place and stated that the appellants were examining other options that would bring the site into legal conformity with the Ordinance.

Ms. Gibb asked why the gate shown in the photographs was still up. Mr. Martin responded that gates and gateposts were allowed to be eight feet in height and were not subject to the height limitation of four feet. Ms. Gibb asked if the gate would remain that way. Mr. Martin stated that under the six-foot rule it would; however, the appellants were investigating a legal remedy outside of this process, and it would remain for the time being.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, stated that staff had no further comments and indicated that she would be willing to answer questions.

Mr. Hart stated that he had looked at the fence, and it was his understanding that what was currently on-site was not in violation because the six-foot gate would be allowed and was pending any changes to the Zoning Ordinance. Mr. Miller responded that the gate could be up to eight feet in height because there was no limit on the height; however, the fence at six feet was still a violation. He said he had been told the appeal would be deferred until December of 2005 pending any further changes to the Ordinance.

Mr. Hart asked Mr. Miller whether the fence that was on the corner next to the appellants' property was taller than the appellants' fence. Mr. Miller stated that fence was five feet, three inches in height; however, there were other issues on that property, and a notice was pending.

In response to Mr. Hart's question, Mr. Miller stated that there were at least 17 fence height cases pending within the neighborhood.

Mr. Hart asked whether staff was considering suggesting that all fence cases be deferred pending the possible Zoning Ordinance amendment. Ms. Stanfield replied that for fences that were six feet or less in height, there was a potential for the Zoning Ordinance to provide a remedy other than the appeal or variance process, and staff would be deferring all such cases until December of 2005.

Chairman DiGiulian called for speakers.

Donald Cochran, 2023 Franklin Avenue, McLean, Virginia, came forward to speak. He said he understood that the Board reviewed the merits of each case before making its decisions; however, he noted that no objections had been expressed concerning the variance heard earlier. He stated that the appellants had volunteered to reduce their fence height to six feet solely to be afforded the opportunity to have their application heard a second time. He said he and his neighbors disagreed with the appellants' argument. He stated that because the appellants had caused this case to run well beyond the statutory 90-day period, it was his opinion that they had done so to allow current law to be overtaken by a new law that would be more favorable to them, and that on its face, such a deferral would be prejudicial to the opponents and would constitute a denial of due process. Mr. Cochran said he thought the Board's action would be contrary to Justice Lemon's opinion for the Supreme Court of Virginia in the Kim D. Tran vs. Board of Zoning Appeals case. He said due process had long been recognized as a fundamental right, and in this case it could be moot if the Board decided to delay the case further. He said the appellant would not qualify for a special permit under the proposed Zoning Ordinance amendment. He quoted from the proposed Zoning Ordinance amendment concerning fences that included reference to the criteria which would be required to qualify for a maximum six-foot yard fence and said he thought the appellants' fence was deficient in all criteria. He said their fence adversely impacted the use and enjoyment of his property, which was immediately adjacent to the appellants. He requested denial of any further delays of the appeal and requested that the Board hold the public hearing on the application as had been advertised.

In response to Mr. Hammack's question, Mr. Cochran said he was adversely affected by the fact that the fence constituted a zoning violation, and it was offensive to him because it was contrary to everything else in the neighborhood.

Mr. Miller responded to Mr. Byers' question, stating that some of the property owners had lowered their fences and they were in compliance with the Ordinance, and some others had lowered the fences, but were still in violation because they were not lowered enough. He said that based on the advice of the Zoning Administrator, he was deferring action on those until such time as the Zoning Ordinance amendment came into play.

Mr. Byers addressed Mr. Cochran's comments by stating that if the neighborhood was pristine and everyone was in compliance with the rules and regulations, then his case would have more strength. He said there has to be an issue of fairness, and he did not consider that it was fair at this time. He said that if staff were to look at fences in Fairfax County that were not in compliance with current zoning regulations, there might be thousands of them. Mr. Byers stated that the Board was attempting to get that corrected. He pointed to Mr. Martin's statement that the fence was now at the six-foot level and said the Board would defer the appeal to December, which would not be any different than they would treat anyone else throughout the County.

Mr. Cochran stated that of the 17 cases mentioned earlier, it was on record that the appellants were the ones who had reported the other 16.

At Mr. Hart's request, Mr. Cochran provided a complete transcript of the Tran decision. Mr. Hart asked if the Tran case involved a nail salon that had gone beyond the 90 days, but had been worked out. Mr. Cochran stated that it was a Non-RUP case similar to that of A-1 Solar Control that had been heard earlier that day.

Wallace Sansone, 1962 Virginia Avenue, McLean, Virginia, representing the Franklin Area Citizens Association, came forward to speak. He stated that the citizens association represented approximately 800 families and noted that he had provided a statement for the record. He stated that the appellants had provided a site plan to the Board in 2002 for a variance with respect to new construction, and the site plan clearly showed a front yard on Virginia Avenue. Notwithstanding the fact that the appellants knew they had that front yard, he said they had proceeded to erect a fence exceeding the height of four feet, which was in violation of the Ordinance, and had done it without applying for or obtaining a variance. He said that not all cases were the same in the neighborhood, and the appellants had misrepresented the height of the fence, admitting to six feet, when it was actually nine feet. Mr. Sansone said the appeal contained no evidence to support the violation or further delay and was riddled with irrelevant reasons as well as misleading

statements, all of which had been dealt with by those neighbors who had written letters of opposition to the Board of Zoning Appeals (BZA). Mr. Sansone said it was clear that the appellants had created a self-inflicted hardship, and there were many ways to cure the fabricated hardship without the BZA's approval. He said landscaping would solve the issue within the existing land use laws, which was a legal choice many of their neighbors had taken. He said that although the violation had been reported on August 12, 2004, the hearing process had been delayed for nearly one year without justification, which was well beyond the 90-day statutory requirement to deal with due process concerns and make a decision. Despite the long delay, he said the association was astounded by the fact that the BZA could consider another deferral because the fence was now six feet tall and was still a violation of the four-foot front yard law. He stated that the BZA's delay was one of speculation as a way to lower County zoning standards. Mr. Sansone said a deferral would not be justifiable, reasonable or legitimate in an attempt to cure a violation. He said the BZA's expectation of lower zoning standards was completely opposite from the public declaration made by the Chairman of the Board of Supervisors (BOS), Gerald Connolly, on January 31, 2005, that the BOS would protect and preserve existing zoning standards, a declaration which had been made at a public information meeting concerning the Zoning Ordinance amendment draft. Mr. Sansone stated that immediately thereafter the proposed Zoning Ordinance amendment had been indefinitely deferred. He said that since that time neither the Chairman nor anyone on the BOS had made any public statement to indicate that the BZA's speculation of lower zoning standards was justified. He said the BZA admitted to not knowing and had no evidence to show that a revised Zoning Ordinance amendment would allow six-foot front yard fences. He stated that even if the old Zoning Ordinance was law and using its lowest standard, it would still not justify approval of the appellants' fence because it was not in character with the site nor was it harmonious with the surrounding development, and it clearly impacted the use and enjoyment of adjacent properties. Mr. Sansone said that because the appellants had violated the law and due process had been unjustifiably delayed, the members of the association were requesting that the appeal and request for deferral be denied.

In response to Mr. Hammack's question, Mr. Sansone said a deferral would adversely impact other properties in the neighborhood because the fence was not harmonious with the surrounding development and because it was over four feet. He said that was the standard for their objections to the appeal. Mr. Hammack asked whether the neighbors had any opposition to the composition or color of the fence, and Mr. Sansone stated that it was not up to him to determine that, and the statute did not address that.

Mr. Hammack asked whether there were other fences in front yards within the neighborhood that were over four feet in height. Mr. Sansone said he did not know the location of the other fences that were supposedly in violation. He said he could not see the Bratti house from his home because he was located one block away.

Ms. Gibb stated that the BZA had received a letter from the Franklin Area Citizens Association and noted that Mr. Sansone was not the president. Mr. Sansone stated that he was a member of the board, and Mr. Meehan, the president of the civic association, was aware of the letter and had asked him to represent the association because he could not be present. Responding to a question from Ms. Gibb, Mr. Sansone said he was not aware of the front yard fence that was next door to the appellants.

In response to Mr. Hammack's question, Mr. Sansone said the Franklin Area Citizens Association opposed the proposed Zoning Ordinance amendment, had taken a formal position, and had informed the County.

Mr. Beard said the civic association had stated in its letter that the BZA went from blatant disregard of the controlling Virginia statutes in applying hardship criteria to blatant contempt for reasonable decision-making on the citizens' behalf where appropriate applications for variances had been submitted. He asked Mr. Sansone if that was the opinion of the citizens association and said he was quoting from the Franklin Area Citizens Association's letter. Mr. Sansone said the letter had been written by the president of the civic association, Mr. Meehan, on behalf of the association.

Mr. Hart asked if the association had taken a position regarding other fences in the neighborhood. Mr. Sansone said not to his knowledge. He said there had been no notices of hearing with respect to any of the other violations that Mr. Bratti had reported. He said there were a number of citizens who had taken corrective action when they determined that their fences were an inch or two above the line, and those fences were between four feet, one inch and four feet, three inches. Mr. Sansone said another distinguishing factor was that not all the fences were the same; however, Mr. Bratti knew the circumstances of his front yard situation, but he built a fence nine feet in height anyway, and it stood for a year. With respect to the other cases, he said most of the people discovered that an error of a few inches had been made when their fences were put up. Mr. Hart stated that when he went through the neighborhood, he could not tell whether the fences were four feet, one inch or four feet, two inches. He said it seemed to him that

the appellants' fence appeared to be lower than his neighbor's house. Mr. Sansone stated that was because Mr. Bratti had dumped one and a half feet of fill dirt in the Virginia Department of Transportation right-of-way in an attempt to make the fence appear lower.

In answer to Mr. Hart's question, Mr. Sansone said he was not singling anyone out; however, the Bratti fence was up for hearing, there was opposition to it, and it should be heard. When the other fences were scheduled for hearing, he said their board would deal with them on a case-by-case basis and not dump them all into one.

Mr. Hart asked Ms. Stanfield whether the BOS had reauthorized the text of the Zoning Ordinance amendment. Ms. Stanfield replied that, to her knowledge, they had not, and no one knew what would be included in it.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to defer A 2005-DR-009 to December 20, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0

//

~ ~ ~ July 19, 2005, After Agenda Item:

Request for Reconsideration
Mrs. Betsy Boyle and Mrs. Demetra Mills, A 2005-BR-005

No motion was made; therefore, the request for reconsideration was denied.

//

~ ~ ~ July 19, 2005, After Agenda Item:

Approval of July 12, 2005 Resolutions

Mr. Beard moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the response received from Mr. Griffin, the McCarthy case, and the Demetricu case pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:50 p.m. and reconvened at 1:19 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:19 p.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: June 10, 2008

K. A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 26, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ July 26, 2005, Scheduled case of:

9:00 A.M. KIM-OANH T. NGUYEN, SP 2005-SU-024 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 28.0 ft. with eave 27.0 ft. from front lot line of a corner lot, 19.0 ft. with eave 18.0 ft. from side lot line and 21.0 ft. with eave 20.0 ft. from rear lot line. Located at 4535 Samuels Pine Rd. on approx. 10,891 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 415.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. Kim-Oanh Nguyen, 4535 Samuels Pine Road, Chantilly, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a modification to the minimum yard requirements for certain R-C lots to allow construction of a two-story addition 28 feet with eave 27 feet from the front lot line, 21 feet with eave 20 feet from the rear lot line, and 19 feet from the side lot line. A minimum front yard of 40 feet, rear yard of 25 feet, and side yard of 20 feet with permitted eave extensions of 3.0 feet are required; therefore, modifications of 12 feet, 10 feet, 4.0 feet, 2.0 feet, and 1.0 foot, respectively, were requested. Ms. Hedrick stated that the proposed addition met the minimum yard requirements of the R-2 Cluster District which was applicable to this lot on July 25, 1982.

Ms. Nguyen presented the special permit request as outlined in the statement of justification submitted with the application. She said her husband purchased the house when he was single in 1989; however, they currently had a family of four and needed additional space. Ms. Nguyen stated she wished to add a family room, an additional bedroom, and a two-car garage. She said the neighbors supported her additions.

Mr. Hart asked about the construction material. Ms. Nguyen answered that the addition façade would match the original house. She said more pavement would be added to the driveway to accommodate a two-car garage.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 2005-SU-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIM-OANH T. NGUYEN, SP 2005-SU-024 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 28.0 ft. with eave 27.0 ft. from front lot line of a corner lot, 19.0 ft. with eave 18.0 ft. from side lot line and 21.0 ft. with eave 20.0 ft. from rear lot line. Located at 4535 Samuels Pine Rd. on approx. 10,891 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 33-4 ((2)) 415. 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 26, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 28, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the two story addition as shown on the plat prepared by Paciulli, Simmons & Associates, Ltd., dated November 14, 1986, revised through March 19, 1987, signed April 19, 2005, as submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion which carried by a vote of 6-0-1. Mr. Ribble abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 2005.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:00 A.M. KATHERINE O. KIRKHAM, SP 2005-SU-026 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of second story addition 30.8 ft. with eave 29.2 ft. from front lot line. Located at 6259 Welton Dr. on approx. 14,738 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 488.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. Katherine O. Kirkham, 6259 Welton Drive, Centreville, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification to the minimum yard requirements for certain R-C lots to allow construction of a second-story addition 30.8 feet with eave 29.2 feet from the front lot line. A minimum front yard of 40 feet with permitted eave extension of 3.0 feet is required; therefore, modifications of 9.2 feet and 7.8 feet were requested. Ms. Hedrick noted that the addition met the minimum yard requirements of the R-2 Cluster District which was applicable to this lot on July 25, 1982.

Ms. Kirkham presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Kirkham said the proposed addition over the existing garage would meet the minimum yard requirements of the R-2 Cluster. The addition would be harmonious with the existing development in the area and had been approved by the architectural review board in her neighborhood. Ms. Kirkham said the proposed addition would not adversely impact the health, safety, or welfare of the area, and was designed to meet all the applicable Zoning Ordinance requirements.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-SU-026 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHERINE O. KIRKHAM, SP 2005-SU-026 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of second story addition 30.8 ft. with eave 29.2 ft. from front lot line. Located at 6259 Welton Dr. on approx. 14,738 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 488. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the second story addition as shown on the plat prepared by John Linam, Jr., AIA, dated February 8, 2005, as revised through May 12, 2005, as submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and become final on August 3, 2005.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:00 A.M. PAULA LOPEZ, SP 2005-MA-022 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7650 Royce St. on approx. 34,902 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((3)) 72.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals was complete and accurate. Lynne Strobel, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Terpak, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Steve Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a home professional office comprised of a real estate title agency. Mr. Varga said the proposed hours of operation would be weekdays, between 9:00 a.m. and 5:00 p.m., and the business would employ three fulltime workers. He stated that the proposed exterior changes consisted of two gravel parking spaces adjacent to the western part of the driveway. These, as well as two driveway spaces, would be used by clients and staff. Mr. Varga said the remaining two spaces in the garage were reserved for residents. Staff recommended approval of SP 2005-MA-022 subject to the proposed development conditions.

Mr. Hart asked about traffic flow when the development conditions stated there would be no signage. Mr. Varga answered that staff did not feel a sign would be necessary due to its location at the intersection of Hummer Road. He noted that the applicant would explain her location to clients before meetings.

Mr. Byers asked why staff recommended approval of the application since the Comprehensive Plan had the property designated for a residential use. Susan Langdon, Chief, Special Permit and Variance Branch, answered that a home professional office was allowed under a special permit. The proposal was for weekday use, and the anticipated 16 clients per month was very low. Staff felt the application met the special permit criteria for approval. Mr. Byers said he shared Mr. Hart's concern over there being no signage. Ms. Langdon commented that they did not want the property to look commercial, so they decided on no signs. The applicant would have the address posted.

Mr. Beard commented that the enforcement of developmental conditions was always a concern.

Referencing Development Condition 10, Mr. Hammack asked how the applicant could impose a limit of two clients at a time. Ms. Langdon answered that the applicant had said that most of the appointments would be offsite, and the onsite clients would be very limited. Mr. Hammack stated that based on his experience, settlements occur at all times of the day and night, and he believed it would be extremely difficult to limit them.

Mr. Hart asked if a title insurance company had ever been approved for a home professional office in an R District. Ms. Langdon said she did not believe the board had approved any, but noted that varied types of businesses had previously been approved, for example, doctors, dentists, attorneys, and computer businesses.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She said that within the last ten days, Mr. Varga had provided her with letters from people in the community who did not seem to understand the kind of use the applicant was proposing. Instead of requesting a deferral of the public hearing, Ms. Strobel said she would like to present the case, but then request deferral of the decision for a week or two so that she could have a dialogue with the community regarding the application.

Ms. Strobel said that a home professional office was, in fact, a permitted use in the R-2 District. The applicant was not proposing to modify the existing residential zoning or to do anything that would be contrary to the residential zoning designation. Ms. Strobel said the applicant would not be changing the appearance of the property or adding any signs and would be maintaining the home as her residence. She said the office

use would be subordinate and accessory to the residential use. Ms. Strobel said the applicant frequently went to the offices of attorneys and settlement agents for closings. She referenced a letter of support from Wesley Hobbs, Bank of America, who noted that 90 to 95 percent of his business dealings with the title company had been through telephone, fax, and email communications. Ms. Strobel said appointments would be limited pursuant to the development conditions, approximately one to two per week and by appointment.

Mr. Hart said he visited the property and found it hard to see the house address until he passed it. He asked how people coming to the office were going to find it without getting lost. Ms. Strobel answered that she had no problem finding it and said if you were given directions and know that a left turn was what to look for after the park, it should not be a problem to find, given the visibility of the house being on a corner.

In response to a question from Mr. Hart, Ms. Langdon said that the applicant and one employee could be onsite by right if no clients come to the site. Ms. Lopez needed the special permit because she had more than one employee.

Mr. Hart asked how many people attended Ms. Lopez's settlements. Ms. Strobel answered that it would be only two. They would park in the graveled spaces or the driveway. Mr. Beard questioned whether a settlement could realistically be done with only two people.

Mr. Hart asked about the enforcement of the development conditions. Ms. Langdon answered that with any applicant you depend on their goodwill and them being in compliance with the conditions. She said enforcement would come through someone making a complaint to the County.

Mr. Hammack asked why the applicant needed three employees for such a small volume of settlements. Ms. Lopez clarified that the three employees included herself.

Mr. Byers remarked that 40 settlements was based on a static condition, and that would probably go up. Ms. Lopez said she had been performing settlements for five years and had never performed more than 25 settlements in one month.

Chairman DiGiulian called for speakers.

Dale Roberts, no address given, came forward to speak. He said he was an attorney who had worked in Annandale for the past 25 years, and he had provided the applicant with legal support from time to time and was familiar with her business. He confirmed that she had a small business and that most of the settlement business was performed electronically through email.

Hcpe Steele, First American Title Insurance Company, came forward to speak. Ms. Steele said that according to her records, the applicant averaged 25 to 35 closings per month. She said the applicant's largest source of business was Bank of America, which Ms. Lopez performed offsite closings for them. Ms. Steele said the applicant conducted high end closings and felt a home business setup would be ideal for her. She said she knew of many title insurance agents that ran their businesses from their homes.

Wes Hobbs, Bank of America, came forward to speak. He said he used the applicant's title business because it was small and he got a quick response from her. Mr. Hobbs stated that almost all their transactions were conducted through email.

Scott Birdwell, a resident of the Pleasant Ridge neighborhood, came forward to speak on behalf of the Northwest Annandale Civic Association and the Pleasant Ridge and the Moore and Keith communities. Mr. Birdwell said there were 82 residents who had signed a petition in opposition to the application since it would degrade the appearance, value, and possibly the safety of the neighborhood. He pointed out that the Lopez property was located at the entrance of the neighborhood, and, therefore, the proposed commercial use adversely affected not just the adjacent property owners, but the entire neighborhood. The changes Ms. Lopez made had commercialized her property and were out of character with the neighborhood, by cutting down the trees and adding more paved area for parking. He said the neighbors were not opposed to having home-based businesses in the neighborhood, noting that there were several which were unobtrusive and otherwise complied with the residential zoning laws. Mr. Birdwell said the application did not comply with the special permit standard that required that the proposed use be harmonious with and not adversely affect the use of neighboring properties nor impair their value.

The following speakers spoke in opposition: Jeny Beausoliel, 3913 Linda Lane, Annandale, Virginia; Jeff Mayfield, 7654 Royce Street, Annandale, Virginia; Linda Boone, Treasurer of the Lafayette Village Community Association, 3686 Yorktown Village Pass, Annandale, Virginia; Arthur Childers, 3905 Linda Lane, Annandale, Virginia; Carl Keller, 3713 Pleasant Ridge Road, Annandale, Virginia; Ernie Cook, 7658 Pond Drive, Alexandria, Virginia. They cited the following reasons for their opposition: increased traffic from couriers, employees, and clients/customers, impaired safety of children and walking adults, desire to keep the neighborhood's residential character and not a commercial setting, and a potential negative effect on wildlife in the area.

Mr. Hart asked how vehicles, when only able to turn right on Hummer Road, would get back to Gallows Road. Ms. Langdon responded that they would need to drive around the block or exit onto Route 235 and then go in a different direction. She noted that the Department of Transportation allowed a small volume of traffic to exit a site in one direction only, and this was a very minimal amount of traffic.

Glen Bernard, 3705 Linda Lane, Annandale, Virginia, came forward to speak. He said a title company was not what he considered to be a professional home office, and the applicant appeared to have purchased the property with her business in mind.

Mr. Hammack asked if a title company fit the definition of a principal practitioner. Ms. Langdon answered that staff had interpreted that it did. Ms. Strobel confirmed for Mr. Hammack that Prime Title was owned wholly by the applicant. Mr. Hart asked if a home professional office was defined in the Zoning Ordinance. Ms. Langdon answered that the Zoning Ordinance defined it as an office or studio or occupational rooms which are located within the single-family detached residence of a duly licensed or certified physician practicing human medicine, chiropractor, physical therapist, or massage therapist, duly licensed practitioner of behavioral sciences, attorney, civil or professional engineer, accountant, architect, real estate appraiser, broker, insurance agent, or similar professional person.

Mr. Hammack asked if it was the applicant's domicile. Ms. Langdon answered that it was not yet an established use, but once it was, the applicant must live in the residence.

Ken Ross, 3809 Linda Lane, Annandale, Virginia, came forward to speak. He commented on the current traffic problems on Hummer Road.

Kerry Gannon, 3900 Linda Lane, Annandale, Virginia, came forward to speak. He said he was heavily involved in the real estate, mortgage banking, and construction businesses, noting that a typical closing would have eight to ten cars at a settlement.

Ms. Strobel asked that the Board defer decision on the application. She emphasized that this was not a request to change the zoning, but was a request for a home professional office to be located in a residence. Ms. Strobel said it was not economically feasible to rent office space for such a low volume of activity, which was why the applicant wanted to have an office in her home.

In response to a question from Mr. Beard, Ms. Strobel stated that the applicant had owned the property since November of 2004 and did not reside there. It was built in 2003.

Chairman DiGiulian closed the public hearing.

Mr. Ribble said he would honor Ms. Strobel's request to defer the decision for two weeks to obtain additional information on the applicant's business, Prime Title, and for Prime Title to be added to the affidavit. Mr. Ribble moved to defer decision on SP 2005-MA-022. Ms. Gibb seconded the motion.

Mr. Hammack commented that the applicant's agent should have dealt with the citizens prior to the hearing. Mr. Beard agreed with Mr. Hammack and said he did not support the motion.

Mr. Byers said he would not support the motion, stating that he did not think the development conditions were enforceable or reasonable. He felt the neighbors would be making zoning violation complaints, and then it would come before the Board again. He did not agree that working with the community on the development conditions would improve the application.

Ms. Gibb said the applicant was allowed to have a professional home office under the Zoning Ordinance, so if the applicant met the required standards, then she believed she should be able to have one. However, Ms. Gibb said a title company may not fall within a home professional office.

Mr. Hammack said the applicant had come back with almost an entirely different application. Counsel had three months to work with the community and did not. Ms. Strobel responded that the letters of opposition had not begun to come in until one week prior to the hearing, and she did not want to defer the hearing because many people had planned on coming out by then.

Mr. Hart said the activity of real estate settlements did not fall within a home office in Sect. 6-006, and he disagreed with staff on Development Conditions 3, 4, 7, and 8. Mr. Hart suggested scaling down the business and not having settlements at the home. Mr. Hammack responded that to do that would change the application, and she would need to reapply for a new application or the applicant do what she could as a matter of right.

Mr. Hammack said under 8-907 for additional standards for home professional offices, the BZA should review all non-residential uses within the area and determine that such use together with all other non-residential uses did not constitute sufficient non-residential activity as might modify or disrupt the predominantly residential character of the area. Mr. Hammack said there was a lot of commercial activity not far away, at the intersection of Hummer Road and 236, and to put this particular proposal into the neighborhood would have a destabilizing effect on the neighborhood.

Mr. Ribble withdrew his motion for a deferral.

Mr. Ribble moved to deny SP 2005-MA-022 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAULA LOPEZ, SP 2005-MA-022 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 7650 Royco St. on approx. 34,902 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((6)) 72. 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 26, 2006; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. It would not be harmonious with the neighborhood. And would have a detrimental affect on the neighborhood. There are too many nuances that can occur with the Title business.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-907 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 2005.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1. (Admin. moved from 10/5/04, 11/30/04, and 3/15/05 at appl. req.) (Admin. moved from 5/17/05 for notices.)

Chairman DiGiulian informed the Board that the notices for the case were not in order; therefore, SP 2004-DR-043 had been administratively moved to September 13, 2005, at 9:00 a.m.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:30 A.M. ROBERT AND JOYCE HARRISON, A 2004-PR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have constructed an addition which does not meet the minimum side yard requirement for the R-1 District in violation of Zoning Ordinance provisions. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1. Providence District. Tax Map 58-2 ((4)) 76. (Admin. moved from 1/25/05 at appl. req.)

Chairman DiGiulian noted that A 2004-PR-038 had been administratively moved to September 13, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, and 4/12/05 at appl. req.)

9:30 A.M. RGBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 16-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning 9/20/05 at Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, and 4/12/05 at appl. req.)

9:30 A.M. OEOERGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special excaption approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. cf land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, and 4/12/05 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to September 20, 2005, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:30 A.M. JOHN NASSIKAS, A 2005-DR-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 5115 Ramshorn Pl. on approx. 1.4 ac. of land zoned R-2. Dranesville District. Tax Map 31-2 ((5)) A.

Chairman DiGiulian called the appellant to the podium.

John Nassikas, 6115 Ramshorn Place, McLean, Virginia, came forward and requested a deferral. He said that staff had informed him of a proposed zoning ordinance amendment that would allow him to have a six-foot fence through the special permit process. Mr. Nassikas said the height of the preexisting stockade fence that he had replaced was six feet.

William Shoup, Zoning Administrator, Zoning Administration Division, spoke to the deferral request, stating that since the fence was seven feet in height, staff could not support the deferral. He explained the status of the amendment, noting that it would be sometime in the fall before a public hearing would be scheduled before the Board of Supervisors. Mr. Shoup said that unless the appellant could immediately cut the fence down to six feet, staff would be unable to support his deferral request.

Ms. Gibb asked about the fence location in relation to the outlet road. Mr. Shoup answered that the fence was in front of the house and not the outlet road, noting that the location of the house with respect to the public street made it a front yard. He said the violation had nothing to do with the outlet road.

Mr. Hammack commented about the neighboring property being able to erect a seven-foot fence, whereas the appellant could not. Mr. Shoup responded that the fence was in the neighbor's rear yard, not front yard, so they could have a seven-foot fence.

Chairman DiGiulian called for speakers.

Doug Sheeran, 1227 Somerset Drive, McLean, Virginia, came forward to speak. He stated that he filed the complaint regarding the appellant's fence because it extended onto land that the appellant did not own, and beyond where the original fence had ended. Mr. Sheeran also noted that the fence was actually almost eight feet in height. He presented a petition to the Board from neighboring properties requesting that the fence height be enforced, and that the portion of the fence that extended beyond the appellant's property be removed.

Jerome Donovan, 6114 Ramshorn Place, McLean, Virginia, came forward to speak. Mr. Donovan agreed with Mr. Sheeran's remarks and said he opposed a fence built by the appellant on property that he did not own.

Mr. Hammack asked how the Board could act on the appeal if the property did not belong to the appellant. Mr. Shoup responded that staff would need look at the portion of the fence that was not on the appellant's property and determine who owned it. He said it was clear that a significant portion of the fence was located in the appellant's front yard and was in violation.

Julie Andre, 1225 Somerset Drive, McLean, Virginia, came forward to speak. She stated that the fence was not only unstable, but extended 30 feet beyond where the original fence had been.

Mr. Hart asked if the appeal had been correctly advertised. Mr. Shoup said staff was correct to cite the violation on Parcel A, but because of the question as to ownership of the outlet road and where the fence was located, they needed to consult the County Attorney.

Cathorine Sheeran, 1227 Somerset Drive, McLean, Virginia, came forward to speak. She said the fence was too high.

Chairman DiGiulian closed the public hearing.

Mr. Hammack asked Mr. Shoup for a deferral date. Mr. Shoup said they could give a status report on September 27, 2005. Mr. Hart added that it would help to see the actual deeds rather than only a summary.

Mr. Hammack moved to defer decision on A 2005-DR-022 to September 27, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 26, 2005, Scheduled case of:

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-037 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7381 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((53)) 4. (Deferred from 4/19/05 and 6/7/05 at appl. req.)

Ms. Gibb made a disclosure and indicated that she would recuse herself from the public hearing.

David Moretti, the appellants' agent, requested a deferral until September 20, 2005.

William Shoup, Zoning Administrator, Zoning Administration Division, said he supported the deferral request, acknowledging that there had been progress in resolving the violation.

Mr. Beard moved to defer A 2004-MA-037 to September 20, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb recused herself from the hearing.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Demetriou appeal and the letter to Anthony Griffin, County Attorney, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:20 p.m. and reconvened at 1:26 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Ribble, Mr. Byers, and Mr. Hart were not present for the vote.

//

~ ~ ~ July 26, 2005, After Agenda Item:

Request for Intent to Defer
Mary Carolyn Thies, A 2005-SU-019

Mr. Beard moved to approve the request for an intent to defer A 2005-SU-019 to November 8, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 26, 2005, After Agenda Item:

Approval of July 19, 2005 Resolutions

Mr. Hammack moved to approve the Resolutions. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ July 28, 2005, After Agenda Item:

Findings of Facts and Conclusions of Law in
Androula Demetriou, A 2004-MV-012

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN DIGIULIAH: Now, item number three, Demetriou case, Mr. Hart.

MR. HART: Thank you, Mr. Chairman. I would move that we adopt the following as findings of fact and conclusions of law in the Demetriou case, in which I understand Judge Vieregg has asked us to put on the record the reasons for the vote before August 1st.

I -- I believe that there are four issues at least potentially raised on the record before us. I -- I've reviewed the documents that we had, as well as watched the tape of the proceedings. Those four issues, and -- and I'll deal with them in turn, would be in -- in general, affordable housing policy. Second, whether the board can consider the equities of the situation. Third, whether there's a nonconforming use, and fourth, the effect, if any, of 15.2-2311(C).

First, with respect to the -- to the policy issue, or the affordable housing concern, I -- I recognize that there were a number of questions in the proceedings regarding the status of these two units, which I think on the record before us, they are old apartments in the Section 8 program, which is locally administered by the Redevelopment and Housing Authority. I think those questions and that discussion is illustrative of natural curiosity rather than any decision by this Board looking at those issues. And to the extent that those issues come up, they are not a basis for a decision and would not really be within our purview.

The Board of Supervisors admittedly has a policy of preserving affordable housing in this county, or committing resources toward doing that. And it may be -- it may seem inconsistent or counterproductive to be devoting the energy and resources of the Zoning Administrator or the County Attorney's Office to eradicating two affordable housing units, or removing them from the Section 8 program somehow. But that isn't really our function. That isn't really a basis for our decision, and to the extent that that suggestion has been raised, I -- I think it's -- it's -- I would state that that was not a basis for our decision, or not a basis for my vote.

Secondly, with respect to the equities of the situation, the appellant's counsel argued at length that his client acquired the property in good faith, that the clients made no alterations to the property, that the apartments have been like that for many years, that it's very difficult for them to show exactly what happened because the structure was built in 1938, the property's been conveyed many times, the records are missing and it's an unreasonable situation for this particular owner to be put on the spot and -- and to come up with reasons why it's not a violation. But, I think on the -- the authority we have from the Supreme Court of Virginia, and I'm -- I'm talking specifically about two cases, Gwinn v. Alward, 235 Va. 616, 369 S.E.2d 410, a 1988 case, and the other being Dick Kelly Enterprises v. City of Norfolk, 243 Va. 373, 416 S.E.2d 880, a 1992 case -- estoppel does not apply to a -- a local government official acting in a governmental capacity. And here where the Zoning Administrator is -- is acting, he isn't estopped because of the passage of time, or because it seems unfair, or other circumstances. We're not really able to consider the equities of the situation. We have to get beyond that. So again, to the extent that that issue was argued to us, or that there were questions asked about us, again I think those were not within our purview. We did not decide this case based on those sorts of equities, however compelling they might be.

The third issue is whether a nonconforming use has been shown. Under the Knowlton v. Browning-Ferris Industries case, at 220 Va. 571, 260 S.E.2d 232, it's a 1979 case, if the Zoning Administrator shows that a use now violates the existing ordinance, the burden shifts to the landowner to prove that there's a lawful nonconforming use. In Town of Front Royal v. Martin Media, at 261 Va. 287, 542 S.E.2d 373, a 2001 case, the Supreme Court dealt with the issue of whether incomplete records or absence of records created an exception to that rule, and the court said "No, it did not." We have that situation here, where I think it's clear that the structure was built in 1938. The records are incomplete after that point. We have some tax records and some building permit records, but we do not have the records which I think would explain, during the operative period, exactly what was going on. This is perhaps unfortunate, particularly for a landowner that's bought into this situation, but those are the principles we're constrained to follow.

Now, with respect to the evidence that was presented, I -- I think there are some errors in the staff report and -- and particularly the -- the statement that the property was always taxed as one single dwelling. I -- I think that was not accurate and not correct. There is also an old letter in the back from someone, saying that it's three apartments, and it wasn't, and I don't think that was accurate either. We didn't really have any testimony about that. I -- I think what is clear, is that at least on the tax records, such as we have them, back to 1970 -- go back to 1960, I guess. On page 3 of the summary that we were given, it's -- it's clear as a bell in -- in the inspector's handwriting that this property was two apartments, the inspector wrote, "Two apartments, house in poor condition." I believe the date is September 16, 1971. So, certainly these apartments are old. I think the question is: when before 1971 did they first come in? Well, on the -- on the tax card again, we only have back to 1960. There don't seem to be substantive notations regarding whether it's one apartment or two, or something else. It isn't really clear also what exactly was going on before 1960, and specifically, whether anything is known about the condition of the property before the adoption of the '59 Ordinance in -- in I believe September of 1959.

The appellant wants us to conclude, based on the inferences that these apartments were old and in poor condition, that they were probably built when the structure was built in 1938. But I think that's speculation on our part. We really don't know when or what was built -- when the apartments were built, or whether they were included in -- in the structure in 1938. I think we'd be speculating and to -- to the extent that the construction of the '41 Ordinance or the '59 Ordinance matters, again I don't think we're constrained to make a finding under those ordinances, because I don't think we have persuasive evidence that leads us to one conclusion or another as to when these apartments went in exactly.

It may well be that these apartments went in prior to 1941. The Zoning Administrator indicated that the historic preservation planner for the County could not put a date on it, but that the dormers appear to have gone in in a style that was used in the 1950s or 1960s, which again doesn't resolve us -- doesn't resolve that issue for us. So I don't think we have enough evidence. I don't think the appellant met its burden on the issue of establishing a nonconforming use, in a situation such as this, where the records were incomplete. That isn't necessarily to validate the statements in the staff report, as I've said, but be that as it may, when the tax records came to light, we still don't have a clear answer on that.

That brings me to issue number 4, the effect, if any, of 15.2-2311(C), which we sometimes refer to as the -- the 60-day rule. The statute provides, in pertinent part: "In no event shall a written order, requirement, decision or determination made by the Zoning Administrator or any other administrative officer be subject to change, modification or reversal by any Zoning Administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination, where the person aggrieved has materially changed his position in good faith reliance on the action of the Zoning Administrator or other administrative officer, unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the Zoning Administrator or other administrative officer or through fraud."

My conclusion would be that under -- that there -- that there are certain pertinent provisions of the Zoning Ordinance applicable to the approval of a building permit. In this case, we have a 1984 application for building permit. Parts of it are illegible. We don't know exactly what happened, but we do know that someone signed off for Zoning. It appears to be August 14, 1984. Someone also signed at the bottom approving the building permit. There is also an approval for building.

18-102 of the Zoning Ordinance provides for -- for duties of the Zoning Administrator, that "In the administration of the provisions of this Ordinance, the Zoning Administrator shall have the following specific duties and responsibilities:" Subsection 1 of that provision: "The receipt, review for completeness and substantial compliance, official acceptance and maintenance of current and permanent files and records for the following:" Subsection G of that: "Applications for building permits, residential and/or non-residential use permits." I think it's clear under this section that it is the Zoning Administrator's duty and responsibility to review, for completeness and substantial compliance, applications for building permits. Number 2, under 18-102 is to, "Conduct inspections of building structures and uses of land to determine compliance with the provisions of this ordinance." Under these provisions, I believe that the review of an application for a building permit includes within its scope a determination as to whether the Zoning Ordinance has been violated.

If you bear with me for one second, under part 6, 18-600, Building Permits, Subsection 18-601, "No building or structure which is required to have a building permit pursuant to Chapter 61 of the Code shall be erected until a building permit application has been approved by the zoning administrator under Section 18-602.

Applications for a building permit shall be on forms provided by the county and shall be approved by the zoning administrator prior to issuance."

Finally, under 18-608, Limitations on Approval of Building Permits, Subsection 1: "No building permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of (and there are several chapters enumerated) this ordinance, all other applicable laws and ordinances, any proffered conditions or any development conditions of any approved rezoning, special permit, special exception, or variance." Again, under these ordinance provisions, I believe that an approval of a building permit requires a determination by the zoning administrator as to whether this is in violation or it isn't.

I -- I believe that based on the record before us, a building permit was clearly approved in 1984. Now, we don't know what exactly was reviewed at that time. It isn't clear for example, whether the 1938 building permit or the pre-1960 tax records were available for review at that time. What we do know, however, is that whatever was looked at, right or wrong, whatever was in the file, whether it's the same as now, the building permit was approved more than 60 days ago, more than 20 years ago. And I would conclude that the building permit approval in 1984 falls within the scope of 8 or excuse me, 15.2-2311(C). It is a written order, requirement, decision or determination made by the zoning administrator or other administrative officer. Because this structure was approved in 1984, it is too late now to come back and say, "We were wrong then, whether we realized it or not." That's not a clerical error. There's been no showing of fraud or malfeasance. I think that the appellant has shown that they had acquired this property, they've been using it and renting it out in reliance on the status of it, that this person had done nothing to change it or make these alterations. And that notwithstanding these other issues, my reason for voting on the motion to overturn the zoning administrator in this case was because of the application of 15.2-2311(C) to these facts. That's my motion.

MS. GIBB: Second.

CHAIRMAN DIGIULIAN: Second by Ms. Oibb. Discussion.

MS. GIBB: No.

CHAIRMAN DIGIULIAN: Okay. All those in favor of the motion.

MR. HART, MR. RIBBLE, MR. BEARD, CHAIRMAN DIGIULIAN, AND MS. GIBB: Aye.

CHAIRMAN DIGIULIAN: Opposed.

MR. HAMMACK: Mr. Chairman, since I recused myself at the hearing, I'll abstain from voting on the motion, findings of fact.

CHAIRMAN DIGIULIAN: Okay, the motion carries by a vote of five with one -- with two abstentions.

MR. HAMMACK: Two abstentions.

MR. BYERS: Yeah.

//

~ ~ ~ July 26, 2005, After Agenda Item:

Request for Reconsideration by the Franklin Area Citizens Association
Regarding Michael Bratti and Ginni Bratti, A 2005-DR-009

No motion was made; therefore, the request for reconsideration was denied.

//

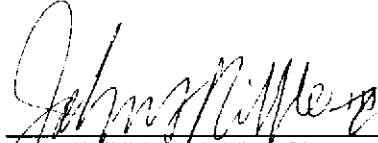
As there was no other business to come before the Board, the meeting was adjourned at 1:47 p.m.

Minutes by: Vanessa A. Bergh / Suzanne Frazier

Approved on: September 19, 2012



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 2, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ August 2, 2005, Scheduled case of:

9:00 A.M. SANG I KIM, SP 2005-LE-025 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5110 Franconia Rd. on approx. 23,993 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 82-3 ((2)) (3) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard E. During, Esquire, 6000 Stevenson Avenue, Suite 209, Alexandria, Virginia, agent for the Kims, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a home professional office to provide acupuncture services in his home, a dwelling of 6,850 square feet, one-story with a two-story addition connected on the west side. The business was located within the eastern one-story part of the home, and access will be through the front door. The applicant proposed six parking spaces, two within the garage for the owners and four on the driveway for two employees and two customers. The proposed hours of operation were from 9:00 a.m. to 6:30 p.m., Monday through Friday, and no more than seven customers per day were expected. Attachment 1 evidenced a modified plat provided by staff addressing issues uncovered in the applicant's submitted plat, which include a reduction of the entrance width from 37 to 30 feet with a replanting of the affected area, and the substitution of four 9-by-18-foot perpendicular parking spaces in favor of four 12-by-22-foot diagonal and one 12-by-24-foot adjacent parking space. Staff recommended approval subject to the proposed development conditions.

Mr. During presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant was in substantial agreement with staff's recommendations except there was an issue with staff's measurement of the entranceway width and a concern over the parking spaces. He said his client conducted his own measurements from the point where they considered the driveway's asphalt met the road curb, which totaled 24 feet and was substantially less than staff's, and asked that the Board consider that fact. Regarding parking spaces, Mr. During concurred with staff's analysis except they would change the parking alignment from an angle, as indicated by staff, to horizontal, which would allow for a wider parking area to accommodate wheelchairs and disabled clients. Mr. Duran requested that staff's parking recommendations comply with the law's handicapped provisions.

Mr. Hart asked staff how clients would know where to find the house without signage. Susen Langdon, Chief, Special Permit and Variance Branch, explained that with a home professional use, staff's intention was that it be compatible with its residential surroundings, and the absence of signage helped it to appear less commercial. She said Mr. Kim's proposed use was small and would service a small number of clientele who would be repeat patients and, therefore, having been initially advised by Mr. Kim on the directions, would be familiar with the location.

In response to Mr. Hart's question concerning a letter from a neighbor, Laurie Sisson, Mr. Duran stated that Mr. Kim had not previously operated a business, and the cars cited in her letter must have referred to those of Jehovah's Witnesses whose church members park either in the shopping center's lot or along the development's entranceway to canvas the neighborhood seeking converts.

In response to Chairman DiGiulian's question concerning a standard handicapped parking space, Ms. Langdon said that staff consulted with the Department of Transportation (DOT) on the parking designation, and DOT drew on the plat what met the requirement. She said that staff could modify the development conditions to provide a handicapped space.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Byers said he intended to recommend deferral of the decision for additional information concerning parking provisions and clarification of the curb-cut measurement, stating that a curb measurement and a curb-cut measurement were entirely different.

Mr. Hart said that if the Board were to defer the decision, he would suggest that the matter of landscaping be considered and that it not conflict with the sight distance.

Mr. Byers moved to defer decision on SP 2005-LE-025 to September 13, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Chairman DiGiulian noted that the next Agenda Item was an appeal scheduled for 9:30 a.m. and it was not yet 9:30. He then called the first After Agenda Item.

//

~ ~ ~ August 2, 2005, After Agenda Item:

Request for Additional Time
Kevin P. and Kristen A. McCarthy, VC 2002-DR-130

Mr. Hart moved to approve 6 months of Additional Time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was November 20, 2005.

//

~ ~ ~ August 2, 2005, After Agenda Item:

Approval of July 26, 2005 Resolutions

Mr. Beard moved to approve the Resolutions. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

The Board recessed at 9:24 a.m. and reconvened at 9:32 a.m.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. CARROLL J. HALL (CJ'S TOWING INC.), A 2005-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5400 Oakwood Rd. on approx. 16,258 sq. ft. of land zoned I-I. Lee District. Tax Map 81-2 ((3)) 36B.

Cynthia Porter-Johnson, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated July 26, 2005. This was an appeal of the determination that the appellant had established a junkyard and storage yard on property in an I-I District in violation of Zoning Ordinance provisions. The appellant was the owner of the property, but did not reside on it, and the building on it was not used as a dwelling, but as an office. A February 8, 2005, zoning inspection revealed that there were tires and numerous inoperable and operable vehicles parked on the property. The appellant was aware that he was in violation of the Zoning Ordinance and had requested a waiver until his retirement in 2007. There was no mechanism for the BZA to grant approval for the appellant that would allow him to continue operating his business. It was also noted that on the subject section of Oakwood Road, there were a number of businesses operating illegally. The property was zoned I-I when purchased by the appellant, and the zoning had not changed. A junkyard and storage yard is not permitted in an I-I District; therefore, staff recommended that the BZA uphold the determination set forth in the Notice of Violation to allow appropriate action to be taken to bring the property into compliance with the Ordinance.

In response to Mr. Hart's question, Ms. Johnson said that there was not a Non-Residential Use Permit (Non-RUP) filed on the property, and it was staff's understanding that the appellant had filed for a rezoning, but there were concerns over environmental issues. The appellant requested a deferral of his rezoning application, which was granted by the Planning Commission, and because of inaction on the application, the case was eventually dismissed.

In response to Mr. Hart's question whether there had been enforcement action since the dismissal, William E. Shoup, Zoning Administrator, Zoning Administration Division, said that sometime during the rezoning process, staff closed out the enforcement case by mistake. He said that staff had no explanation for the erroneous action. Mr. Shoup said a complaint on another property down the street revealed the inappropriate use on the appellant's property. He said that the zoning inspectors were methodically working Oakwood Road to ensure that another problematic area like Cinder Bed Road did not develop.

Dale Pettit, an associate of Mr. Hall, (no address given) said Mr. Hall operated a tow business, had agreements with various townhome and apartment associations to remove inappropriately parked vehicles, and that he would not be able to operate his business nor fulfill his obligations if unable to use his property. Mr. Pettit pointed out that Mr. Hall's business was in operation for over ten years without incident or complaint. He said Mr. Hall planned to retire in two years and was seeking a waiver to permit him to complete his obligations, and when he retired, the problem would have solved itself.

In response to Mr. Hart's question of whether he had an authority, either Cede or case law, that would allow the Board to grant a waiver such as he was requesting, Mr. Pettit said he was not a lawyer, was not versed in the law, and that he was only present to assist Mr. Hall. He said Mr. Hall was uncertain whether he had obtained a Non-RUP for the property.

Vice Chairman Ribble assumed the Chair.

Mr. Hammack explained to Mr. Pettit that the Board did not have the authority to grant waivers, and the issue before them was an appeal of a determination, and if the Zoning Administrator was right, the Board was obligated to uphold the decision.

Mr. Pettit suggested that the decision be deferred until such time as Mr. Hall's property was purchased by a developer.

Mr. Shoup stated that it was the current use of the property that was the problem, and if the illegal use continued, the violation continued. He said staff would support a short deferral, but he did not want to jeopardize any momentum gained with rectifying the illegal usage on Oakwood Road. He questioned what could be expected from the appellant after the deferral that would resolve the matter, noting that if the violation was not resolved, further action would be taken, which included litigation. In response to Mr. Hart's question, Mr. Shoup said childcare centers, churches, establishments for scientific research, and offices were some of the permitted uses allowed in an I-I District, and site plan approval and a Non-RUP were required.

Mr. Pettit again requested that the Board allow time for action on the anticipated development, the purchasing of Mr. Hall's property and Mr. Hall's subsequent retirement, stating that the problem would then be resolved.

Discussion followed between Mr. Hart and Mr. Shoup concerning allowed usage of the property, and Susan Langdon, Chief, Special Permit and Variance Branch, pointed out that a 200-foot setback requirement complicated the possibilities.

Mr. Hammack moved to defer decision on A 2005-LE-014 to October 11, 2005, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 3-2. Mr. Byers and Mr. Hart voted against the motion. Chairman DiGiulian was not present for the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. MARY CAROLYN THIES, A 2005-SU-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an addition which does not meet the bulk regulation as it applies to the minimum side yard requirement for the

PDH-2 District in violation of Zoning Ordinance provisions. Located at 13187 Ashvale Dr. on approx. 10,494 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-3 ((24)) 14.

Vice Chairman Ribble noted that on July 26, 2005, the Board had approved an intent to defer A 2005-SU-019 to November 8, 2005.

Mr. Beard moved to defer A 2005-SU-019 to November 8, 2005, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was not present for the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. DAVID T. FREEMAN AND SHANA VON ZEPPELIN, A 2005-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Contractor's Office and Shop on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 4819 Spruce Av. on 1 ac. of land zoned R-1. Springfield District. Tax Map 56-3 ((2)) 45.

Vice Chairman Ribble noted that A 2005-SP-020 had been administratively moved to October 25, 2005, at the appellants' request.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. DAVID M. LONGO, A 2005-DR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-1 District, is in violation of Zoning Ordinance provisions. Located at 9813 Spring Ridge La. on approx. 20,100 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-3 ((10)) 20.

Vice Chairman Ribble noted that A 2005-DR-025 had been administratively moved to December 13, 2005, at the appellant's request.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. LEANN M. JGHNSON AND JAMES W. KOCH, A 2005-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 1830 Massachusetts Av. on approx. 15,729 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (2) 1.

Vice Chairman Ribble noted that A 2005-DR-026 had been administratively moved to December 13, 2005, at the appellants' request.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. ADAM RUTTENBERG, A 2005-DR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 2021 Franklin Av. on approx. 21,599 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 4.

Vice Chairman Ribble noted that A 2005-DR-027 had been administratively moved to December 20, 2005, at the appellant's request.

//

~ ~ ~ August 2, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((6)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 7. (Continued from 11/16/04) (Decision deferred from 3/1/05, 5/3/05, 6/14/05, and 7/19/05)

Vice Chairman Ribble noted that A 2004-SP-025 had been deferred for decision from July 19, 2005.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in her memorandum dated June 7, 2005. This was an appeal of a notice of violation that the appellants had a fence in excess of four feet in height located in the front yard of a corner lot. The six-foot high fence exceeded the maximum height of four feet for a fence located in the front yard of a residential lot; therefore, the appellants were in violation of the Zoning Ordinance. The Board of Zoning Appeals (BZA) heard the case November 16, 2004, and deferred decision three times. The deferral on June 14, 2005, was to allow additional time to subpoena the appellants' fence contractor. On July 11, 2005, a Prince William County sheriff posted the subpoena on the contractor's door for him to appear before the BZA on August 2, 2005.

Chairman DiGiulian resumed the Chair.

In response to Mr. Hart's question, Ms. Tsai said the fence contractor was not present.

The appellant, James Lane, 12419 Popes Head Road, Clifton, Virginia, said that from his contact with Supervisor McConnell's office, he understood that the Board of Supervisors (BOS) continued to work on a variance amendment. He requested that the decision be further deferred or be addressed with respect to the BOS's variance amendment.

As there were no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack commented that this case was unusual in that it was an appeal. He asked the Zoning Administrator whether staff objected to deferring this case and adding it to the lengthy list of fence cases that were deferred to December of 2005.

William E. Shoup, Zoning Administrator, Zoning Administration Division, said staff had no objection as this case was consistent with other cases that had been deferred. He commented that this case was a little different in its circumstances in that the BZA had already deferred its action several times and because staff hoped the subpoena would have produced the contractor whose testimony was to provide more information.

Mr. Hammack informed the appellants that the anticipated variance amendment may still not allow a six-foot fence in a front yard to remain, but it would allow individuals to apply for a remedy.

In response to Mr. Hart's questions, Mr. Shoup said the subpoena was issued on behalf of the BZA and was posted at the contractor's residence.

In response to Mr. Hammack's question, Susan Langdon, Chief, Special Permit and Variance Branch, stated that if a deferred case was reapplied for as a special permit, the case must be re-advertised and scheduled accordingly. If the application remained an appeal, no further advertisement would be required.

Mr. Shoup said staff would notify appellants with deferred cases of any amendment changes and would request what further action they cared to pursue.

Commenting that the fact the subpoena was not recognized caused him concern, Mr. Hammack moved to defer decision on A 2004-SP-025 to October 11, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Mr. Hammack moved that the Board recess and go into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the James Lane/Joan Toomey appeal, the Heisler case, the Antioch Baptist Church case, the BZA's letter to the County Executive, Tony Griffin, the Douglas Smith case, the Demetriou case, and the Merrick case. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 10:07 a.m. and reconvened at 11:09 a.m.

Mr. Hammack moved that the Board of Zoning Appeals certified that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Hammack moved that the Board approve a letter to the County Executive requesting legal representation in the Antioch Baptist Church vs. BZA case, Chancery 103132; and in the Douglas A. Smith vs. BZA case, Chancery 20054452. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

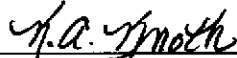
Mr. Beard announced that the BZA had been requested to adopt a motion on the topic of the Department of Planning and Zoning (DPZ) staff making inquiries to the County Attorney's Office. He moved that the BZA confirm that it had no objection to DPZ staff making inquiries of the County Attorney's Office in the performance of their duties. Mr. Ribble seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:12 a.m.

Minutes by: Paula A. McFarland

Approved on: June 10, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 9, 2005. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; John Ribble; James Hart; and Norman P. Byers. Paul Hammack and V. Max Beard were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., roofed deck 82.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18.

Mr. Hart stated that on the revised affidavits dated July 29, 2005, the builder was listed as Bison Building Company, LLC. He noted that his law firm, Hart and Horan, P.C., was representing an adverse party in a case his firm participated in sometime within the past year or so. He stated that although he did not believe that would preclude his participation, he recused himself from the hearing for VC 2005-MV-002 as well as for VC 2005-MV-003 and VC 2005-MV-005.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michelle Rosati, Holland & Knight, 1600 Tysons Boulevard, McLean, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a dwelling 35.5 feet with eave 34.5 feet from the front lot line, a roofed deck 32.1 feet from the front lot line, and a bay window 34.1 feet from the front lot line. A minimum front yard of 50 feet is required; however, eaves and bay windows are permitted to extend 3.0 feet into the minimum front yard; therefore, variances of 14.5 feet, 12.5 feet, 17.9 feet, and 12.9 feet, respectively, were requested.

Ms. Rosati presented the variance request as outlined in the statement of justification submitted with the application. She noted that in December of 1983 a variance was granted by the Board of Zoning Appeals to permit construction of a single-family dwelling 25 feet from the front lot line. She said variances had been similarly approved for 11 other lots on Greene Drive, as shown on the tax map. Ms. Rosati pointed to the map on the overhead projector and noted that the lots shaded in green had been approved for similar, and in many cases greater, variances to the front lot line. She said that all the houses in the shaded areas had been built pursuant to the variance approvals. She noted that the lots shaded in pink, including the subject property, had been for those variances similar and greater in dimension; however, homes were not constructed on them before the variances expired 18 months after the approval. Ms. Rosati said her firm was seeking similar, though lesser in scale, variances for Lots 18, 17 and 15A to those that had been approved in 1983, but had not as yet been built.

Ms. Rosati indicated that the application she was presenting applied to Lot 18. She said the lot was difficult because of its unique topography, and it presented a clear hardship, especially in light of the 50-foot setback that was required on an R-E zoned parcel. She noted that the property had an unusually problematic topography because it dropped off steeply away from the front lot line. Ms. Rosati stated that the location of the floodplain in the lower portion of the lot and the prevalence of marine clay in the soils toward the rear lot line created a clear and demonstrable hardship if the strict application of the 50-foot front setback was applied to the property. She stated that since most lots on the applicant's side of Greene Drive had been constructed by means of variances to the minimum front yard with house locations as close or closer to the front lot line, approval of the requested variance would not change the character of the neighborhood nor would it be a detriment to the adjacent properties. She noted that the hardship she had referred to with respect to this property was not generally shared by other properties in the R-E District. Ms. Rosati emphasized that the combination of the severely sloping topography and soil conditions was unique in Fairfax, although it was common to that section of Greene Drive. She said most of those lots had already been developed pursuant to variances for that reason. She stated that the relief that was being sought by the applicant would not confer a special privilege or convenience on the applicant, but would permit the use of the property similar to the eight houses already built on Greene Drive pursuant to similar variances.

Ms. Gibb asked whether there was any other place a house could be located on the property without asking for a variance. Ms. Rosati responded that it was a matter of a front/back push because the 50-foot setback was pushing it from the front lot line, and the soils and slope were pushing it forward, which resulted in the proposed location of the house. She said that complying with the 50-foot setback would push the house back into bad soils far down the slope. Ms. Rosati stated that there was also a RPA line that rode significantly higher on the property than that of the floodplain. She said an east-west shift would not affect the house. She stated that the house would still be 35.5 feet from the front lot line, which was very deep as compared to other homes located in Fairfax County.

Ms. Gibb then asked what would happen if the house was not so deep. Ms. Rosati stated that would require taking 15 or 16 feet off the depth of the house even just to make the dwelling comply, and it would cut the house too much. Ms. Gibb asked if the house could be made longer. Ms. Rosati said she was not the builder, but it was probably worth considering that the variance had been approved for a 25-foot setback in 1983 and there were eight other houses on that street that had been built similar in shape and size. She said the proposed setback was farther away from the street than what had been approved in 1983.

Ms. Gibb noted that the Board was dealing with the aftereffects of the Cochran decision, and she said it was hard to see how the applicant was being denied all reasonable beneficial use of the property taken as a whole. Ms. Rosati argued that under the State Code and the Zoning Ordinance, to impose a 50-foot setback on the lot, considering the topography, soils, and that eight other homes had been approved and built and the four in question had been approved and not built, was an unreasonable restriction. She said that was another way to justify and approve a variance in Virginia aside from the hardship issue. She said this type of soil and slope was one of the most dramatic hardships in a variance case that she had personally seen, and it was clearly where a combination of a really deep setback and tough lot was an unreasonable restriction and a hardship.

Ms. Gibb noted that the Board had a very tough standard to deal with now that was different from that in 1983. She stated that when the applicant claimed that he would be denied all reasonable beneficial use of the property taken as a whole, it was difficult for her to see how this case presented that when a smaller house could be built.

Ms. Rosati said she was concerned with the word "reasonable" because eight houses had been built on the street next to the subject property, had been approved by variance, were consistent in size and shape, and were closer to the street. She questioned whether it was reasonable because the Cochran decision had not changed the standard. She noted that the Code and the Ordinance provided, in addition to a clear and demonstrable hardship approaching confiscation, for finding that a variance was justified if it was an unreasonable restriction. She asked if it was reasonable to strictly impose a 50-foot setback on the subject property when it had not been imposed on eight others that had been built and when, in fact, the same variance had been approved on the subject property for a greater encroachment into the minimum yard than was currently being requested. She noted that the situation was unique because it was a very difficult lot, and she said it was her opinion that the BZA could consider the reasonableness of the application and could approve the application in light of the information she had presented.

In response to comments by Ms. Gibb, Ms. Rosati said it was hard to reconcile the word "all" and the word "reasonable" because it would be very difficult to deprive someone of all uses of their land. She pointed that if it could be built, one could put an entire house underground or a person could put a pup tent or a house 10 feet by 10 feet on a lot; however, she said that would not be a reasonable use of the land. She said there was a reasonableness test in that standard, and she thought that one of the things that had to be looked at in reasonableness was the context. She said that considering that there were eight homes built and twelve approved with at least this much variance, it was the number one item that came to her mind in terms of the reasonableness of the approval and of the context. Ms. Rosati said that all uses of the property could not be absolute because that was not what the standard was. If that was the case, she said she doubted that there would be many variance cases presented anymore.

Mr. Ribble said he recalled the cases presented in 1983 and noted that there were marine clay issues involved. He said that prior to that, probably in the late 1970s, all of them had been denied for variances because of the marine clay. He noted that there had been new ways of dealing with that problem in 1983. He said the Cochran case had changed things quite a bit with respect to permitting variances. He said he thought that the applicant could redesign the property and perhaps a more favorable decision could be made.

Chairman DiGiulian asked if the house could be moved closer to the RPA line. Ms. Rosati said the applicant was cutting it pretty close as it was. She noted that Lot 15A was already in the RPA line. The Chairman said Lot 18 looked like the closest corner of the house was at least 15 feet from the RPA line. Ms. Rosati said it may be that the applicant needed to determine if the houses could be reoriented in terms of turning them to try to get it a little closer so the BZA would be more comfortable. She said that, in her opinion, it was unfortunate that variances expire because if the property met the tests once, it was hard to understand how that would change. She said it would be in the applicant's best interest to take another look.

Mr. Ribble asked staff what the current time limit was on variances if they were granted. Susan Langdon, Chief, Special Permit and Variance Branch, responded that the Ordinance laid out 30 months unless otherwise stated. Mr. Ribble said the point was that they were constantly changing.

Ms. Gibb said that the fact that the variances had been granted earlier could not be relied upon because the Virginia Supreme Court had told the Board that they had not been interpreting the granting of variances correctly.

Mr. Byers called attention to page 3 of a letter that had been submitted by Holland & Knight, dated June 7, 2005, that indicated that as the topographical contour showed compliance with the 50-foot front yard, it would essentially negate the use of the lot for purposes of construction of the single-family dwelling. He stated that statement was not precisely accurate. He said it might not be the dwelling the applicant wanted to build on the property, but that didn't mean that one could not be built there. He said the dwelling could be realigned and/or changed in size. Ms. Rosati said that if it was taken all the way down to the point of de minimis or even if it was a 10-foot by 10-foot house, she doubted that anyone would live in it. She indicated that a house consistent in size with the other houses built on Greene Drive pursuant to the approved variances could not be built at the 50-foot setback. She said she was not sure that any house was buildable at the 50-foot setback line.

Mr. Byers called attention to page 4 of the June 7, 2005 letter that stated that "The result of the imposition of this minimum front yard in essence negates the use of the lot for development with a single-family residential structure." He asked whether that was definitively known. He said that he noticed that all of the variances, as Ms. Rosati had pointed out, were in the time frame of 1983, and from his perspective, based on the Cochran case, that was not relevant in 2005 because the BZA was dealing with today's laws, not those of 22 years ago. He said the issues and facts presently before the Board were those that had to be dealt with in this day and time.

Chairman DiGiulian called for speakers.

John H. Breidenstine, Jr., 10517 Greene Drive, Mt. Vernon, Virginia, the applicant, came forward to speak. He said that he had purchased the lot 15 months ago and had looked at 35 designs. He stated that even though he did not particularly like the design he had chosen, he had done so because the builder had told him that they had tried to position the house on the lot so he could obtain favorable consideration for a variance allowance. He stated that he felt like he was being held hostage. Mr. Breidenstine asked for favorable consideration by the Board.

In response to questions from Ms. Gibb, Mr. Breidenstine said he had purchased the lot and the sale was approved by the County in June of 2004, and he had purchased it from Bison Builders, the owner of the property at that time. He said he had signed a construction loan with them, and they had stated that they would construct the house on the property.

In answer to another question from Ms. Gibb, Mr. Breidenstine said no contingencies had been placed on him. He said he had been assured by the builder and he had a contract in place that said that, in their opinion, the lot was buildable. He said he had selected the smallest house possible, but he did not have a house to live in 15 months after the purchase of the lot. He said he was under the assumption that a builder could not sell him a lot unless he was able to build a house on it. Ms. Gibb stated that that was not true.

Helen Vanhose, 10501 Greene Drive, Lorton, Virginia, came forward to speak in opposition to the application. She said the lots in question were located down the street from her home. She said there were three houses on the court, and all three had been built 50 or more feet from the front lot line. She noted that her house backed up to the wetlands and had the same topography as the application lots. She presented photographs that showed the location of her house. She said her property had been built up with dirt and was very steep on the sides and in the back. She said the stream went away from the house and indicated that the lot next door to her was even further away from the stream. She suggested that the house be

located 40 feet from the front lot line. She said that in 1983 she assumed that the eight houses in their subdivision could be built within 20 to 30 feet back from the front lot line. Ms. Vanhooose noted that there were 170 houses in the subdivision, eight of which were not in compliance with the 50-foot requirement. She said the applicant's statement that the proposed homes would be in compliance with the rest of the subdivision was not true. Ms. Vanhooose also presented photographs of the eight lots and noted that the people who lived in those houses did not have enough room to park their cars, trailers, and boats on their property, which resulted in parking them on the street, which particularly caused traffic problems in the winter. She commented that the subdivision had a marina, and the photographs did not reflect the extent of the problems she had just mentioned because they were taken during the summer. Ms. Vanhooose said she was afraid that if the houses were located 35 feet from the front lot line, they would not accommodate the vehicles and recreation vehicles they owned. She said there were ways to build up the backs of the houses to allow the homes to comply with the 50-foot requirement. She said she was firmly against having the homes sit 35 feet from the front lot line.

Chairman DiGiulian noted that an e-mail had been received from Steven Thompson, who was in opposition to the application.

In her rebuttal, Ms. Rosati stated that she thought it would be prudent to defer the application for further consideration. She said the applicant would like to continue to work with the neighbors in an attempt to satisfy their concerns. She also requested that the following two applications be deferred as well.

Chairman DiGiulian said that if the cases were to be deferred, he wanted to see topography on the lots to determine if the justification met the existing topography.

Mr. Ribble asked how long the builder owned the property before they sold it and whether or not they had tried to obtain a variance. Ms. Rosati said Bison Builders was not the builder that had owned the property since the initial approval of the variances.

Ms. Gibb said she wanted evidence to show that the applicant was being denied all reasonable beneficial use of his property and how that happens.

A brief discussion ensued regarding the scheduling of the next session of the hearing.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision on VC 2005-MV-002 to September 13, 2005, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. ABDUL SLAM, VC 2006-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 36.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17.

Michelle Rosati, Holland & Knight, 1600 Tysons Boulevard, McLean, Virginia, stated that she would defer her presentation on VC 2005-MV-003 and VC 2005-MV-005 until the September 13, 2005 hearing.

There were no speakers to address the question of a deferral.

Mr. Byers moved to defer VC 2005-MV-003 to September 13, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance

to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Greene Dr. on approx. 28,982 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A.

Ms. Gibb moved to defer VC 2005-MV-005 to September 13, 2005, at 9:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. WARREN T. JORDAN, VC 2005-MV-004

Chairman DiGiulian noted that VC 2005-MV-004 had been withdrawn.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. JOSEPH T. MERTAN, JR. AND CONNIE C. MERTAN, SP 2005-SU-027 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 15.9 ft. from side lot line. Located at 4405 Carrier Ct. on approx. 10,969 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 375.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph Mertan, 4405 Carrier Court, Chantilly, Virginia, replied that it was.

Stephan Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for modification to certain R-C lots to permit construction of a second-story addition, specifically a bedroom with an interior bath, 15.9 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 4.1 feet was requested.

Mr. Mertan presented the special permit request as outlined in the statement of justification submitted with the application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 2005-SU-027 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH T. MERTAN, JR. AND CONNIE C. MERTAN, SP 2005-SU-027 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 15.9 ft. from side lot line. Located at 4405 Carrier Ct. on approx. 10,969 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 375. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 9, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
5. The applicants presented testimony showing compliance with the required standards for a special permit.
7. The request is relatively modest in that it is just a second floor over an existing garage.
8. The addition will be no closer to the side lot line.
9. The addition will have no real impact on any of the neighbors.
10. The lot was developed under earlier standards in the Ordinance.
11. It is consistent with a number of other similar special permits that have been granted for homes in this neighborhood, which was later down-zoned to the R-C District.
12. The lot size is approximately a quarter acre, and because the R-C District has setbacks for five-acre lots, it is difficult for a homeowner to do anything with a nonconforming lot like the subject lot.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of a second story addition, as shown on the plat prepared by Rico Associates, P.C., dated December 10, 1993 revised June 8, 2005, submitted with this application and is not transferable to other land.
2. A Building Permit shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 9, 2005.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 ac. of land zoned R-2. Dranesville District. Tax Map 40-1 ((1)) 12. (Admin. moved from 11/2/04, 3/15/05, and 5/17/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-111 had been administratively moved to November 15, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. CONNIE J. REID, VCA 2002-MA-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-MA-176 to permit fence greater than 4.0 ft. in height to remain in front yard and greater than 7.0 ft. in height to remain in side yard. Located at 8214 Robey Ave. on approx. 39,727 sq. ft. of land zoned R-2. Mason District. Tax Map 59-1 ((11)) 21. (Admin. moved from 6/15/04 and 10/19/04 at appl. req.) (Moved from 3/1/05 for notices) (Admin. moved from 4/19/05, 5/24/05, and 7/12/05)

Chairman DiGiulian noted that VCA 2002-MA-176 had been administratively moved to December 20, 2005, at 9:00 a.m.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Varnon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, and 6/14/05 at appl. req.)

Chairman DiGiulian noted that SPA 75-S-177 had been administratively moved to September 13, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:30 A.M. DONALD E. BOYD, A 2005-SP-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the R-C District in violation of Zoning Ordinance provisions. Located at 13316 Compton Rd. on 10 ac. of land zoned R-C. Springfield District. Tax Map 75-1 ((1)) 26.

William Shoup, Zoning Administrator, Zoning Administration Division, stated that the appellant had requested a 90- to 120-day deferral to enable him to complete the cleanup of his property. Mr. Shoup called attention to photographs contained in the staff report and noted that considerable effort would be required in order to do that and indicated that the appellant would need help. He noted that the request for deferral was also based on the appellant's medical condition. Mr. Shoup stated that he had been informed by Mr. Ribble that the Notice of Violation had been issued to Mr. Boyd, and because the property was owned by him and his wife, the notice should have included both of them. He said he had asked the Zoning Enforcement Branch to explain why Mrs. Boyd's name had been omitted, and although staff would object to a long deferral, he asked that a 30-day deferral be approved to enable staff to sort out the notification problem, if there was one, and to allow them to rescind and reissue the notice, if necessary. He indicated that once that had been done, the process would have to be started again.

Chairman DiGiulian called the appellant to the podium and asked if he wanted to address Mr. Shoup's comments.

Donald E. Boyd, 13316 Compton Road, Clifton, Virginia, said that he would have preferred 60 to 120 days, but he would accept the 30-day deferral.

Chairman DiGiulian called for speakers to address the issue of a deferral; there was no response.

In response to Mr. Hart's question, Mr. Boyd said his wife was still a co-owner of the property.

Mr. Hart then asked staff whether they would need more than 30 days to redo the notice. Mr. Shoup stated

that if Mrs. Boyd was still the co-owner, staff would have to rescind and reissue the Notice of Violation within the next few weeks. He said staff would dispose of the current appeal, and then Mr. and Mrs. Boyd would have to appeal the new notice. After that was completed, a new hearing would be scheduled. Mr. Shoup stated that before the 30 days were up, staff would issue a new notice, and because the current notice would be rescinded, staff would withdraw the current appeal, and a new appeal would be presented to the Board under the name of Mr. and Mrs. Boyd.

Brant Mayber (phonetic), a former Chairman of the Board of Zoning Appeals for the Town of Clifton, Virginia, and a friend of Mr. Boyd, stated that he had witnessed Mr. Boyd's attempt to clean up his property. He said he hoped that another appeal would not be necessary because he expected that everything would be resolved.

Mr. Boyd called attention to photographs that had been taken of his property a year prior that were at the back of the staff report. He stated that staff had returned to his property on August 5, 2005, and had taken additional photographs that showed that a considerable cleanup had been done. He noted that staff had those photographs, of which he had copies. Mr. Boyd said that staff had not included them in the staff report presented to the Board. Mr. Mayber suggested to Mr. Boyd that he hold onto the photographs and present them to the Board when the revised appeal was heard.

Mr. Byers moved to defer A 2005-SP-024 to September 13, 2005, at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:30 A.M. BRANDON M. AND MELISSA CLARK RUSHING, A 2005-MV-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Contractor's Office and Shop and are allowing the storage of commercial vehicles in excess of the allowable number for the R-3 District in violation of Zoning Ordinance provisions. Located at 8230 Frye Rd. on approx. 28,109 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-3 ((12)) 2.

Chairman DiGiulian noted that A 2005-MV-028 had been administratively withdrawn.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:30 A.M. JOHN N. GERACIMOS and MEI LEE STROM, A 2005-MV-018

Chairman DiGiulian noted that A 2005-MV-018 had been administratively moved to December 13, 2005, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:30 A.M. ROBERT FITZGERALD AND CAPITAL RENTALS, INC., A 2005-MA-021

Chairman DiGiulian noted that A 2005-MA-021 had been withdrawn.

//

~ ~ ~ August 9, 2005, Scheduled case of:

9:30 A.M. ROBERT H. AND ANJALI M. SUES, A 2005-PR-023

Chairman DiGiulian noted that A 2005-PR-023 had been administratively moved to December 13, 2005, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Approval of Board of Zoning Appeals Meeting Dates for 2006

Mr. Ribble moved to defer the approval of the Board of Zoning Appeals meeting dates for 2006 to September 13, 2005. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Jerusalem Korean Baptist Church, SP 00-S-045

Mr. Ribble moved to approve 12 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was May 28, 2006.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Trustees of the Kings Chapel, SP 2002-SP-051

Mr. Hart moved to approve eight months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was February 18, 2006.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Good Shepherd Lutheran Church, SP 2002-HM-045

Mr. Ribble moved to approve 12 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was June 17, 2006.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Murray and Virginia Seltzer, VC 00-B-107

Mr. Hart moved to approve 18 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was October 18, 2006.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Trustees of First Baptist Church of Fox Chase, SP 2002-MA-038

Mr. Byers moved to approve 30 months of Additional Time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was November 6, 2007.

//

~ ~ ~ August 9, 2005, After Agenda Item:

Request for Additional Time
Hopkins House, SP 01-V-016

Ms. Gibb moved to approve six months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting. The new expiration date was November 19, 2005.

//

Mr. Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Heisler case, the Demetriou case, the Trustees of Antioch Baptist Church case, the Smith case, correspondence between the Board and the County Executive, and the subpoena in the Lane appeal, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

The meeting recessed at 9:55 a.m. and reconvened at 11:06 a.m.

Mr. Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

//

Mr. Hart moved that the Board authorize Ms. Gibb to send a letter to the County Executive as discussed in the closed session with respect to the enforcement of the subpoena. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Beard were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: June 10, 2008

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 13, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. John F. Ribble, III, was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ September 13, 2005, Scheduled case of:

9:00 A.M. JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., roofed deck 32.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18. (Decision deferred from 8/9/05)

9:00 A.M. ABDUL SLAM, VC 2005-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17. (Deferred from 8/9/05)

9:00 A.M. HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Greene Dr. on approx. 28,982 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A. (Deferred from 8/9/05)

Mr. Hart stated that he would recuse himself from participating in these three variance applications.

Chairman DiGiulian called the applicants' representative to the podium and asked whether there was a request for deferral.

Michelle A. Rosati, Holland & Knight, LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, agent for the three applicants, requested a deferral to the October 25, 2005 hearing, stating that additional time was required to respond to the Board's August 9th request that the applicants demonstrate that, in essence, no houses could be built on these three lots without a variance. She submitted that there had been no easy answer as they had considered different configurations; therefore, they were currently in the process of consulting with civil engineers, soil specialists, and residential real estate experts with the intention of providing expert testimony at the October 25th meeting.

As there was no one present who wished to speak to this issue of deferral, Mr. Hammack moved to defer decision on VC 2005-MV-002 and defer VC 2005-MV-003 and VC 2005-MV-005 to October 25, 2005, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, 2005, Scheduled case of:

9:00 A.M. SANG I KIM, SP 2005-LE-025 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5110 Franconia Rd. on approx. 23,993 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 82-3 ((2)) (3) 7. (Decision deferred from 8/2/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard E. Doring, 6000 Stevenson Avenue, Suite 209, Alexandria, Virginia, the applicant's agent, replied that it was.

Stephen Varga, Staff Coordinator, advised the Board that on July 26, 2005, the BZA voted to defer decision on the above referenced special permit to September 13, 2005, to allow time for the applicant to prepare a revised plat in response to the Board's request that the applicant provide a parking arrangement parallel to Franconia Road and more detailed information on a curb-cut. The applicant submitted a plat dated September 1, 2004, revised through August 24, 2005, evidencing changes to include a reduction of the

driveway width from 37 to 30 feet, four parking spaces, one handicapped, parallel to Franconia Road, and a sign proposed east of the entrance. The revised plat addressed most of the issues except that the paved area approximately 26 feet long by two feet, south of parking space 1, be cut, scarified, and replanted. Mr. Varga stated that staff believed that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions with the adoption of the proposed development conditions dated September 13, 2005, with two minor clarifications to Development Conditions 2 and 9.

Mr. During stated that the applicant agreed to all of staff's conditions. He pointed out that his client, in compliance with staff's request, had already recut and scarified parking space 1, and the area was replanted. He stated that, as evidenced by the plat, all the requirements were met. In response to Mr. Hsrt's question concerning the signage, he said the dimensions were approximately four feet off the ground with a width of approximately six feet and that it was not illuminated, but only a plain sign showing the location of the premises.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-LE-025 for the reasons stated in the Resolution.

For clarification, Mr. Hammack repeated the revised language proposed by staff. He questioned whether the applicant would have to submit a revised plat evidencing the strip of pavement. Mr. Varga concurred that the language was correct, and a revised plat was not necessary.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANG I KIM, SP 2005-LE-025 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5110 Franconia Rd. on approx. 23,993 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 82-3 ((2)) (3) 7. (Decision deferred from 8/2/05) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 13, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The presents zoning is R-3 and HC.
3. The area of the lot is 23,993 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 Sect(s). 8-907 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Sang I. Kim, and is not transferable without further action of this Board, and is for the location indicated on the application, 5110 Franconia Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Leslie Schuermann dated September 1, 2004, revised August 24, 2005, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum hours of operation of the home professional office shall be limited to 9:00 a.m. to 6:30 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to two (2) on-site at any one time, in addition to the applicant.
7. The area utilized for the home professional office shall not exceed 1,470 square feet.
8. The dwelling that contains the home professional office shall be the primary residence of the applicant.
9. Parking shall be limited to two (2) spaces in the garage for the dwelling, and four (4) spaces in the driveway for the Home Professional Office. All parking shall be on-site as shown on the special permit plat. The parking spaces in the garage shall be kept for the parking of family automobiles and not converted to living space or preclude parking because of storage uses.
10. Appointments shall be scheduled so that there are a maximum of two people (clients) on site at any one time. The maximum number of clients shall be limited to seven (7) daily.
11. All proposed signs shall be in conformance with Article 12 of the Zoning Ordinance and shall be a minimum of 10 feet from the right-of-way. The applicant shall obtain sign permits for all approved signs.
12. All autos exiting the site shall pull out forward onto Franconia Road.
13. Existing trees and/or shrubs designated for relocation on the approved plat shall be transplanted to a location that will not compromise sight distance.
14. All areas on site where pavement is to be removed shall be scarified, topsoil added and replanted with landscaping and/or grass, including the 26 foot long by 2 foot wide area (54 square feet) located south of parking space #1.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for establishing the use as outlined above, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:00 A.M. MINA AKHLAGHI, SP 2004-DR-043 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 1192 Dolley Madison Blvd. on approx. 14,568 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (A) 1. (Admin. moved from 10/5/04, 11/30/04, and 3/15/05 at appl. req.) (Admin. moved from 5/17/05 and 7/26/05 for notices.)

Chairman DiGiulian announced that the case had been withdrawn.

//

~ ~ ~ September 13, 2005, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.)

Chairman DiGiulian announced the case.

Mr. Hart stated that after the public hearing he would move to defer the decision on the case. He said Mr. Ribble had indicated that he wanted to participate, but he was unable to attend today, and the Board had received a substantial amount of material to review. Mr. Hart stated that the record would remain open for written testimony up to ten days before the decision date. He encouraged those who intended to speak to be as brief as possible given the number of listed speakers, and perhaps, if sharing similar views or positions with a previous speaker, to state one's concurrence with that person in lieu of repeating the same issues.

Chairman DiGiulian called the applicant's representative to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Suite 13, Arlington, Virginia, agent for the applicant, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit amendment to permit the addition of 0.54 acres of land; the addition of a private school of general education for 65 students and a before and after school child care center only for students of the school; construction of a 4,950-square-foot addition to the fellowship hall and a 2,500-square-foot education building addition, both with cellars; the construction of a memorial wall and garden with a columbarium; an enlarged parking area on the southwest side of Old Mill Road and the reconfiguration of the existing parking area on the northeast side of Old Mill Road; and, other site modifications including stormwater management facilities under the southwestern parking lot, a new driveway in front of the church along Old Mill Road, and a play area.

Ms. Langdon explained that the applicant proposed these changes to be constructed in phases. Phase 1A would consist of the addition of the private school and child care center, the construction of the fellowship hall, the enlargement of the southwestern parking lot, the installation of a driveway along the Old Mill Road frontage, and the memorial wall and garden with the columbarium. The private Montessori school would have a total maximum daily enrollment of 65 children and a before- and after-school child care center only for the children enrolled in the school. The core hours for the school would be from 9:00 a.m. to 12:00 noon, with before-school care starting at 7:30 a.m. and after-school care ending at 6:00 p.m. A 3,680-square-foot play area would be added to the rear of the existing fellowship hall/education building. An addition to the fellowship hall would add 4,950 square feet, for a total square footage on the site after Phase 1 of 10,710 square feet and a floor area ratio (FAR) of 0.103. A 4,950-square-foot cellar was also proposed. The parking lot on the southwest side of Old Mill Road (adjacent to the existing sanctuary) would be enlarged from the existing five spaces to nineteen spaces for a total of 71 spaces on the site and a parking-to-seat ratio of 1:1.77. At the time the river gravel parking surface would be constructed in the parking area, access to the parking lot would become ingress only, and a driveway would be added from the parking lot along the Old Mill Road frontage of the church. Cars leaving the expanded parking area would exit via the driveway to

a point further down Old Mill Road. A portion of the driveway would be constructed of brick pavers to tie into a brick patio and wall at the front of the sanctuary building. Stormwater management/Best Management Practices (SWM/BMPs) would be provided through the installation of a detention system installed under a portion of the southwestern parking lot. Downspouts from all roof systems would tie directly into the underground system which would be routed to an existing stormwater pipe under Mount Vernon Memorial Highway.

Phase 1B would consist of the construction of a 2,500-square-foot addition for classroom space, an education wing, for a total square footage at build-out of 13,210 square feet and an FAR of 0.128. A maximum 0.20 FAR is permitted. A 2,500 square-foot cellar was also proposed. During Phase 1B, the existing parking lot on the northeast side of Old Mill Road would be reconfigured to meet the requirements of the Public Facilities Manual (PFM), which would cause an overall reduction of parking spaces in that lot from 50 spaces to 29 spaces, for a total of 50 parking spaces combined between both the southwestern and northeastern parking lots and a parking-to-seat ratio of 1:2.5. In Phase 1B, frontage improvements would be made along Old Mill Road; crosswalks would be added between the eastern and western portions of the site; and the play area would be reduced to 3,060 square feet in size because of the construction of the education wing.

Phase 1C would consist only of the addition of a small overflow parking area directly south of the parsonage. The area would be constructed with grass pavers. Six spaces would be added; however, two existing spaces in the southwestern parking lot would be removed for access, so there will only be a net gain of four parking spaces, bringing the total number of parking spaces on site to 54 and the parking-to-seat ratio to 1:2.33.

Ms. Langdon stated that staff believed the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Under the proposal, the historic structure on site would remain with its current 126 seats remaining unchanged. Ms. Langdon noted that the majority of the mature trees would be left on the site; the proposed construction material of masonry and siding was typical of the surrounding residential development; and the proposed use of earth-toned colors blended in with the scenic character of the Mount Vernon Memorial Highway and the surrounding residential areas. She said that egress from the lot would be improved, which would allow a significant increase in the stacking area along Old Mill Road at its intersection with Mount Vernon Memorial Highway. Ms. Langdon stated that staff believed the changes were in keeping with the rural nature of the Highway and tied in with the historic Mount Vernon District, and staff recommended approval of SPA 75-S-177 subject to the proposed development condition contained in Appendix 1 of the staff report dated September 8, 2005.

In response to Mr. Hammack's request, Ms. Langdon pointed out on the plat the location of a scenic easement and where the addition to the land area was located.

In response to Mr. Hart's questions and comments, Ms. Langdon concurred that although the copy of the deed provided by the applicant was difficult to read, its information was germane concerning the scenic easement because the deed showed the determination that the easement did not run to the County. She acknowledged Mr. Hart's conclusion that because the easement did not run to the County, the County had no responsibility with it, and it was a private matter, not a zoning issue. Ms. Langdon noted that there were several issues in the deed which might require consideration in the Board's determination, one of which was that no vegetation be removed from the site, and there was no vegetation at the present time being shown removed from the parking lot. Concerning the river gravel for the parking area, she explained that the applicant would have to apply for a waiver of the dustless surface to the Department of Public Works and Environmental Services (DPWES), and although DPWES had indicated to staff that there was no problem, a waiver still must be obtained.

At Mr. Beard's request, Ms. Langdon explained that the crosswalks would be constructed in the second phase of development. She said they would be on-grade and would be either brick or a stamped type of pavement.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She gave a brief history of the church, noting that it had been in its current location since 1965, with the property itself utilized as a church since 1882. She explained that the place of worship pre-existed the requirement for special permit or special exception approval, and the property was the subject of a special permit for the education building with the Board of Zoning Appeals approving it in 1975. She pointed out that currently the parking was in the same area along Old Mill Road, and it had been 30 years since the applicant's last approval. Ms. Strobel stated that the church required improvements to serve its existing congregation and was requesting a special permit amendment to allow construction of a

fellowship hall, and an addition for storage, which currently was in sheds, and administrative use. She noted that in consideration of staff and citizen concerns, the applicant would continue to serve its congregation with two Sunday services and had not proposed an increase in the sanctuary seating, as originally planned. Ms. Strobel said the applicant also requested a Montessori school with an enrollment of 65 students, adding that it was typical for preschools to be located in places of worship in the County. She said the applicant had thoughtfully considered its needs and carefully created a proposal to meet its needs while respecting the surrounding community and the larger area of Mount Vernon. Ms. Strobel said that the church's plans to meet community needs had begun before she became involved in the process, with a number of focus groups held, the retention of an architect, and a significant outreach to the community at-large and specific adjacent neighbors. Ms. Strobel stated that the church had diligently worked to address community and staff concerns. She noted that her letter dated July 11, 2005, included proposed development conditions submitted by the applicant to the County and said that a number had been incorporated. Ms. Strobel listed the revisions to the plan since its original filing: a significant reduction in the proposed building program; a more central location for the playground area; and revisions to the materials for the proposed parking lot, which would be pervious, aesthetically pleasing, have storm-water management benefits, and be river gravel because that material generated less dust than bluestone. She indicated that the storm drainage system had been thoroughly reviewed and analyzed. She pointed out that several development conditions proposed by the applicant were in response to community concerns and were included in the staff report appendix. Ms. Strobel said the church took seriously the building appearance and had reduced the building height and designed it traditionally in character with the existing church and area.

Ms. Strobel reported that a transportation consultant's services were obtained at the request of the neighbors, not County staff, to evaluate existing traffic conditions and impacts associated with the proposals, and the recommendations from that report were incorporated into the applicant's plan, with a copy of the report distributed to community representatives June 3rd. The County advised the applicant not to overbuild the parking area to the detriment of open space, and the total amount of parking provided was 54 spaces. Ms. Strobel explained that the conservation easement that ran along the parking lot north of Old Mill Road was created with the West Gate Subdivision recordation in 1960 and did not run to the benefit of Fairfax County, but was simply a note on the plat that read, "Cutting or removal of trees within 50-foot conservation easement is prohibited." She noted that parking was not prohibited and had been located on the property for 30 years and that she was unsure whether trees had been removed either from the property or from adjacent properties, as the easement ran along Mount Vernon Highway, but explained that the applicant had redesigned the proposed parking to ensure no trees would be removed. She assured the Board that she would try to obtain a more legible copy of the deed. She noted that the applicant had reduced the enrollment number for its Montessori school from 99 to 65 children, with the first class consisting of 22 students and with additional classes added the following two years, the enrollment would total 65. She also noted that the scheduling was an opportunity to address a community need without adversely impacting traffic because the arrival and departure of students would be staggered and not all the students would arrive at the same time.

Ms. Strobel stated that the remaining issues were addressed with development conditions proposed by the applicant, incorporated by staff, and included the limitation of the number of people in the fellowship hall, ending the fellowship hall activities at 11:00 p.m., and restricting the use of alcohol. She clarified that the pavers/crosswalks referenced in Development Condition 16 would be approved by the Virginia Department of Transportation (VDOT) as the street was maintained by VDOT. She requested that the suggested change to Condition 20 be ignored, as the location was correct and the applicant proposed no changes to that which staff recommended. She said the word "hour" was erroneously excluded in Condition 25. Concerning Condition 29, Ms. Strobel said the applicant would support any efforts to reduce speed limits along Volunteer and Old Mount Vernon Road if it were a unanimous community request.

Utilizing the overhead view graph, she showed several elevations of the applicant's proposal and two residential communities to illustrate the residential nature of the bulk and height of the proposed building.

In response to Mr. Hammack's question concerning the scenic easement, Ms. Strobel said she understood that for 38 years the lot had been used for parking, and, to her knowledge, the issue of conservation had never been raised, not even when the application was presented to the Board in 1975. She said the parking area was redesigned in order to mitigate impact on the trees, and the original plan was redesigned to meet current Public Facilities Manual requirements. She said that once the applicant learned of the conservation easement, they further reconfigured the lot, actually losing several spaces, to ensure no trees would be removed.

In response to Mr. Hart's questions, Ms. Strobel explained that Condition 29 was generated in response to an adjacent neighbor's e-mail. Ms. Strobel said the applicant would support a request, in the form of a

petition filed by the entire community, for a reduction in the speed limit and perhaps the language should be rewritten to state, "The applicant shall provide written support." At Mr. Hart's request, she pointed out the drop-off and pick-up configuration designed for the school in order to address concerns about stacking and the Mount Vernon Memorial Highway entranceway.

Ms. Langdon concurred with Ms. Strobel's explanation that the design was reviewed and accepted by both staff and the Department of Transportation and there were signage conditions as well as the installation of a small island to direct traffic. She noted that the facility's downstairs was considered a callar, not a basement and, therefore, did not count in the total floor area ratio (FAR).

Addressing Mr. Hart's questions concerning the downstairs, Ms. Strobel explained that the area would be used for classrooms for the Montessori school until the classrooms were moved to the fellowship hall, and then the area would be used for storage. Concerning the parking capacity, she explained that some social events might have more than 126 persons, but the capacity of the fellowship hall was generated by the church's desire to seat all its members at different functions, and more than one person was anticipated per vehicle.

Ms. Strobel concurred with Mr. Beard's statement that the maximum enrollment for the Montessori school and day care was 65 children. At Mr. Beard's request, Ms. Strobel explained that the columbarium would be a memorial wall made of masonry that it would be placed around a portion of the cemetery section. She said the height would be 6 feet, and the length would be 40 feet by 60 feet. She explained that ashes would be placed in niches that would face inward, and from the exterior of the property, it would look like a wall.

Chairman DiGiulian called for speakers.

Pastor Byron R. Wilkinson, Sr., no address given, came forward to speak in support of the application. He stated that the church's vision and mission illuminated and underscored their reason for their request to update and expand the facilities. Besides updating the facility with wheelchair accessible walkways and restrooms, he said he thought it provided a growing opportunity to share Christian love and provide a restful place among friends and neighbors.

Jim Van Metre, 9006 Nomini Lane, Alexandria, Virginia, came forward to speak in support of the application. He stated that the plan submitted was conceived out of need, listing reasons of: insufficient classroom area and lavatory facilities; no storage space and having to utilize outside sheds; accessibility difficulties for seniors and the physically challenged; and, inadequate administrative space. He said an architectural firm was selected that had experience in church construction. He explained that the church also sought to establish a values-oriented Montessori school, and that concept became an integral part of the plan. Mr. Metre noted the ongoing closure of military facilities which would further increase the population on post at Ft. Belvoir, two miles from the church, stating that the church was aware of the challenges and responsibilities to do its part to help with the growing spiritual and human needs of the community. Mr. Van Metre noted that the church engaged the County staff and its neighbors in a dialog to improve its plan, meet all requirements, and satisfy its congregational needs as well as those of the greater community.

George Ojalehto, 6326 Wagon Wheel Road, Alexandria, Virginia, came forward to speak in support of the application. He pointed out that the property had a church on it since the turn of the century. He said the church needed to expand through minimal increments and modernize its facilities in order to meet the needs of its congregation, community, and visitors.

Carci McMillan, 6265 Cedar Landing Court, Alexandria, Virginia, came forward to speak in support of the application. She stated that her reasons for believing that Washington Farm United Methodist Church needed newer facilities became evident after retirement when she became a volunteer of the Director of Christian Education and the Chair on the Council of Ministries. They sought to build a strong youth education program which in turn builds strong communities, and their focus shifted to building strong families by offering activities that parents support, such as, sports, computers, scouting, clubs, summer camps, and offering these Family First Programs Sunday mornings. Ms. McMillan stated that those programs and activities needed the additional space.

Karen Ellis, 9327 Brambly Lane, Alexandria, Virginia, came forward to speak in support of the application. She stated that the church was always a good neighbor, contributing more than 16 percent of its budget to its outreach program, and in addition to its monetary contributions, its members volunteered at local organizations providing food to less advantaged and the elderly, providing support for hospital patients, aided women and children at shelters, helped build homes through Habitat for Humanity, assisted emigrants,

participated in Reading is Fundamental and facilitated multiple Alcoholics Anonymous meetings in their building. She urged the approval of the application in order to expand the facilities to continue to offer beneficial social programs which the church had been providing for over 36 years through well-known and well-supported fund raisers.

Jennifer Ralliston-Allen (phonetic), 3801 Adrienne Drive, Alexandria, Virginia, came forward to speak in support of the application. She said the Montessori School was greatly needed, and with improved facilities, the church could more easily continue to offer beneficial services to the community.

Scott Smith, 11270 Fairwind Way, Reston, Virginia, came forward to speak in support of the application. As an organizer and operator of three Montessori schools in the county, he noted that each operated out of leased church space located in residential communities, and they had always been mindful of their neighbors regarding traffic. He said the drop-off, pick-up, and playground times were staggered to assure minimal noise and even traffic flow, and there had never been a backup in traffic flow or complaints about the schools or their activities. Mr. Smith stated that the church's Montessori school would operate in the same manner, and he said there would be no negative impact.

Sylvester Berdux, 4201 Pickering Place, Alexandria, Virginia, came forward to speak in support of the application. He stated that the church sought a reasonable expansion of its facilities in order to support the needs of the growing community. He noted that numerous meetings were held since 2003 with neighbors, and at Supervisor Hyland's suggestion, a community work group had been formed, and the church met with them as well on several occasions. Mr. Berdux said the original six concerns grew to 35, and each were considered and addressed, and, if appropriate, the plan was adjusted accordingly, resulting in a better final plan. At the church's expense, the community representatives had been provided with conceptual plans and multiple sets of drawings, and a traffic consultant had been hired to address traffic issues. Besides proffered road improvements, the church also lowered the building height, substantially reduced the building footprint, relocated the playground, reduced the enrollment number of children, and modified the traffic design and parking in response to citizen concerns.

Edwin Anderson, 9301 Craig Avenue, Alexandria, Virginia, came forward to speak in support of the application. He said that issues of parking and traffic had already been thoroughly covered and that the improved parking and traffic results had been in response to the report prepared by Wells and Associates, who were hired to address the neighbors' request that a study be performed.

Leland Fay, 4403 Granada Street, Alexandria, Virginia, came forward to speak in support of the application. He pointed out the church's historic nature with the original sanctuary built in 1882 and used continuously since then and that it would be retained as the cornerstone of the improvements. He said the materials and design were consistent and compatible with the historic colonial architecture of the Mount Vernon area, and substantial tree save and plantings were proposed. He explained aspects of the columbarium, noting the material would be masonry and the wall would face inward and be built next to the existing Hosley Family Cemetery, established in 1923, and have covered plates on the niches and not be visible from adjacent properties. He said that a memorial garden enclosing the cemetery and columbarium were proposed to be built later to offer a place of meditation and reflection. He pointed out that issues of stormwater management were addressed through downspouts and routing water flow underground to collect in an infiltration facility to enter the County system. Mr. Fay stated that the proposed improvements were within the limits established by the Fairfax County Zoning Ordinance, and buffers and landscaping were used to maintain natural settings and adequate transitional screening for the entire church property.

Charles Mason, 8704 Bluedale Street, Alexandria, Virginia, came forward to speak in support of the application. He stated that the Montessori school would provide quality preschool education that would serve the needs of the growing population of Mount Vernon. He noted that the property which contained the conservation easement had been purchased by the church in 1967 and utilized for parking for over 38 years. He said that no trees would be removed. Mr. Mason stated that he believed the application would make no noticeable difference in the peaceful solitude of the surrounding residences, was reasonable and appropriate, preserved the historic nature and character of the Mount Vernon area, and had been tailored to serve the needs of the community.

At Mr. Hart's request, Ms. Langdon pointed out on the plat an existing shed and clarified that it would be removed.

Larry Dawes, 4312 Ferry Landing Road, Alexandria, Virginia, came forward to speak in support of the application. He said, as chairman of the building committee, he was a participant in the needs assessment

study that developed the church's requirements, and he found the process disciplined and professional. He said he was impressed with the leadership and the process of selecting the technical staff, the architect and architectural firm, their legal representation, the land use engineers, and the hiring and utilization of the traffic engineers. He pointed out how diligent and specific the committee was in keeping the neighbors informed of the plan's need, nature, and progress. Mr. Dawes noted that apparently the inherent nature of the process was not fully understood by a small group of neighbors who had continued to voice their concern that the final plan submitted was not the original one proposed. He said the current plan was the result of negotiations and acquiesces that led to a better plan before the Board. Mr. Dawes said he believed the concerns over the Montessori school's negative impact were unfounded, and he reminded the Board how each issue was thoroughly addressed and explained by professionals and experienced personnel in the business.

Cheryl Bechtold, 9004 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. She stated that issues of traffic and safety, use of the conservation easement, size and scale of the facility, and parking were not adequately addressed. She stated that Old Mill Road was narrow, winding, had ditches along each side, and was dangerous for the youths who walked to their bus stop along it. She stated that there was inadequate parking on the site, and the bi-annual yard sales produced traffic that parked on neighboring streets and along Mount Vernon Highway. She said that because her neighborhood of Westgate did not have curb and sidewalks, the children walked and rode their bicycles in the street, and the traffic generated by the church's events caused concern for their children's safety. Ms. Bechtold said the current parking was inadequate for the church's use, and to approve a fellowship hall was setting the church up for failure. She voiced her concern over the existing trees within the conservation easement, noting that they already were in a stage of decline due to the continued parking and driving over their roots. She said that although the current application takes measures to preserve mature trees, the measures would not be implemented until Phase 1B, perhaps 10 years in the future, and the continued activity that was jeopardizing the health of the mature, stately oaks should cease.

Patty Meyers, 3810 Westgate Drive, Alexandria, Virginia, came forward to speak in opposition to the application. She said the neighborhood did not need added traffic the use would generate, that it was dangerous for the children, and because she was a carpool mom, she knew about cut-through traffic seeking a quicker way to the destination. Ms. Meyers stated that it was a safety issue for her, and she was not opposed to the church, just the school. At Mr. Hart's request, she pointed out on the viewgraph where the areas were that she believed traffic would cut through.

Steve Morken, 4000 Westgate Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He said he thought the church was a terrific neighbor, and he supported its intention to add to its facilities; however, in his opinion as a licensed architect, the plan was ill-conceived and would upset the residential balance in the neighborhood. He said the four issues of his concern, the scale of the project, parking, safety, and the project's phasing, had already been discussed. Utilizing the viewgraph, he pointed out the proposed scale, noting how massive it was compared to the residential surroundings. He proposed several conditions if the Board were to approve the application. They included that any portion of building within 50 feet of an adjacent property be limited to 20 feet in height; any structure greater than 25 feet in height shall include an architectural element such as a porch not greater than 20 feet in height; the entranceway should be moved further east; and, the parking component should be increased to accommodate the capacity anticipated. He also suggested that Phase 1B should be done concurrently with Phase 1A. He said that after reading the staff report, he interpreted staff's recommendation of approval to be warranted on the church's process to where it was today and not based on the merits of the project, and he believed the point should be to evaluate the project based on County standards and to hold the applicant to them.

Kevin O'Meara, 9006 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. The safety of his children was his concern. He said he believed the past record of the church was evidence to the blatant disregard of the terms of their special use permit because there already was insufficient parking, and as the church could not meet the needs of its current members, an expansion should not be considered.

Bob Kuhns, 9111 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. As a transportation professional, he pointed out that Old Mill Road in the vicinity of the church and signalized intersection at Mount Vernon Memorial Highway currently exhibited difficult, unsafe, and deteriorating conditions where high volumes of automobiles, pedestrians, bicycles, and school, transit, and tour buses converge. He pointed out that 67 cars were parked for the church service the prior Sunday with almost a fourth parked along roadway right-of-ways. Mr. Kuhns said that the primary entrance could be

shifted to the property the church purchased in 1996 away from the problem intersections, which would assist in providing additional parking and serve for the expansion of the new fellowship hall. He stated that the Mount Vernon Civic Associations' transportation committee voted 8-2 to move the accessway. Mr. Kuhns noted that the church's access was proposed to be moved closer to the signalized intersection and the regional crosswalk trail, and the intersection was already a bad one.

Brent Pope, 3905 Old Mill Road, Alexandria, Virginia, came forward on behalf of his family and his neighbors, George and Virginia Damron, 3910 Old Mill Road, Alexandria, Virginia, to speak in opposition to the application. He pointed out that his property appeared to be included with the application property. He said he initially supported the school when he had understood the additional students would be accommodated by the current school and there would be some minor modifications. He said he agreed with all the issues that previous speakers cited. Mr. Pope clarified that he would support a small school with a little additional income for the church, but he believed the proposal was a for-profit entity in a residential area, and he thought the tranquility of the neighborhood would be violated and historic trees would be removed.

Randy Souder, 3811 Great Neck Court, Alexandria, Virginia, came forward to speak in opposition to the application. He stated that overflow church parking often parked on his property and walked through his yard. He referenced his easement document, noting that it prohibited installation of any driveways or entranceways from between Route 235 and Route 624 and questioned whether the church was exempt because the lot it purchased in 1967 had an entrance established on it and had been utilized for parking since 1967.

Addressing Mr. Souder's comment concerning his deed's restrictive covenants, Ms. Gibb explained that those covenants were beneficial to the homeowners, not to the benefit of the County, and were unenforceable by the County.

At Mr. Hart's request, Ms. Langdon clarified that the new proposed development conditions did stipulate that all parking be on-site. She explained that the reason Mr. Pope's property was marked as church property was because the map had been staff's original rendering of the tax map, and she had erroneously picked it up as she prepared her presentation. She stated that a subsequent tax map had been prepared with Mr. Pope's property excluded, the application had been advertised correctly, and Mr. Pope's property had not been included in the FAR calculations.

Jaime Guzman, 3810 Great Neck Court, Alexandria, Virginia, came forward with a neighbor, Jo Jo Shifflett, 3804 Great Neck Court, Alexandria, Virginia, who read Mr. Guzman's opposition statement. He listed concerns about the parking lot, dust, noise, and vehicular danger to his small children. As a next-door neighbor, the parking area already generated so much dust that it was difficult to enjoy being outside in his yard, and he had erected his own fence to protect his family from the dust and vehicles. He was concerned that the increased church's activities, the new Montessori school's hours, the increased noise, the traffic, and the dust would make any outdoor enjoyment of his property impossible.

John A. Hurley, 9001 Cherry Tree Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He stated that the proposal was disproportionate and incompatible with the Comprehensive Plan's R-2 zoning. He referenced the May 19, 2005 memorandum from Pamela Nee, Chief, Environment and Development Review Branch, Department of Planning and Zoning, in the staff report dated September 6, 2005. He pointed out that the policy plan's guidance under land use objectives, Item 4, recommended that any new development having direct or visual access or impact upon Old Mount Vernon Road, Highway, and Memorial Highway, and the George Washington Memorial Parkway should be compatible with the historic and scenic character of those routes and should be low density, detached, single-family residences. He said the proposal was for three structures with a variety of support, which were not residential. Mr. Hurley said several items of concern were glossed over in the staff report, and there had been several revisions to the plan since it was first submitted. He said he was particularly opposed to the columbarium, as he found it a new and intrusive activity. If the Board were to approve the application, Mr. Hurley asked the Board to consider all ameliorative measures be included at the onset of construction, not in later phases.

Jo Jo Shifflett, 3804 Great Neck Court, Alexandria, Virginia, came forward to speak in opposition to the application. She said she and her neighbors' concerns included the possibility of people parking on the quiet cul-de-sac, on which she lived, and cutting through the neighborhood via a sidewalk to get to the church property. She said she would not know how that could be prevented, but from living on a cul-de-sac, they expected less traffic. Ms. Shifflett said that she viewed the proposal's use and scale too large for the property, that it was not compatible with its surroundings, that the proposal barely met plan standards and requirements, and that the use was better suited for an urban setting. Ms. Shifflett said she was informed by

the County Attorney's Office that the County was unable to investigate the conservation easement because it was a BZA matter, not a Planning Commission matter. She stated that from her investigation, she understood that the conservation easement use had changed over the years, perhaps acquiescing to use as a parking lot for a church. Because the church was seeking a new permit, she said she concluded that the use was changing, that may be an issue, and there may be future legal problems resulting from approving the permit as any conservation restrictions cannot be enforced until the use was clarified or changed to that of a school.

Louis DeCamp, 9000 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He said his issue was that of safety. He pointed out the danger of increased vehicular traffic on Old Mill Road, a narrow, winding road, and said that there already were several accidents a year at the intersection. He predicted a serious safety challenge for their quiet streets and neighborhoods with all the increased traffic the expanded use would generate as well as that of increased traffic traveling to Fort Belvoir for services in light of the projected closings of other military installations. Mr. DeCamp said that although he was very supportive of schools and the school system, he disapproved of the proposal regarding the Montessori school.

John Allen, 3804 Densmore Court, Alexandria, Virginia, came forward to speak in objection to the application. He said he was opposed to the church's proposal to rezone the single-family dwelling property it purchased on Old Mill Road and erect and operate a commercial fellowship hall in his neighborhood. He said the hall was to hold 250 people, and there were 54 parking spaces. Mr. Allen stated that he doubted if anyone really believed all the additional traffic the church's proposed uses would generate could be accommodated by 54 parking spaces, and he requested that, if approved, the church be required to provide adequate parking to accommodate its members, that any Sunday through Thursday activity be limited to 9:00 p.m. and Friday and Saturday events limited to 10:00 p.m., and that no alcohol be allowed on the premises. In response to Mr. Hammack's question, Mr. Allen said that as he understood it, the church would be renting out its fellowship hall for church activities, such as, wedding receptions and anniversaries, and he believed that was a commercial use.

Colt Mefford, 9007 Chickawane Court, Alexandria, Virginia, came forward to speak in opposition to the application. He said he could not add anything else to the previous statements of his neighbors, but he would reiterate his strong objection to the proposal, its scale, the fellowship hall, school, and the columbarium. He noted that a grandfather clause precluded a graveyard, and although the church contended a columbarium was not a graveyard, he believed it was. Mr. Mefford stated that he believed the church's activities could continue without the additional buildings.

Mitch King, 3802 Densmore Court, Alexandria, Virginia, came forward to speak in opposition to the application. He said he concurred with the previous speakers on the issues addressed. He said he believed the Montessori school was a for-profit school, and he strongly objected to a commercial enterprise along the Mount Vernon Memorial Highway route, an area that was strictly residential.

John Quilty, 9095 Chickawane Court, Alexandria, Virginia, came forward to speak in opposition to the application. He said he was adamantly opposed to the for-profit Montessori school for many of the reasons shared by his neighbors as well as the fact that the Phase 1A and Phase 1B development was not concurrent, which would leave the church with new structures, but without the infrastructure to safely support it, the children attending it, and the children in the neighborhoods. He said potential cut-through traffic was a grave concern, and the size and scale proposed was not harmonious with the neighborhood. Mr. Quilty requested that funds be allocated to the neighbors adjacent and contiguous for additional landscaping and greenspace to create an additional barrier between them and the new buildings. To further assure sufficient parking for events, Mr. Quilty said the plan should be modified to maintain the 71 parking spaces indicated in Phase 1, and the fellowship hall should be restricted from holding functions typically housed in the sanctuary because all parking calculations were based on the number of seats in the sanctuary. He also suggested that the school hours be 9:00 a.m. to 3:30 p.m. to further reduce adverse impact on the adjacent neighborhood.

Eileen Hurley, 9001 Cherry Tree Drive, Alexandria, Virginia, came forward to speak in opposition to the application. She said her property shared a 125-foot common border to the southwest with the church. She also concurred that the intersection at Old Mill Road and Route 235 was already difficult, and pedestrian signalization was warranted presently without the projected traffic and school customers. She said she was also concerned about the safety of the residential families, the church and school customers, and the bicycle riders with the traffic flow over the narrow, almost county-character of the neighborhood roads where there were no sidewalks. Ms. Hurley said all vegetation should be preserved to assure adequate screening and

that no screening or barrier waivers should be allowed. She said the church had been a good neighbor to her and her husband and that they support its activities and annual events, but the Montessori school would change the dynamics of the neighborhood and should not be approved.

Michael Bechtold, 9004 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He stated that the application significantly adversely impacted his and his neighbors' lives daily. He said the applicant's plan was not compatible with the historic and scenic character of the area, that the fellowship hall would dwarf the sanctuary and would loom more than 10 feet above the residences surrounding the church property, that the current tree and vegetation screen would be razed leaving bare pavement, that the school traffic could not be routed as the plan indicated, and there would be cut-through traffic through their quiet neighborhoods and increased traffic over Old Mill Road.

Jose Urgino, 9003 Cherrytree Drive, Alexandria, Virginia, came forward to speak in opposition to the application. He said the issues of his concern were already deliberated by his neighbors, but he just wanted to register his objection especially regarding the new school which would definitely impact the neighborhood.

Fran Weiland, 3802 Great Neck Court, Alexandria, Virginia, came forward to speak in opposition to the application. She said that the Montessori school was not Christian based and that the reason why the church would want a non-Christian school on the property was because the church anticipated increased membership and money. Ms. Weiland said the previous statements by others were all correct. She stated that the 501-C3 was a non-profit designation, and moving to the profit category should require that the 501-C3 land and building be changed and removed if the application was approved.

Pam O'Meara, 9006 Volunteer Drive, Alexandria, Virginia, came forward to speak in opposition to the application. She said she worried about her young children, the neighborhood children, and church attendees walking along or riding bicycles on Old Mill Road and Volunteer Drive as there were no sidewalks and the roads were very narrow and were not designed to carry the increased traffic from parents picking up and dropping off their children. She also voiced her concern about the parking along their streets. She stated the parking plan was ill conceived. Ms. O'Meara said the intersection, available parking, and the surrounding pedestrian areas were not adequate for their current use, and to increase the already maximized potential of parking and traffic to an additional five days a week with changes to the special permit was not a plan with foresight or consideration for the neighborhood. She asked that the integrity of the neighborhood be kept completely residential.

Donna Hadjis, 9004 Chickawane Court, Alexandria, Virginia, came forward to speak in opposition to the application. She said they were the people who had swapped land with the church and that she was opposed to the church's proposal.

Ms. Strobel, in her rebuttal, said she thought the testimony given was both subjective and objective and she would focus her remarks on the objective. She pointed out that the church was a long-standing institution with good access, and she said she did not believe there would be a problem with cut-through traffic. She noted that issue had been evaluated by their traffic consultant, and the transportation plan provided was sound and would manage the drop-off and pick-up of children. She said churches and schools were not commercial entities, that they were neighborhood serving, and she believed they should be located in neighborhoods. Ms. Strobel noted that, to her knowledge, there were no violations of existing special permit approvals or special permit conditions. Referencing Mr. Kuhns' letter, which she said she received only that morning, Ms. Strobel stated that on June 3rd he was delivered a report in which their transportation consultant requested Mr. Kuhn's to inform him of any concerns or questions, and there was no response. Ms. Strobel utilized the overhead to point out that the access was not moved closer to Mount Vernon Memorial Highway, as a speaker contended. She affirmed that the notice packet was sent out with the correct map, that there was no intent to take an adjacent property by eminent domain, and that the application's FAR density calculations were that of church property solely. Ms. Strobel said the conservation easement was carefully reviewed. She confirmed that the easement was enforceable by the community and had not been enforced for over 30 years. Ms. Strobel clarified that the church's proposal was not a commercial enterprise, and the fellowship hall was strictly for the church's membership. She said the applicant was taking measures to provide pedestrian safety, as evidenced by providing sidewalks and pedestrian signalization, and the applicant was doing all that could be done. Addressing an issue regarding parking, she explained that there might have been some parking within a County right-of-way that was brought to the church's attention, and it was corrected. Ms. Strobel requested a modification of transitional screening so as to supplement the vegetation and not take down any trees. She pointed out that the applicant's proposed building height was well below that which was permitted by the Ordinance, and the design was in keeping with the scale and character of the residential surroundings. She stated that the

application was in accordance with all the Zoning Ordinance requirements, well within the limitations, and that staff supported the application.

In response to Mr. Beard's question concerning traffic generation, Robert Kohler, M.J. Wells & Associates, LLC, 1420 Spring Hill Road, Suite 600, McLean, Virginia, explained that with 23 children enrolled in the program, there would be a total of 22 trips during the morning peak hour and 21 during the afternoon peak hour, which was inclusive of staff and parent trips during that time. With 65 children, there would be a total of 53 trips during the morning peak hour and 52 during the peak afternoon hour, also inclusive of staff and parents. He clarified that a trip in and then immediately out constituted two trips, and with 65 children, there would be 28 trips in the morning and 25 out in the morning because one parent driving in and immediately dropping off their child will immediately be an out-bound trip which was one of the 25. He added that all the trips for the use would not occur within one hour due to the staggered pick-up/drop-off hours.

In response to Mr. Byers' question of whether the Mount Vernon Civic Association had taken a position on the application, Ms. Strobel said she did not believe an official vote had been taken. Mr. Dawes, with the Mount Vernon Civic Association, said since his initial presentation at the onset of the application's processing, he was unaware of any further position.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer decision on SPA 75-S-177 to October 11, 2005, with the record to remain open for written comment. Ms. Gibb and Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

Chairman DiGiulian stated that all written testimony was to be submitted ten days prior to October 11th to assure time for the Board's review.

//

Mr. Hammack moved that the Board recess and go into closed session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Lake Braddock Community Association versus BZA, Bristow Shopping Center versus BZA, Antioch Baptist Church versus BZA, Smith versus BZA, Heisler versus BZA; the following four court cases involving the Board of Supervisors versus BZA, McCarthy, Lee, West Lewinsville Heights, Demetrious; the subpoena in the Lane/Toomey appeal; correspondence with the County Executive; and litigation and potential litigation matters pursuant to Virginia Code Ann. Sect. 2.2-3711(A)(7) (LNMB Supp. 2002).

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

The meeting recessed at 11:57 a.m. and reconvened at 2:04 p.m.

Mr. Hammack moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene closed session were heard, discussed or considered by the Board during the closed session.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

Ms. Gibb moved that, on the Board's behalf, she send a letter, under the signature of Chairman DiGiulian, to Kathleen Knoth, Clerk to the Board of Zoning Appeals, requesting that all correspondence be sent to all BZA members; that the Board draft letters in response to the Antioch, Smith, Lake Braddock, and the Bristow Shopping Center court cases; and that the BZA's counsel write a letter to the County Attorney.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. ANTHONY TEDDER, A 2004-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is allowing a dwelling to be constructed and has

allowed a land area in excess of 2,500 square feet to be filled and graded, both occurring in the floodplain and the Resource Protection Area without an approved permit, in violation of the Zoning Ordinance provisions. Located at 2862 Hunter Rd. on approx. 4.74 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-2 ((7)) (44) D. (Admin. moved from 7/13/04, 10/12/04, 1/18/05, 4/5/05, and 6/14/05 at appl. req.)

Chairman DiGiulian announced that A 2004-PR-011 had been administratively moved to March 14, 2008, at the applicant's request.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. ROBERT AND JOYCE HARRISON, A 2004-PR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have constructed an addition which does not meet the minimum side yard requirement for the R-1 District in violation of Zoning Ordinance provisions. Located at 8909 Glenbrook Rd. on approx. 31,351 sq. ft. of land zoned R-1. Providence District. Tax Map 58-2 ((4)) 76. (Admin. moved from 1/25/05 and 7/26/05 at appl. req.)

Chairman DiGiulian announced that A 2004-PR-038 had been administratively moved to November 29, 2005, at the applicants' request.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. ESTATE OF SCOTT P. CRAMPTON, A 2003-MV-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot width requirements of the Zoning Ordinance when created, does not meet current minimum lot width requirements of the R-E District, and is not buildable under Zoning Ordinance provisions. Located at 11709 River Dr. on approx. 29,860 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((3)) 3. (Admin moved from 12-2-03 and 6/29/04, 12/21/04, and 6/21/05 at appl. req.)

Chairman DiGiulian announced that A 2003-MV-032 had been withdrawn.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. SHAH ABBAS, A 2005-HM-029 Appl. under sect(s). 18-801 of the Zoning Ordinance. Appeal of a determination that appellant is leasing an affordable dwelling unit to a tenant and is not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 2559 Peter Jefferson Ln. on approx. 1,409 sq. ft. of land zoned PDH-12. Hunter Mill District. Tax Map 25-1 ((21)) 127.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that this was an appeal of the determination that the appellant was leasing an affordable dwelling unit to a tenant and not occupying the dwelling as his domicile in violation of Zoning Ordinance provisions. She said that Mr. Abbas was in the process of reoccupying the house, and staff expected the violation to be cleared in the near future. She stated that staff supported a request for a deferral to November 8, 2005.

Mr. Hammack moved to defer A 2005-HM-029 to November 8, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. MICHAEL J. RYAN, A 2005-DR-030

Chairman DiGiulian announced that A 2005-DR-030 had been administratively moved to December 13, 2005.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. ANGELA C. MEDEROS, A 2005-MA-031

Chairman DiGiulian announced that A 2005-MA-031 had been administratively moved to October 18, 2005.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. VIRGINIA EQUITY SOLUTIONS, LLC, A 2005-PR-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant purchased an affordable dwelling unit without obtaining a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and is not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 8054 Sebon Dr. on approx. 878 sq. ft. of land zoned R-12. Providence District. Tax Map 49-2 ((43)) 139. (Decision deferred from 6/14/05 and 7/19/05)

Mr. Hart indicated that he would recuse himself from the public hearing.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in a memorandum dated September 2, 2005, from Ms. Tsai. She stated that this was an appeal of a determination that the appellant purchased an affordable dwelling unit (ADU) without having obtained a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and was not occupying the dwelling as a domicile in violation of Zoning Ordinance provisions. She stated that the Board of Zoning Appeals (BZA) had held a public hearing on June 4, 2005, and had twice deferred decision. At the June 19, 2005 meeting, the BZA had requested that the appellant bring Rita Hockenbury to the current hearing and bring the chain of title along with copies of the associated deeds. Ms. Tsai reported that the BZA had also requested that the appellant provide legal briefs to the County to support their arguments made at the July 19th hearing three weeks prior to the September 13th hearing and that the County Attorney's Office respond to the briefs prior to the current hearing. To date, the appellant had not provided legal briefs or any documentation to staff, but the prior afternoon, September 12th, the appellant's attorney facsimiled a rebuttal to the June 7, 2005 staff report. Ms. Tsai noted that at the July 19th meeting, Camille Barry testified, as principal of Virginia Equity Solutions, LLC, that she and her company had never purchased an ADU property before; however, Ms. Barry purchased the only two ADU properties in Fairfax County that were sold at foreclosure in the last two years. A title search on the two properties would have revealed the associated ADU covenants. Staff provided the BZA with the chain of title used by Escrow One Limited, the company the County retained, along with the associated deed book and pages which supported that a reasonable title search for the subject property revealed the ADU covenants. Ms. Tsai pointed out that the appellant failed to provide documentation showing the chain of title for the property and that it did not reveal the ADU covenants. She noted that the appellant had not refuted the fact that a Certificate of Qualification had not been obtained or that the unit was not being occupied as the appellant's domicile and had provided no evidence or addressed how the appellant qualified for either the Certificate of Qualification or was using the subject property as the appellant's domicile. Ms. Tsai stated that staff recommended that the BZA uphold the Zoning Administrator's determination that the appellant purchased an ADU without having obtained a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority and was not occupying the dwelling as a domicile in violation of the Zoning Ordinance.

In response to Mr. Hammack's request that staff clarify its statement in the September 2nd memorandum that the two properties were not encumbered by the ADU covenants at the time of the foreclosure sale, Ms. Tsai explained that when an ADU property goes to foreclosure sale, the unit is stripped of the ADU covenants,

and the purchaser is not bound by the ADU covenants at the time of the foreclosure sale. She pointed out that prior to the foreclosure sale, the two properties were former ADU properties.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that the point of staff's statement was that what was represented by the appellant in the previous public hearing was that they had not purchased ADUs prior to the current transaction, and staff's records reflected that the appellant had, in fact, purchased two units.

Ms. Gibb commented that, in her opinion, for staff to state that the appellant had purchased an ADU unit and thereby imply that the appellant was lying when the appellant was not encumbered by the ADU covenants when the property was bought seemed rather deceptive.

Michael R. Congleton, Chief, Deputy Zoning Administrator for Zoning Enforcement Branch, explained that the two units were ADU units until the moment they were sold at the foreclosure sale. He said that the previous testimony by Virginia Equity Solutions indicated that it had no knowledge of the ADU program and ADU units, and staff sought to show that the corporation indeed had prior experience with purchasing ADUs through foreclosure. In response to Mr. Hammack's question of whether the Notice of Trustee Sale indicated that the units were ADUs, Mr. Congleton said that, to his knowledge, it was not recorded, and unless a title search was performed, the prospective purchaser would have no indication that it was an ADU.

Stephen K. Christenson, Esquire, 4015 Chain Bridge Road, Fairfax, Virginia, agent for the appellant, said that he performed the research requested by Mr. Hammack, and his determination was that the covenants were recorded among the land records of Fairfax County, Virginia, and the covenants under Virginia law were duly admitted to the record, and he conceded to those facts. He further stated that because the covenants were duly admitted to record, the covenants did serve as record notice of their existence to all subsequent purchasers. He clarified that under Virginia case law, record notice was basically when any deed or covenant is submitted to the Clerk of Court for recordation and the document is stamped in, it is deemed duly admitted to record; however, further processing, albeit dropping the document in the trash can, is all record notice is in Virginia. The clerk is bonded to prevent such actions, but the fact that it is record notice does not ensure that it exists as actual notice to a subsequent purchaser. Mr. Christenson stated that their position was that in order to have a violation of the Zoning Ordinance, there must be some actual notice that the purchaser of the unit knew he was purchasing an ADU, and the Ordinance requires that the covenants be of record and recorded simultaneously with the deed of subdivision. He pointed out that the important fact was that the covenants themselves required that they exist in the deed of conveyance from the developer to the purchaser of the ADU, and in both cases, those requirements were not complied with because the County did not timely submit through the developer the final approved subdivision and failed to require inclusion of the covenants, and Van Metre's deed made no reference to the covenants. Mr. Christenson noted that the purchaser testified that their title examination failed to reveal the covenants, and without special indexing, the covenants will not be evident. He stated that it was patently inequitable and just wrong to hold the purchaser, Virginia Equity Solutions, LLC, in violation of an Ordinance that was violated by the grantor, Ms. Maples. Addressing the fact that Virginia Equity had previously purchased an ADU, Mr. Christenson claimed that the corporation never purchased at a consensual sale where the contractor was a willing seller, only at foreclosure, and that many others have purchased ADUs at foreclosure sales, as the process of foreclosure strips the covenant from the unit, and, therefore, it was no longer viable.

Mr. Hammack referenced the memorandum from John E. Foster, County Attorney, noting that the County's argument was that the covenants were properly recorded, that they were performed under a different Ordinance, but remained constructive notice to purchasers. Mr. Hammack pointed out that the County's position was that the appellant's argument that recordation had not complied with the Ordinance was without merit.

In explanation, Mr. Christenson stated that the Notice of Violation relied on the Ordinance that mandates that the covenants be recorded with the final subdivision plat, which was referenced in the staff report as the basis for the citation. He submitted that staff used one law and now was relying on another law, but nevertheless, the covenants were to be recorded in the deed of conveyance, of which they never were to the immediate grantor. He argued that if they were put in the deed of conveyance by the developer, the appellant would have had actual knowledge of the covenants. Mr. Christenson noted that it was a failure to comply with the requirements that Virginia Equity Solutions had no knowledge of the covenants.

Mr. Hammack pointed out that Lot 139, the subject lot, was recorded in Van Metre's deed when the developer acquired the lots, and Mr. Christenson affirmed that the lot was not recorded in Ms. Maple's deed when she purchased the property from the developer. Mr. Christenson submitted that the appellant bought the unit, their title examiner made a mistake, but they themselves were not culpable to have caused a

violation under those circumstances. He pointed out that his client now owned a property that nothing could be done with, and it could not be sold nor rented. He said the sole recourse would be a suit in Circuit Court to acquire the title, perhaps determine what party was at fault during the transactions, and determine what covenants may or may not pertain. Mr. Christenson stated that the innocent party was Virginia Equity Solutions. He said they should not be penalized because this situation's resolution would end up being quite costly for them, and they should not be held in violation of the Ordinance under the circumstances.

Rita Hockenbury, consultant for Virginia Equity Solutions, stated that there were two points she would make. She said Cherrie Maples told her that the property she purchased was through a first-time homebuyers program. She said she twice requested Ms. Maples to send the purchase papers, but she never had.

Chris Beatley, Esquire, 221 South Fayette Street, Alexandria, Virginia, reminded the Board that he gave testimony at the June 14, 2005 public hearing and that he conducted the closing of the subject property. He explained that the usual procedure was that a trustee never would announce an ADU at foreclosure settings because often a trustee was unaware of the ADU covenants, that the covenants are not announced at the sale nor are they advertised, and a trustee usually only performs a bring-down title examination and rarely does a 60-year search, which would not bring such covenants up. He said that most bidders at foreclosure sales do not perform their own title examination, and the first time a bidder may be made aware of covenants would be after they bought the property, and perhaps someone might bring them to their attention at settlement. Mr. Beatley clarified that at that time covenants do not matter because they were stripped from the land records by virtue of the superiority of the deed of trust over them, and it is not an issue. He said that a settlement attorney typically would not even raise the issue. Mr. Beatley affirmed that if ever a prospective property contained an ADU, he and his firm would decline to service the transaction for they had never knowingly bought an ADU. He submitted that he thought it unfair to fine the appellant for something they had no knowledge of nor could they have known that they were doing something wrong.

John E. Foster, County Attorney's Office, said that it appeared to him that Mr. Christenson had admitted that the covenants served as notice. He said in July the BZA pointed out to Mr. Christenson that his client was on notice twice of the ADU covenants, once through general declaration in the land records and, secondly, through the unit's specific declaration, which also was recorded in the land records. He cited language from the Virginia Supreme Court that twice clearly stated "recordation of a document," in this case the covenants, "was notice to the entire world," in this case notice to Virginia Equity Solutions, and that an indexing error, Van Metre appearing as one word, did not change the fact that the recordation of these covenants on two separate occasions was notice to the appellant. Mr. Foster stated that Virginia Equity Solutions had twice been noticed by the Zoning Administrator for violating two sections of the Ordinance, 2-813(1) and 2-813(5), because the ADU was not occupied as the domicile nor had the purchaser obtained a Certificate of Qualification. He said those were two clear violations, and he found the case very straight-forward. He stated that Mr. Christenson's argument was that the retroactive application of the current Zoning Ordinance be applied to the developer, Van Metre, when Van Metre recorded the unit's specific declaration in 1999 and the general declaration in 1998. However, the retroactive application of ordinances and statutes should not be done unless expressly stated by the legislative body, the Board of Supervisors, of which there had been no expressed statement in the sections of the Zoning Ordinance that were at issue. Mr. Foster referenced his brief in which he cited that the applicable 1999 Ordinance clearly required that the covenants be recorded with the deed for the affordable dwelling unit, which was what Van Metre did. Mr. Christenson's argument seemed to be that despite the clear language, the covenant language had to be in the deed, which basically was requesting that the BZA rewrite the 1999 Ordinance to specify "in" rather than "with." Mr. Foster said the Board was aware that when legislation was clear, it could not be rewritten by an administrative body. Addressing the appellant's contention that this situation was unfair, Mr. Foster stated that it was unfair to the ADU program to have a unit removed from the program with no consent, no participation by the Zoning Administrator or the Housing Authority, with the end result being the appellant obtains a unit free and clear of the program.

In rebuttal, Mr. Christenson claimed the covenants were never recorded with the deed, but prior to the deed, and that there was no reference in the deed of the covenants. He pointed out that Virginia Equity Solutions could do nothing to come into compliance with the covenants other than convey the property to the County at about a \$300,000 loss. He insisted that the appellants had no knowledge of the covenants and were in a "no win" position. He affirmed that the ADU Program was salutary, but this was not a situation of someone trying to profit at the expense of the poor or the County's program. Mr. Christenson said that this was a situation where Virginia Equity Solutions, after a title exam which missed the covenants, ended up with the title to a property and now was being asked by the County of Fairfax to do an impossible remedy of coming into compliance. He submitted that if the covenants were cited in Ms. Maples' deed, the problem would never have arisen. He said that although there was a technical violation of the Ordinance, the violation occurred

because of the County's failure to comply with its own Ordinance, and the appellants should not be further penalized by being held in violation of the Zoning Ordinance.

Mr. Hammack cited deed language that read, "This conveyance is made subject to conditions, restrictions and easements affecting the property convey," and asked Mr. Christenson to address it. Mr. Christenson acknowledged that there were covenants of record, that there was record notice of the covenants, and that the deed's language was specific that the purchaser was subject to anything in the title, but he said he believed it unfair to penalize the appellant. He said the appellant had purchased the property under the mistaken assumption that there were no existing covenants, and his clients now possessed a property ripe with problems for which they should not be held in violation of the Zoning Ordinance because a previous owner, Ms. Maples, failed to properly convey the property by going through the County. Mr. Christenson stated the sole remedy was through the Circuit Court. He said he understood that one first goes before the BZA to appeal the penalty imposed, and 30 days after the BZA's determination, then appeals to the Circuit Court, and it was his intention to file suit in Circuit Court to resolve the matter.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she found that the appellant was not occupying the property as her residence, although as a corporation one could not, and that no Certificate of Qualification was obtained, as required by the Ordinance. The restrictive covenants were required by the Zoning Ordinance to be recorded with the deed and were recorded just prior to the deed, and a prudent title examiner should have found it. She clarified that she based her decision on Mr. Foster's memorandum in which he cited law language that was not disputed by the appellant, that the restrictive covenants had been recorded, that they were notice, and they were recorded in the deed and the land records. Ms. Gibb submitted that it was not within the BZA's purview to decide what may be fair, but she said she believed the restrictive covenants were enforceable because they did appear in the land records. She also suggested that perhaps the appellant's recourse would be against the title examiner.

Mr. Hammack said he supported the motion and acknowledged it could be difficult doing title searches, but a title examiner was charged with knowing the procedures. He said he believed that there was constructive notice because the covenants were recorded. He concurred with Ms. Gibb that perhaps that matter should be pursued with the title examiner. He also acknowledged that the Board's authority was to rule on the violation and not administer equity.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, Scheduled case of:

9:30 A.M. DONALD E. BOYD, A 2005-SP-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the R-C District in violation of Zoning Ordinance provisions. Located at 13316 Compton Rd. on 10 ac. of land zoned R-C. Springfield District. Tax Map 75-1 ((1)) 26. (Deferred from 6/9/05)

Chairman DiGiulian announced that A 2005-SP-024 had been administratively withdrawn.

//

~ ~ ~ September 13, 2005, After Agenda Item:

Board of Zoning Appeals Meeting Dates for 2006

Mr. Hart moved to defer approval of the 2006 BZA meeting dates for one week. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, After Agenda Item:

Approval of November 4, 2003; November 18, 2003; December 2, 2003;
January 20, 2004; June 15, 2004; and June 14, 2005 Minutes

Mr. Hart moved to defer approval of the Minutes for one week. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, After Agenda Item:

Consideration of Acceptance
Appeal Application filed by Charles E. and Anita S. Cauley

Mr. Hart stated that there was no one present to represent the Cauleys and that the information memorandum was just received and he would want time to adequately review the information. Mr. Hart moved to defer the consideration of acceptance for one week. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//

~ ~ ~ September 13, 2005, After Agenda Item:

Consideration of Acceptance
Appeal Application filed by Charlie C. Hwang


Mr. Hart stated that there was no one present to represent Mr. Hwang, and that the information memorandum was just received and he would want time to adequately review the information. Mr. Hart moved to defer the consideration of acceptance for one week. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

//


As there was no other business to come before the Board, the meeting was adjourned at 2:50 p.m.

Minutes by: Paula A. McFarland

Approved on: January 10, 2006



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 20, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman P. Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m.

Mr. Hart explained that although in the past an eight-day waiting period following the Board's decisions had been publicized, in the recent Virginia Supreme Court case of West Lewinsville Heights, in which the BZA had prevailed, the Court ruled in its decision that the BZA's eight-day waiting period by-law was invalid. Mr. Hart said the issue would be revisited in the future, but until it was straightened out, people should not assume that there was an eight-day waiting period even if it had been indicated in the past or it appeared on the Web site, in brochures, or as a caption on the broadcast.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no additional Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ September 20, 2005, Scheduled case of:

9:00 A.M. ARNOLD S. CORRADINO, SP 2005-PR-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on errors in building locations to permit addition to remain 8.0 ft. from one side lot line and 8.1 ft. from other side lot line, stoop to remain 3.7 ft., deck (patio) 3.4 ft. and accessory structure (play equipment) 4.0 ft. from side lot line and accessory storage structure to remain 3.7 ft. from side and 4.1 ft. from rear lot lines. Located at 2843 West George Mason Rd. on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((4)) 132.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Arnold Corradino, 2843 West George Mason Road, Falls Church, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction to minimum yard requirements based on errors in building locations to permit an addition to remain 8.0 feet from the northern side lot line and 8.1 feet from the southern side lot line; stoop to remain 3.7 feet from the side lot line; deck (patio) to remain 3.4 feet from the side lot line; accessory structure (play equipment) to remain 4.0 feet from the side lot line; and, accessory storage structure to remain 3.7 feet from the side lot line and 4.1 feet from the rear lot line. A minimum side yard of 10 feet is required, and a minimum rear yard of 9.2 feet is required for the shed; however, decks and stoops are permitted to extend 5.0 feet into the minimum side yard; therefore, modifications of 2.0 feet, 1.9 feet, 1.3 feet, 1.6 feet, 6.0 feet, 6.3 feet, and 5.1 feet, respectively, were requested.

Mr. Corradino presented the special permit request as outlined in the statement of justification submitted with the application. He said he accepted responsibility for the errors involved and was trying to rectify the situation in the best manner possible, which he hoped would result in him being allowed to keep the structures in place subject to obtaining the necessary permits. He stated that the addition to the house was approximately 450 square feet and measured 30 feet wide by 15 feet deep. He said that at the time it was built he did not know the setback requirements had changed and were different than those of the original house. Mr. Corradino said the addition and play equipment fit within the context of the neighborhood, which was comprised primarily of Cape Cod and bungalow style homes which had been built in the 1940s and 1950s and many of which had subsequent additions. He said the addition did not extend beyond the existing limits of the original house and did not interfere with the neighbors' use and enjoyment of their property. He said that no one had expressed opposition to the application, and six neighbors had written letters of support.

Mr. Beard asked whether the applicant's house protruded beyond the house to the left, which appeared in the photographs to also have an addition. Mr. Corradino responded that as far as the depth back, his addition went approximately 10 feet beyond the location of the neighbor's addition.

Mr. Hart asked whether the location of the house was legal in 1947 or 1948 and complied with the 1941 Ordinance, including the location of the chimney. Ms. Hedrick replied that it was permitted at that time.

Mr. Hart asked for confirmation that the subject district was one in which the minimum yards increased in the

1978 Ordinance, which resulted in the house currently being nonconforming, which Ms. Hedrick confirmed.

Mr. Hart asked for confirmation that the walls of the addition were no closer to the sides on either side than the walls of the original house, which Ms. Hedrick confirmed.

Mr. Hart asked whether the shed was resting on cinderblocks and if it and the play equipment could be shifted toward the center of the yard so that a special permit would not be needed for those items. Mr. Corradino indicated that the shed was on cinderblocks and both could be moved. He said that when they had been originally placed in the current locations, there had been a pear tree located in the middle of the rear of the yard, which had subsequently fallen over. He indicated that although currently it would be possible to relocate the shed and play equipment, it was not possible at the time of the original placement.

In response to questioning by Mr. Hart regarding why a building permit had not been obtained and who built the addition, Mr. Corradino said he had been in a situation where he felt an urgent need for additional space, and a situation arose, upon which he acted without going through the process. He said he had hired a contractor. He indicated the contractor had built the addition without a building permit, inspections, or plans prepared by an architect or engineer with computations regarding the foundation or dimensions of the structural members. He confirmed that the addition contained plumbing, electricity, and mechanical.

In response to Mr. Hart's question regarding what caused the urgency at the time the addition was built that prevented a permit being obtained and monitoring by inspectors occurring, Mr. Corradino stated that it was a crazy time in his professional and home life, and there was not a lot of clear thinking going on.

In response to Mr. Hart's question as to whether the proposed Zoning Ordinance amendment might apply to the subject case, Susan Langdon, Chief, Special Permit and Variance Branch, replied that the proposed amendment included the potential to apply for a special permit to build upward, but the subject application might also fit under the possibility of obtaining a special permit for a reduction to the yard.

Mr. Hart explained to the applicant that one of the standards that the Board had to conclude was met was that the noncompliance was done in good faith or through no fault of the property owner or was the result of an error in the relocation of the building subsequent to the issuance of a building permit, if such was required. He stated that because there was no building permit, the last part did not apply, and he asked how the Board was to conclude that the noncompliance was done in good faith or through no fault of the property owner. Mr. Corradino replied that he did not remember having bad faith and just remembered not thinking clearly about it at the time and making a decision in haste with a contractor who was ready to proceed. He said he hoped that by his actions since that time that he had demonstrated good faith in coming before the Board and doing everything he could to rectify the situation as opposed to denying there was a problem or acting in a way inconsistent with what was trying to be accomplished.

Mr. Beard asked whether the applicant recalled having the intention of or anticipated getting a permit at some point. Mr. Corradino replied that he knew at some point he would move and sell the house and that he would need to get the addition up to code before that time. He added that he understood from the contractor that the addition was built in accordance with Fairfax County Code.

Mr. Ribble asked whether the contractor was licensed and whether the contractor had said anything about getting the permits. Mr. Corradino responded that the contractor had said he was licensed and insured and was building the addition up to Fairfax County Code.

Ms. Gibb asked how the County learned about the violation. Ms. Hedrick replied that there was nothing on the record regarding a complaint. She explained that Roy Biedler, Zoning Enforcement Branch, had gone to the site and determined the addition itself was a code issue and not a zoning issue without taking into consideration the side yard requirements, and it was turned over to Code Enforcement. She said George Ford, Code Enforcement Residential Inspections, was present at the hearing to answer questions. Ms. Hedrick said there was no notice of violation written by Zoning Enforcement.

When asked by Ms. Gibb if he knew how he had come to be before the Board, Mr. Corradino indicated that he did not.

Mr. Ford stated that he had received the complaint from zoning. He said he went to the site and wrote a corrective work order to the applicant that stated the addition would require permits and inspections that would entail digging up at least part of the foundation, opening up some walls, and going through an electrical testing agency. He said he did not know about the situation with the setbacks currently being more

restrictive than when the house was built. He explained that in order to get a permit from the building department, zoning first had to look at the plat and the setbacks, and that was as far as the applicant had gotten in the process of getting a permit. Mr. Ford stated that the applicant had kept in contact with him and been easy to work with. Mr. Ford explained that because there was a two-year statute of limitations, the County had filed suit against the applicant.

In response to Chairman DiGiulian's question regarding how the complaint originated, Mr. Ford said the complaint came through zoning to code enforcement and was then given to him as a complaint. He said complaints typically came in as anonymous complaints, complaints from zoning, and complaints from the Fire Marshal.

Chairman DiGiulian asked why zoning had filed a complaint. Ms. Hedrick stated that there was no record in the computer data base or otherwise regarding how zoning got the information.

Mr. Hart asked about culpability and whether it was correct that the contractor would know that they would have to call several times during the inspection process before they could progress further with the work. Mr. Ford said that was correct, but that 60 percent of construction currently occurring in the county was being performed by unlicensed contractors, and one in twenty was being caught. He said that if the contractor was licensed, he would be culpable.

Mr. Hart asked if the identity of the contractor was known and why the homeowner was in trouble, but not the contractor. Mr. Ford said that because the identity of the contractor was not given to him, he assumed it was not a licensed contractor. He said 90 percent of what he dealt with were unlicensed contractors and that only seldom did problems arise with licensed contractors because they could be immediately charged, but an unlicensed contractor could not be forced to come back to fix something.

Mr. Hart commented that he thought there was some crime in the fact that the contractor had lied when he told the applicant he was licensed, and he asked what office handled that. Mr. Ford replied that Code Enforcement routinely went after unlicensed contractors, but they were then turned over to the State, with whom the burden for the enforcement of that mostly fell. When asked by Mr. Hart if that was being done in the subject case, Mr. Ford replied that it was not.

Mr. Byers asked whether it was typical that the homeowner would get the required permits when dealing with a contractor that they believed in good faith was a licensed and bonded contractor or whether it would be the responsibility of the contractor. Mr. Ford responded that state law required the contractor be the person to pull the permit if the contractor was licensed.

In response to questions by Mr. Byers regarding how licensing was confirmed, Mr. Ford said that in many of the times he had gone out on issues, the homeowner had been presented with something and assumed the person had a license to do the work. He cited one case in Loudoun where a business license had been provided, and the homeowner, who was in the real estate market, did not realize that State law required a contractor's license and not just a business license.

Mr. Byers asked whether it was true that most people did not do a thorough background check on contractors and took it on face value that they were licensed when they said they were. Mr. Ford replied that most of the time contractors were taken on good faith.

Mr. Beard asked whether the applicant had a written contract with the contractor. Mr. Corradino replied that some estimates had been provided, but there was no written contract.

Chairman DiGiulian called for speakers.

John Atkinson, 2845 West George Mason Road, Falls Church, Virginia, came forward to speak in support of the application. He said that what the applicant and his family had done to improve the property in regard to the addition, play equipment, landscaping, and so forth had been invaluable to him and the property and had not decreased the value of his property or the neighborhood. Mr. Atkinson said the neighborhood was more than just structures, and the applicant provided for the neighborhood and the community. He stated that there had been no negative impact on him, and he was not aware of any negative impact on anyone else.

Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-PR-028 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Hart noted that there was testimony that the play set and the shed could be moved. He said he did not see any obstruction or uniqueness to the lot that precluded them from being moved slightly to meet the minimum requirements. He said he could not support the approval of those two items. With respect to the addition, Mr. Hart said he would be more comfortable with a deferral to see if the proposed Zoning Ordinance amendment would eventually allow the addition without Standard 1B because there was no immediate crisis and only a vague complaint that Zoning Enforcement was not aggressively pursuing.

Mr. Beard commented that he could support Mr. Hart's amendment, but because the applicant intended at some point to get a permit, that resolved the Standard 1B issue in his mind. He said he intended to support the motion and preferred not to support a deferral.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARNOLD S. CORRADINO, SP 2005-PR-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit a reduction to minimum yard requirements based on errors in building locations to permit addition to remain 8.0 ft. from one side lot line and 8.1 ft. from other side lot line, stoop to remain 3.7 ft., deck (patio) 3.4 ft. and accessory structure (play equipment) 4.0 ft. from side lot line and accessory storage structure to remain 3.7 ft. from side and 4.1 ft. from rear lot lines. Located at 2843 West George Mason Rd. on approx. 6,250 sq. ft. of land zoned R-4. Providencia District. Tax Map 50-4 ((4)) 132. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 20, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There is reason to believe, as most people in Fairfax County do, that when someone does say they are licensed, they are licensed.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the locations of the structures, as shown on the plat prepared by Zigler & Payne, Surveying-Engineering, dated October 18, 2004, as revised through June 28, 2005, submitted with this application and is not transferable to other land.
2. Building permits and final inspections shall be diligently pursued within 30 days and obtained within 90 days of final approval or this Special Permit shall be null & void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 5-1-1. Mr. Hart voted against the motion. Mr. Hammack abstained from the vote.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:00 A.M. HOSSEIN FATTAHI, VC 2004-PR-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.5 ft. from side lot line. Located at 6723 Litwalton Ct. on approx. 13,789 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 5A. (Decision deferred from 5/25/04, 7/20/04, 1/25/05, and 5/3/05)

Susan Langdon, Chief, Special Permit and Variance Branch, advised the Board that the applicant had requested a deferral to February 7, 2006.

Mr. Hammack moved to defer decision on VC 2004-PR-037 to February 7, 2006, at 9:00 a.m., at the applicant's request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-050 previously approved for a church to permit a correction in building height. Located at 6363 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110.

Chairman DiGiulian noted that SPA 98-M-050 had been administratively moved to November 8, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. BATAL CORBIN, LLC, A 2005-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of the order contained in a February 10, 2005, Notice of Violation directing the appellant to immediately cease all development activities until such time as legislative action is secured from the Board of Supervisors to resolve the violation. Located at 2346 Gallows Rd. on approx. 7.69 ac. of land zoned R-2. Providence District. Tax Map 39-4 ((1)) 26. (Admin. moved from 6/7/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-007 had been administratively moved to November 8, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. BAUGHMAN AT SPRING HILL, LLC, A 2004-DR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, and 6/28/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-040 had been administratively moved to December 20, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. HOLLADAY PROPERTY SERVICES, INC., A 2004-DR-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 96-D-142 and Zoning Ordinance provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, and 6/28/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-042 had been administratively moved to December 20, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. NVR, INC., A 2004-DR-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is required to construct a noise wall in accordance with Condition 6 of Special Exception Amendment SEA 98-D-023 and Condition 2 of Variance VC 98-D-142 and Zoning Ordinance Provisions. Located at 8315 Turning Leaf La. on approx. 7.72 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((20)) A. (Admin. moved from 2/1/05, 5/17/05, and 6/28/05 at appl. req.)

Chairman DiGiulian noted that A 2004-DR-041 had been administratively moved to December 20, 2005, at 9:30 a.m., at the appellant's request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. JOHN L. MORRIS, A 2005-BR-032 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing outdoor storage on the property, which exceeds allowable total area, in violation of Zoning Ordinance provisions. Located at 6021 Greeley Bv. on approx. 11,452 sq. ft. of land zoned PRC. Braddock District. Tax Map 79-4 ((7)) 58.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that the appellant had requested that the appeal be withdrawn as the violation had been cleared.

Mr. Byers asked how the violation had been cleared. Ms. Stanfield responded that the appellant had removed the outdoor storage, and all that remained were a couple of permitted sheds.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. RONALD AND LETA DEANGELIS, A 2003-SP-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 21.83 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A, 17B and 17C. (Concurrent with A 2003-SP-003 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, and 7/26/05 at appl. req.)

9:30 A.M. ROBERT DEANGELIS, A 2003-SP-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17A. (Concurrent with A 2003-SP-002 and A 2003-SP-004). (Intent to defer from 6-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, and 7/26/05 at appl. req.)

9:30 A.M. GEORGE HINNANT, A 2003-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is conducting activities associated with the plant nursery operation on property located in the R-1 and R-2 District that have not been authorized pursuant to special exception approval, an approved site plan, an approved Building Permit and a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 9401 Burke Rd. on approx. 7.65 ac. of land zoned R-1 and R-2. Springfield District. Tax Map 78-4 ((1)) 17B. (Concurrent with A 2003-SP-002 and A 2003-SP-003). (Intent to defer from 8-17-03 approved 5-6-03) (moved from 7-15-03, 10/21/03, 12/9/03, 1/27/04, 2/17/04, 3/23/04, 5/11/04, 10/26/04, 3/1/05, 4/12/05, and 7/26/05 at appl. req.)

Chairman DiGiulian noted that A 2003-SP-002, A 2003-SP-003, and A 2003-SP-004 had been administratively moved to November 29, 2005, at 9:30 a.m., at the appellants' request.

//

~ ~ ~ September 20, 2005, Scheduled case of:

9:30 A.M. ANTOINE S. KHOURY AND MRS. HIAM H. KHOURY, A 2004-MA-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have paved a portion of the front yard on property located in the R-4 District in excess of the allowable surface coverage under Zoning Ordinance provisions. Located at 7381 Rodeo Ct. on approx. 16,703 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((53)) 4. (Deferred from 4/19/05, 6/7/05, and 7/26/05 at appl. req.)

Ms. Gibb indicated that she would recuse herself from the public hearing.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, advised the Board that the excess pavement had been removed from the front yard. She said an inspector had visited the site the evening before the hearing and verified that there was currently less than 30 percent paving. She stated that the violation had been cleared, but the appellants had not had time to submit a letter requesting the appeal be withdrawn, although they would be willing to do so, or the Board could dismiss the appeal.

David Moretti, the appellants' agent, confirmed that the violation had been corrected by the removal of the concrete paving. He said he would be happy to entertain the Board's dismissal of the appeal or he had a

letter he would provide requesting the withdrawal of the appeal. It was decided the letter would be submitted, and no motion was made.

//

~ ~ ~ September 20, 2005, After Agenda Item:

Approval of the Board of Zoning Appeals Meeting Dates for 2006
(Deferred from 8/9/05 and 9/13/05)

Mr. Ribble moved to defer the approval of the Board of Zoning Appeals meeting dates to September 27, 2005. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ September 20, 2005, After Agenda Item:

Approval of November 4, 2003; November 18, 2003; December 2, 2003;
January 20, 2004; June 15, 2004; and June 14, 2005 Minutes
(Deferred from 9/13/05)

Mr. Hart moved to defer the approval of the January 20, 2004 Minutes for 30 days. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

Mr. Beard moved to approve the November 4, 2003; November 18, 2003; December 2, 2003; June 15, 2004; and June 14, 2005 Minutes. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ September 20, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Charles F. and Anita S. Cauley

Mr. Hart asked why the appellants filed the appeal two days late or whether the reason had been articulated, to which Ms. Stanfield indicated she did not know nor had she been told the reason.

Mr. Hart asked whether the appellants knew the item was being addressed at the meeting. Ms. Stanfield replied that she did not believe so.

Mr. Hart stated that he had made the motion at the prior meeting to defer the item, and he thought he asked that people be told that the items from the prior meeting would be finished at the next meeting. Ms. Stanfield stated that there had been no one present at the prior meeting for the item, and she had misunderstood Mr. Hart's request.

Mr. Hart moved to defer the consideration of acceptance of the application for the appeal filed by Charles F. and Anita S. Cauley to September 27, 2005, and he requested that the Zoning Administrator advise the appellants that the item had been deferred to that date. Mr. Ribble seconded the motion.

Mr. Hammack indicated he would support the motion. He noted that the memorandum to the Board showed that it went to the appellants, but did not inform them of their right to come and address the Board. He said they might feel their appeal had been timely filed.

In reference to the last paragraph in the memorandum to the Board, Mr. Byers noted that it did say the appellants had been notified of staff's recommendation that the appeal not be accepted and they had been advised that would be given an opportunity to respond to the position when the BZA considered acceptance of the appeal as an after action item on September 13, 2005. He asked whether it was correct that the appellants had not contacted staff, to which Ms. Stanfield replied that was correct.

Mr. Byers said he was concerned that the appellants and the Zoning Administrator had agreed that the

consent decree would serve as the notice of violation for the fence, and the appellants had until August 13, 2005. He said that although the Board wanted to be fair, there was some responsibility that should be born by the appellants. He noted that the appeal was filed two days late, did not include the required number of copies, the correct filing fee, or a copy of the consent decree, and did not indicate the nature of the appeal. He referenced that to date the unlawful storage shed and fence remained on the property in violation of the Zoning Ordinance and the consent decree, which was a judicial order.

Mr. Hammack stated that the memorandum was dated September 13th and said he did not see how the appellants could have received the memorandum before the meeting. Mr. Hart stated that the Board had received the memorandum the morning of the September 13th meeting. He said the appellants should be told that their whole case could be thrown out and advised of the time that the Board was going to vote on the issue so they could come in.

Chairman DiGiulian called for the vote, and the motion carried by a vote of 7-0.

//

~ ~ ~ September 20, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Charlie C. Hwang,
John Hwang, and Brothers Construction Co., Inc.

Mr. Hart indicated the after agenda item should be deferred for one week to ensure the appellants knew when the Board would be addressing the issue.

Mr. Hammack noted that the memorandum indicated that Stan Press, the attorney for the appellants, had been notified of staff's recommendations and had been advised that he would be given the opportunity to respond to the position on September 13th. Mr. Hammack asked if that was a known fact. Ms. Stanfield stated that she did not speak with the agent, but Joe Bakos, Zoning Enforcement Branch, had spoken with him.

Mr. Hart moved to defer the consideration of acceptance of the application for the appeal filed by Charlie C. Hwang, John Hwang, and Brothers Construction Co., Inc., to September 27, 2005, and he requested that staff advise the appellants' agent that the item had been deferred to that date. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack noted that letters dated September 21, 2005, over the deputy clerk's signature advising individuals of the BZA's decisions had been included in the after agenda items, and he asked whether they would be mailed on September 21, 2005. Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the letters had been dated after the eight-day waiting period, as had been done in the past, and would be sent on September 21, 2005.

Mr. Hammack stated that the procedure would have to be changed. Ms. Langdon said that staff had a discussion with the Chairman prior to the meeting regarding what needed to be done.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the West Lewinsville, Demetriou, McCarthy, Lee, Lancaster Landscapes, Lake Braddock Community Association, Bristow Shopping Center, Smith, and Antioch Baptist Church cases; correspondence with the County Executive; litigation and potential litigation matters; and the BZA's by-laws; pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart and Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 10:03 a.m. and reconvened at 12:23 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard,

discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

Mr. Hart moved that the Board authorize Brian McCormack to take the actions discussed in the closed session. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

Mr. Hart moved that the Board hire Brian McCormack regarding the McCarthy case. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

Mr. Hart moved that the Board authorize Chairman DiGiulian to send the correspondence discussed by the Board in closed session. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

Mr. Hart moved that the Board authorize Ms. Gibb to send the letter to the County Executive discussed by the Board in closed session. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

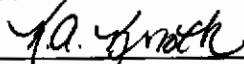
Chairman DiGiulian appointed Mr. Byers to work with the committee that was working on the Zoning Ordinance amendments.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Kathleen A. Knoth

Approved on: October 25, 2005



Kathleen A. Knoth, Clerk
Board of Zoning Appeals



John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 27, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ September 27, 2005, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, LLC, SP 2005-MV-029 Appl. under Sect(s) 8-919 of the Zoning Ordinance to permit noise barrier height increase. Located at Laurel Highlands W. of I-95 and E. of Furey Rd. on approx. 1.35 ac. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) F1 pt. and G pt.

Chairman DiGiulian noted there was a deferral request on behalf of the applicant to October 25, 2005.

Mr. Beard moved to defer SP 2005-MV-029 to October 25, 2005, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 4-0. Ms. Gibb, Mr. Ribble, and Mr. Hammack were not present for the vote.

//

Barbara Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning, was present to discuss the recent Lewinsville Park case in which the Supreme Court decided that a decision was final on the date the Board of Zoning Appeals took action and not after eight days as was the present policy. The change would be implemented by staff who would now bring the Resolutions to the BZA for their information at the following week's meeting. This would allow an opportunity for the BZA to reconsider their decision if they desired and a new public hearing scheduled for that case. On cases that the BZA was not comfortable making a decision on the hearing date, staff suggested that it be deferred.

Ms. Byron said she was working with Bill Shoup on approved special permits or variances which were approved with a time period, but had not yet been implemented. The letters gave a final approval date of the eight days after the hearing date. These people would be contacted and told they did not have the additional week and that they either needed to implement their special permit or variance a week earlier or ask for additional time.

Mr. Hart asked if the BZA was allowed to reconsider at the next meeting when the by laws specifically referred to the 8-day waiting period. He said the by laws needed to be fixed.

Ms. Byron answered that she hoped that the by-laws would be updated, and noted that some of them had not been followed; for example there would be one night meeting per month and there had not been one for several years. Ms. Byron said she was aware that there were discrepancies between Roberts Rule of Order, meaning procedures, and the by laws.

Mr. Beard asked if the additional time was retroactive.

Ms. Byron answered that it was retroactive to the citizens who had been approved prior to now, but were not yet established, so there needed to be a way to not harm those people.

James Zook, Director, Department of Planning and Zoning, stated the intent of notification was to serve the public and those that had been previously approved and staff wanted to avoid citizens inadvertently having their permit expire because they were using the date of the official decision.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that in the past resolutions for only special permits and variances were brought to the BZA the following week and not for the appeals. The appeal letters would be included in the packet as well as an information item.

Mr. Hart asked why the appeal letters were not seen by the BZA prior to mailing them each week.

Bill Shoup, Zoning Administrator, Zoning Administration Division, explained that it was a practice that was started awhile back and there had never been resolutions for appeals.

Mr. Hart asked if there was any other correspondence that went out regarding the BZA's decision without the BZA review.

Ms. Byron answered that there was a letter sent as to whether the BZA had granted a reconsideration or not.

Mr. Hart said he thought the Board should see these as well.

Chairman DiGiulian said he wanted to see the letters prior to mailing.

Mr. Zook suggested that the BZA review them until such time as the BZA does not deem it necessary. Mr. Zook said he viewed the letters as fairly perfunctory and that they just simply stated the facts.

Mr. Byers said that if there were something substantive in the letters that could become a legal issue or an interpretation was necessary, then they should be reviewed; but the letters essentially said whether the application had been approved, and he agreed with Mr. Zook that they were administrative and perfunctory. He said he did not know what the BZA would be reviewing.

Mr. Hart clarified that he had been referring to letters regarding appeals.

Ms. Byren said that they would forward the letters until the BZA had gotten to a level of comfort and then Ms. Langdon would revisit the subject with the BZA again.

Mr. Hammack said he agreed with Mr. Zook.

Ms. Gibb said she wanted to see the letters to avoid what had happened a year ago where the initial letter said the BZA was overturning the Zoning Administrator and then a second letter was subsequently sent stating it was a decision of DPWES and the case then went to court.

//

~ ~ ~ September 27, 2005, Scheduled case of:

9:30 A.M. STEPHEN T. SMITH, A 2005-MA-033 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established an office use on property in the R-3 District and is allowing outdoor storage on the property, all in violation of Zoning Ordinance provisions. Located at 3908 Braddock Rd. on approx. 10,560 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-3 ((7)) (E) 3.

Chairman DiGiulian noted that A 2005-MA-033 had been withdrawn at the applicant's request.

//

~ ~ ~ September 27, 2005, Scheduled case of:

9:30 A.M. GAGIK VARTANIAN, A 2005-PR-034 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8 and HC. Providence District. Tax Map 50-3 ((15)) A5.

Gagik Vartanian, 2842 Stuart Drive, Falls Church, Virginia, came forward to state his name and address for the record.

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. The subject property was zoned C-8, which did not permit a storage yard under any circumstances in violation of Paragraph 5 of Section 2-302 of the Zoning Ordinance. It could not be considered an accessory use.

The appellant presented the arguments forming the basis for the appeal. Mr. Vartanian distributed photographs to the BZA. Mr. Vartanian went through each of the violations. He said the bobcat was there for his personal use. He said there was nothing that specified how many cars could be parked on the subject property or how many he could look at per day.

Mr. Hart asked how many of the cars on the site had dead tags. Mr. Vartanian answered two or three that may be dealer cars or someone that did not pay him.

Mike Congleton, Zoning Enforcement Branch, said the Zoning Ordinance allowed for 250 square feet of outside storage without a site plan, provided it was accessory to the principle use. Mr. Congleton said in this case it was an accumulation of outside storage, junk cars, cars with dead tags, parts on the ground, and, therefore, the use that the appellant had created was a storage yard which was not a permitted use in the C-8 district.

Mr. Hammack asked about the 11 parking spaces on the plat. Mr. Congleton responded that they could be used by 11 customers or clients, not for the storage of vehicles, equipment or junk. Mavis Stanfield explained further that the storage of vehicles would be cars with expired tags that were stored there for months. Mr. Congleton added that a vehicle would be permitted to use a parking space while under repair for an alternator or battery. The site was a business and supply service establishment that would service up to three automobiles per day for alternators and generators. The storage of an inoperable junk vehicle constituted a storage yard. They met the definition of inoperable junk vehicle if they did not have tags. There had been vehicles staying there for extended periods without tags and not actively being worked on.

Mike Adams, Senior Zoning Inspector, Zoning Enforcement Branch, said he had been out to the property prior to the notice of violation being issued and found two thirds of the vehicles had dead tags for two to three months. The State Code defined vehicles with dead tags as being an inoperable vehicle.

Mr. Byers inquired as to how many site inspections there had been by Mr. Adams. Mr. Adams answered there had been five from March to May. He established that 12 of the 25 cars had either no tags or expired tags.

Zaki Bengo, 71118 Mint Place, Alexandria, Virginia, came forward to speak in support of the application. Mr. Vartanian helped him learn how to drive a postal truck.

Brenda Keith, 3113 Beachwood Lane, Falls Church, Virginia, came forward to speak in support of the application. She had her 1984 pick-up truck worked on by Mr. Vartanian. There had been starter and alternator problems that he worked on. The truck had sat there for weeks while her husband was traveling.

Amin Arman (phonetic), 2808 Lee Oaks Place, Falls Church, Virginia, came forward to speak in support of the application. Mr. Arman said he had known Mr. Vartanian since 1997. Mr. Arman was a used car salesman and brought Mr. Vartanian about two to three cars per week to work on. He showed photographs to the Board and described the work that was performed on the cars. He said that most cars stayed for five to six days while getting repaired, and sometimes longer.

Tina Wical, 2844 Stuart Drive, Falls Church, Virginia, came forward to speak in opposition to the application. Ms. Wical said her house was located next to Crank and Charge, Mr. Vartanian's business for 9 years. She said she would call Zoning regarding his clutter. His employees parked in front of her house. Ms. Wical said Mr. Vartanian stored some items on top of his roof, such as tires, mufflers, and front ends.

Mr. Congleton stated that three cars would be allowed to be worked on per day as an accessory use to a business service and supply service establishment. The appellant had greatly expanded the business to 12 to 25 vehicles per day parked on the site, some operable and some inoperable. There was also other types of material stored on the site; based on this it was determined to be a storage yard use and was not accessory to the business service and supply service establishment use. However, if the BZA felt that it remained a business service and supply use and it could have an unlimited number of vehicles on the site, the BZA needed to state that for their guidance. If the BZA felt that it was no longer a business service and supply service use, as the use appeared to have expanded greatly, that it may be considered a vehicle light service establishment use, based on the nature of the use and the amount of equipment stored on site and the amount of vehicles.

Mr. Vartanian rebutted that it was not a vehicle light service establishment. He also said Ms. Wical's complaints were baseless and went on to explain that she had purchased her house knowing that his business was there.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. He said that the evidence supported the notice of violation and the photographs were very persuasive that it was used as a storage yard. Mr. Byers seconded the motion.

Mr. Hart said he would support the motion and said that the Ordinance needed some clarity in regard to the storage of vehicles in a parking lot. Mr. Hart said he did not think that the use was ever a business service and supply use establishment. He thought it was the Zoning Administrator that started this in 1996 and not the BZA. Mr. Hart said he viewed it as a vehicle repair establishment. The definition of a storage yard was broad enough to include the use of the outdoor space for the storage of vehicles. The activity that had occurred there fell within the definition of a storage yard.

Mr. Beard said he would support the motion with the understanding that the appellant needed to clean things up.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

//

~ ~ ~ September 27, 2005, Scheduled case of:

9:30 A.M. IKHMAYYES J. JARIRI, A 2005-MA-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory storage structure, which exceeds eight and one-half feet in height and which does not comply with the minimum yard requirements for the R-3 District, without a valid Building Permit, in violation of Zoning Ordinance provisions. Located at 3513 Washington Dr. on approx. 15,411 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (F) 502.

Chairman DiGiulian noted that A 2005-MA-035 had been administratively withdrawn.

//

~ ~ ~ September 27, 2005, Scheduled case of:

9:30 A.M. A-1 SOLAR CONTROL, A 2005-DR-012 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 6/14/05 and 7/19/05)

9:30 A.M. CHARLES A. LANARAS, A 2005-DR-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant must obtain site plan approval and complete construction of all required improvements in accordance with Special Exception SE 2002-DR-011 prior to issuance of a Non-Residential Use Permit. Located at 10510 Leesburg Pi. on approx. 28,555 sq. ft. of land zoned C-5. Dranesville District. Tax Map 12-4 ((1)) 55. (Decision deferred from 6/14/05 and 7/19/05)

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. Staff recommended that the appeal be dismissed because the appellants were operating a vehicle lights service establishment in the C-5 District without an approval of the special exception.

Charles Lanaras, 701 Cliff Spring Road, Great Falls, Virginia, the appellant presented the arguments forming the basis for the appeal. They had been issued a special occupancy permit by the County and now the County wanted it revoked. He disagreed with the staff report and said he was appealing the reversal of Zoning Administrator's position and was not dealing with the special exception. Mr. Lanaras said he operated in good faith and in plain view.

Mr. Hammack asked if Mr. Lanaras had any legal authority that said that the 60-day rule applied in their case. Mr. Lanaras responded that that was what he was debating.

Mr. Hammack asked if he had completed the improvements required by the special exception. Mr. Lanaras answered that he had not.

Mr. Byers asked about the additional time requested for the special exception. Ms. Tsai answered that the Board of Supervisors denied the request for additional time for the special exception.

Mike Congleton, Zoning Enforcement Branch, Zoning Administration Division, said based on the action of the Board of Supervisors the prior day, the Zoning Enforcement Branch was withdrawing the existing notice of violation because the statutes did not apply and a new notice would be issued within the week because there was no valid special exception for the use on the site. The appeal that was filed was with regard to the use of the property with the special exception without the improvements, but that issue was moot because there was no special exception.

There application was, therefore, administratively withdrawn.

//

~ ~ ~ September 27, 2005, Scheduled case of:

9:30 A.M. JOHN NASSIKAS, A 2005-DR-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 6115 Ramshorn Pl. on approx. 1.4 ac. of land zoned R-2. Dranesville District. Tax Map 31-2 ((5)) A. (Deferred from 7/26/05)

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. The deed stated that both the 10 and 18 foot outlet roads were conveyed to the appellant. The appellant's fence in the front yard was 7 feet in height and would not benefit from the pending Zoning Ordinance amendment. Therefore, staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's finding that a fence in excess of 4 feet in height located in the front yard of subject property was in violation of Zoning Ordinance provisions.

Mr. Hart remarked that he thought the case had been deferred in order that a corrected violation letter be sent because it only referred to parcel A. Mavis Stanfield, Deputy Zoning Administrator for Appeals, responded that the violation was on parcel A only.

Mr. Hart said the fence that was in violation extended to the south of parcel A which was the neighbor's complaint. Bruce Miller, Zoning Inspector, Zoning Enforcement Branch, answered that he was the author of the notice of violation. The notice of violation included the strip of land which was the 10 foot outlet road, recorded in the deed book as 119391622, which was referenced in the legal description.

Mr. Nassikas said Supervisor DuBois's office had indicated to him that the pending Zoning Ordinance amendment could lead to a solution so in the meantime he would preserve the 7 foot fence. If the final language did not allow the 7 foot fence to remain, he would reduce it. He said there was not any dispute that the ownership of the outlet road was part of the farmhouse he purchased four years ago.

Ms. Gibb asked whether the 7 foot was under the currently proposed Zoning Ordinance amendment for the front yard requirement. Ms. Stanfield answered that it was her understanding that it was based on the previous ordinance amendment that was proposed for 6 feet. Mr. Hart added that the pending Zoning Ordinance was to be 4 to 6 feet in a front yard.

Mr. Hammack asked if the fence was on Mr. Nassikas' property. Mr. Nassikas confirmed that it was and remarked that 150 feet of the 200-foot fence that he built was in the front yard of his farmhouse and the backyard of the complaining neighbor. The rest of the fence, according to staff could remain at the 7 feet. He did not want to waste time and resources to reduce the fence to 6 feet if the pending outcome was that a 7 foot fence was allowed.

Bruce Miller explained that the outlet road was separate, but was connected via the deed book, and had been historically part of parcel A. An accessory structure were permitted on that parcel, however they are limited by the location and height regulation set forth in Article 10.

Chairman DiGiulian called for speakers.

Doug Sheeran, 1227 Somerset Drive, McLean, Virginia, came forward to speak. He measured the fence at 7 feet, 10 inches; 2 inches from being 8 feet. He said it destroyed his view. He submitted a petition with all the neighbors along the fence requesting that the fence be lowered to 4 feet.

Mr. Hammack recommended deferral in order to get additional information concerning the application of the Ordinance to the parcel of land that was outside parcel A.

Mr. Hammack moved defer decision on A 2005-DR-022 to October 25, 2005, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 27, 2005, After Agenda Item:

Approval of November 25, 2003;
January 6, 2004; and February 10, 2004 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 27, 2005, After Agenda Item:

Board of Zoning Appeals Meeting Dates for 2006
Memorandum Dated August 1, 2005, from Kathleen A. Knoth
(Deferred from 8/9/05, 9/13/05, and 9/20/05)

Mr. Hammaok moved to approve the meeting dates with the following deletions: January 17, 2006, February 21, 2006, May 30, 2006, October 10, 2006, and November 21, 2006; the Board would keep August 15, 2006 for an as needed meeting. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ September 27, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Charles F. and Anita S. Cauley
(Deferred from 9/13/05 and 9/20/05)

Mr. Hart moved to not accept the appeal. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ September 27, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Charlie C. Hwang, John Hwang, and Brothers Construction Co. Inc.
(Deferred from 9/13/05 and 9/20/05)

Mr. Hart moved to not accept the appeal. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

Mr. Hammaok moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Lane Toomey, Wes Lewinsville Heights, Lake Braddock Community Association versus Board of Zoning Appeals, BZA, Demetriou, Smith versus BZA, McCarthy, and correspondence with the county executive, or probable litigation related to those properties pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

The meeting recessed at 12:01 p.m. and reorvened at 1:11 p.m.

Mr. Hammack then moved that the Board of Zoning Appoals cartify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

Mr. Hammack moved to request staff to fax correspondence that was formerly sent to Chairman DiGiulian and Mr. Hammack to all Board members. Mr. Ribble seconded the motion, which oarried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:12 p.m.

Minutes by: Vanessa A. Bergh

Approved on: September 19, 2006

K.A. Knoth
Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III
John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 11, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. John F. Ribble III was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 11, 2005, Scheduled case of:

9:00 A.M. DEBORAH R. LAPPAT, SP 2005-SP-030 Appl. under Sect(s). 8-914 and 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals and reduction to minimum yard requirements based on error in building locations to permit accessory storage structure to remain 1.1 ft. from rear lot line and deck to remain such that side yards total 22.70 ft. Located at 6609 Greenview La. on approx. 13,941 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 39-1 ((6)) 67.

Chairman DiGiulian announced the case, then made a disclosure, and recused himself. Vice Chairman Hammack assumed the Chair, called the applicant to the podium, and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Deborah R. Lappat, 6609 Greenview Lane, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit a modification to the limitation on the keeping of animals to permit the keeping of five dogs. Four dogs were permitted by right, and a lot of 20,000 square feet is required to permit the keeping of five or six dogs.

The applicant also requested approval to permit a reduction to the minimum yard requirements based on an error in building location to permit an accessory storage structure 11 feet in height to remain 1.1 feet from the rear lot line and a deck to remain such that side yards total 22.70 feet. A minimum rear yard of 11 feet for the accessory storage structure is required; therefore a modification of 9.9 feet was requested. A minimum total side yards of 24 feet is required; therefore, a modification of 1.3 feet was requested.

In response to Mr. Hart's question concerning the subject parcel's yard that faced Rolling Road, Ms. Hedrick explained that it had been determined through the zoning inspection process that Rolling Road was considered a major thoroughfare, and because of that and the fact that the property had another front yard, the applicant was permitted to maintain the side yard that had the shed as the rear yard. She clarified that the fence was not being considered although it did lie partially within the right-of-way.

Ms. Lappat presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she currently owned five dogs; two additional dogs were returned to the breeder in July; and, her three Scottish Terriers were mature and the two Rhodesian Ridgebacks were young, one still a puppy. She noted that both the shed and the deck were pre-existing when she bought the property. In response to Mr. Hart's question of whether the large shed could be moved, she said it would be very difficult, but it would be moved when Rolling Road was widened if necessary. She said that the shed had electricity.

In response to Mr. Hart's question regarding necessary inspections, Ms. Hedrick said that because of the shed's size, it did not require a building permit, but an electrical inspection was necessary. She said staff could add a development condition to address the electrical permit issue if requested.

In response to a comment from Mr. Beard, Ms. Lappat acknowledged that one of the development conditions would stipulate that after the loss of a dog, none could be replaced and that no more than four dogs would be permitted.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

At Mr. Byers' request, Ms. Hedrick explained to Ms. Lappat that staff would include a development condition stipulating that she be required to obtain, within 30 days, an administrative approval through the Zoning Evaluation office for a ten percent or less reduction to her side yards.

Mr. Byers moved to approve SP 2005-SP-030 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH R. LAPPAT, SP 2005-SP-030 Appl. under Sect(s). 8-914 and 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals and reduction to minimum yard requirements based on error in building locations to permit accessory storage structure to remain 1.1 ft. from rear lot line and deck to remain such that side yards total 22.70 ft. Located at 6609 Greenview La. on approx. 13,941 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((6)) 57. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 11, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has determined that it will permit the modification on the keeping of animals to permit the keeping of four adult dogs and one puppy.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit to permit modification on the limitation on the keeping of animals' approval is granted to the applicant only, Deborah R. Lappat, and is not transferable without further action of this Board, and is for the location indicated on the application, 6609 Greenview Lane (13,941 square feet) and is not transferable to other land.
2. This Special Permit is approved for the location of the structure, as shown on the plat prepared by DiGiulian Associates, PC, Land Surveyors, dated June 26, 1997 as revised through July 15, 2005, submitted with this application and is not transferable to other land.
3. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
4. This approval shall be for the applicant's existing five (5) dogs. If any of these specific animals die or are given away, the dogs shall not be replaced, except that four (4) dogs may be kept on the property in accordance with the Zoning Ordinance.
5. The yard areas where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
6. An electrical permit shall be diligently pursued within 30 days, and obtained within 90 days, of final approval of this application for the accessory storage structure or this Special Permit shall be null and void.
7. A 10% administrative reduction shall be obtained from the Department of Planning and Zoning for the deck to remain such that side yards total 22.70 feet within 30 days of final approval of this application or this Special Permit shall be null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards

Mr. Beard seconded the motion, which carried by a vote of 4-0-1. Mr. Ribble abstained from the vote. Chairman DiGiulian recused himself. Ms. Gibb was not present for the vote.

//

Chairman DiGiulian resumed the Chair.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 7.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05, 4/26/05, and 6/28/05)

Chairman DiGiulian noted that a request to defer the decision on SP 2004-SP-052 to November 1, 2005, had been received.

Chairman DiGiulian called for speakers to address the issue of the decision deferral request; there was no response.

In response to Mr. Hart's question of whether the advertisement for the November deferral date would require editing, Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant had submitted an amendment that did include new acreage and the request was slightly different; therefore, re-advertising and a new public hearing was required. She noted that the applicant's new submission had not yet been accepted, and it would be difficult for staff to meet the November 1st re-advertisement date, but staff was trying to accommodate the applicant's request. Ms. Langdon stated that there was a good possibility that the November 1st deferral date may have to be further moved and the possibility that the applicant may choose not to pursue the amended application and go forward with the present one, which was the situation

in which staff was working, and until further details arose, staff could not predict the next action.

Mr. Hammack moved to defer decision on SP 2004-SP-052 to November 1, 2005. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION, INC./ FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 91-P-077 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 91-P-077 previously approved for a community swim club to permit the parking of Fairfax County school buses. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7.

Chairman DiGiulian noted that SPA 91-P-077 had been administratively moved to October 25, 2005, at the applicant's request.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05)

Chairman DiGiulian noted that SPA 75-S-177 had been deferred for decision from September 13, 2005.

Mr. Ribble said he was not present for the public hearing, that he had reviewed the video, that he spoke with church officials and neighbors, and that he particularly hoped to speak to Sylvester Berdux. He said the parking lot restrictions may not be within the BZA's purview, that he had questions about the resubdivision, that he wanted to see the deed to the church, that there were issues concerning the traffic generation studies that prompted further clarification, and that he wanted information on the church's tradition regarding the columbarium. Mr. Ribble moved to defer decision on SPA 75-S-177 to October 25, 2005, at 9:00 a.m.

Lynne Strobel, Esquire, the applicant's agent, Walsh, Colulcci, et al., 2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia, said she would make herself available to the Board.

Mr. Hart said some public testimony he reviewed prompted several questions that he would voice to staff and the applicant so that each could provide a response at the deferral date. He said he thought the request that construction traffic not be routed over the substandard roads was reasonable, and staff and the applicant should consider it. He noted that the original subdivision plat restricted certain lots from having driveway access to Old Mill Road, and asked that the grantor be identified. Mr. Hart said, if available, he wanted further information regarding the 50-foot conservation easement, suggesting that, since the time of the subdivision plat's reordination, further research be done to ascertain whether there was an earlier instrument or some historical reason pertaining to that easement.

Referencing photographs that evidenced street parking during one of the church's functions, Mr. Hammack asked Ms. Strobel to provide information on that matter.

Mr. Byers stated that all the e-mails submitted to staff were provided to the Board members, and the Board was well aware of the neighbors' comments. He said the Board had information regarding the current transportation issues, but he was concerned about what would happen in the future, such as other military facilities being closed and the impact the base realignment would have on the Fort Belvoir area. He requested any information that addressed future traffic impact on the neighborhoods in the area.

Ms. Langdon reminded the Board that it would not meet the following Tuesday; therefore, there would be less time to prepare the Board's package containing the requested information and less time for the Board to review it.

Mr. Ribble moved to amend his motion to defer decision on SPA 75-S-177 to November 1, 2005, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

Kevin O'Meara came forward to speak, identified himself as one of the neighbors affected by the church's proposal, and requested that the homeowners be allowed to submit comments regarding the same questions that were posed to the applicant's representative. Chairman DiGiulian said the Board would accept citizen comments regarding the questions asked.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. CARROLL J. HALL (CJ'S TOWING INC.), A 2005-LE-014 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5400 Oakwood Rd. on approx. 16,258 sq. ft. of land zoned I-I. Lee District. Tax Map 81-2 ((3)) 36B. (Decision deferred from 8/2/05)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that A 2005-LE-014 had been deferred for decision for the appellant to provide documentation on the possible sale of the property.

Chairman DiGiulian was informed by a member of the audience, Gene Pettit (phonetic), that Mr. Hall was delayed, but was expected. Chairman DiGiulian said the Board would return to A 2005-LE-014 later in the meeting.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. CURTIS A. AND BEULAH M. CRABTREE, A 2004-SP-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are allowing the parking of four commercial vehicles on property in the R-C District in violation of Zoning Ordinance provisions. Located at 5401 Ruby Dr. on approx. 21,780 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 17. (Deferred from 5/11/04 for notices.) (Decision deferred from 7/20/04, 9/14/04, 9/28/04, 11/9/04, 12/14/04, and 4/5/05)

Kay Phillips identified herself as the wife of the agent representing the Crabtrees and requested a brief deferral on her husband's behalf. She stated that Mr. Phillips was not present because he was arguing a case before the Supreme Court that morning that concerned toxic mold.

In response to Mr. Hammack's question concerning any progress made regarding the cleanup of the yard, Elizabeth Perry, Zoning Administration Division, said there were reports from the neighbors that no changes had taken place.

Chairman DiGiulian called for speakers to address the issue of the decision deferral request; there was no response.

Mr. Beard moved to defer decision on A 2004-SP-004 to November 29, 2005, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. CARROLL J. HALL (CJ'S TOWING INC.), A 2005-LE-014 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and

storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5400 Oakwood Rd. on approx. 16,258 sq. ft. of land zonod I-I. Lee District. Tax Map 81-2 ((3)) 36B. (Decision deferred from 8/2/05)

Gene Pettit, no address given, came forward to speak and identified himself as a personal friend and representative of the appellant. He said his discussions with KSI Land Development informed him that the company was preparing a development plan for office facilities at the end of Oakwood Road, and construction was projected to commence in 2007. He said the road, which was full of potholes and ruts, would be the primary access to the site. Mr. Pettit requested that the appellant be allowed to continue his towing business until February of 2007, thereby fulfilling contracts, and then the appellant planned to sell the property and retire.

In response to Mr. Byers' question, Mr. Pettit conceded that since 1989 the appellant had been in violation of the Zoning Ordinance. He said the appellant had dropped his past requests for rezoning. Mr. Pettit agreed with Mr. Byers' statement that basically the Board was being asked to be complicit in an illegal operation until February of 2007. Mr. Pettit said the business had been operating for 18 years, and the change would be a hardship on the appellant which would put him out of business. He said the appellant was a hard worker who provided a good service to his clients and allowing him to continue for a year or so would not be a terrible hardship. Addressing the reference in the staff report to oil dripping onto the ground from parked cars, Mr. Pettit suggested limiting the number of parked vehicles.

In response to Mr. Beard's question of what was the next step in the process, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said if the Zoning Administrator's determination was upheld, Zoning Enforcement would take the case to court. She concurred with his statement that the reality of this situation was that it would take a while getting through the court system.

In response to Ms. Gibbs' question, Mr. Pettit said that KSI expressed an interest in purchasing the appellant's property at a later date, but presently there was no purchase contract.

Referencing his earlier statement, Mr. Beard asked Mr. Pettit if he understood the ramifications of the County proceeding with enforcement if the appellant was not successful with the appeal. Mr. Pettit said that if the cars were removed, there would be no enforcement, and the appellant could still own the land. Mr. Beard asked whether the appellant had an attorney, and Mr. Pettit replied no. Mr. Beard suggested the appellant consider getting an attorney. Mr. Pettit said that the appellant would certainly get an attorney if there was a court action.

Chairman DiOjulian closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said he believed there was ample factual support in the staff report to support the conclusion that a junk and storage yard had been established, and those facts had not been rebutted. He noted that the case had previous deferrals, and his understanding was that the purpose of the last deferral was to explore the sale of the property. He said he did not think there was a need for another deferral that was related more too equitable considerations. Mr. Hart said it was not within the Board's purview to allow a use to continue for a period of time or continue with a limitation on the number of vehicles. The Board's function was to decide whether or not the determination of the Zoning Administrator was correct.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. OAKWOOD ROAD ASSOCIATES, LLC, A 2005-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. Located at 5404 Oakwood Rd. on approx. 16,778 sq. ft. of land zonod I-I. Lee District. Tax Map 81-2 ((8)) 36A. (Admin. moved from 6/21/05 and 6/28/05 at appl. req.)

Maurice Moylan, Esquire, North Springfield Professional Center II, 5411-D Backlick Road, Springfield, Virginia, came forward to speak and said he was representing Oakwood Road Associates and their agent and principal, William Manscur.

Cynthia Porter-Johnson, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 29, 2005. The appeal was of a determination that the appellant had established a junkyard and storage yard on property in the I-I District in violation of Zoning Ordinance provisions. A February 8, 2005, inspection conducted by the Zoning Enforcement Branch revealed numerous inoperable vehicles and vehicle parts being stored on the property, and the property was being used for vehicle repairs and maintenance. The presence of vehicles without license plates and vehicle parts were indicative of a storage yard/junkyard use, and given the Ordinance definition of the nature and extent of the storage, it was determined that the appellant had established a junkyard/storage yard on the property and, therefore, was in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. The appellant also was in violation of using the property to perform light maintenance of trucks operated by A-1 Towing. Staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's determination set forth in the Notice of Violation to allow appropriate enforcement action to be taken to bring the violation into compliance with the Zoning Ordinance.

Mr. Moylan presented the arguments forming the basis for the appeal. He stated that his client had owned the property since October 31, 1995, a two-story detached dwelling with an accessory structure, and leased it to A-1 Towing for its administrative offices. He said A-1 Towing utilized other lots to park towed vehicles, and owners retrieved them from those lots. If the vehicles were not retrieved, they remained at those lots while A-1 Towing contacted the Department of Motor Vehicles (DMV) for owner information, notified the owners, and advertised in a public place the sale of the vehicle to satisfy their lien. Vehicles that were purchased at auction by A-1 Towing through that process were then moved to the subject property where the tags were removed and returned to the DMV to issue new tags, and once the new tags were placed on the vehicles, the vehicles were then normally taken to an auction. Mr. Moylan said the vehicles without license plates shown in the photographs were those vehicles, and the vehicles with license plates shown in the photographs parked in front of the building were employees' vehicles.

Mr. Moylan stated that A-1 Towing used the accessory structure for light maintenance only, such as oil changes. He said that since 1995 A-1 Towing had a permit, which required annual inspections and fees, through the Fairfax Fire Department for an aboveground oil tank to drain the oil, but as a result of the Zoning Administration providing the violation information to the Fire Department, the permit was revoked on September 15, 2005. He stated that vehicle repair for profit was not performed on the property, and the Zoning Administrator's argument on that matter failed. He said the issue of the property being utilized as a junkyard had no merit because the photograph of a child's car seat, which was what the County evidenced as junk, was actually part of some trash someone dumped near the property which was picked up to be properly disposed of later that day. Mr. Moylan stated that there was no evidence showing dismantling and/or major repair work performed on the site, and the few vehicles staff showed in pictures without tags all were operable. He stated that vehicles were not being stored at the subject property for the general public, and the property was not being used as a junkyard and was not an automobile graveyard. Mr. Moylan respectfully requested that the Board overturn the Zoning Administrator's determination.

Mr. Hart commented that the Board once heard a similar case that was currently in court that lasted nine years, and then the County Attorney's Office said they had to start over because it had not involved both the landlord and the tenant. He noted that in the subject case the Notice of Violation letter only was issued to the landlord and not to A-1 Towing, and he was to understand from the County Attorney's Office that it was fatally defective to proceed against only one party instead of both the landlord and the tenant in order to go to court. He asked staff why only the landlord was noticed.

Roy V. Biedler, Senior Zoning Inspector, Zoning Enforcement Division, stated that Mr. Mansour was the President of Oakwood Road Associates, LLC, and he also owned A-1 Towing, so it was the same entity, and that was the reason the subject property owner was notified and not A-1 Towing.

At Mr. Hart's request for clarification, Mr. Moylan explained that Oakwood Road Associates, LLC, owned the property, and an owner of that company was Mr. Mansour; A-1 Towing Companies, Inc., was the lessee, which was a separate and distinct legal entity, and Mr. Mansour was also an owner of the company. In response to Mr. Hart's question regarding who Mr. Moylan was representing, Mr. Moylan said he was representing Oakwood Road Associates at the hearing, but he also represented A-1 Towing in other cases.

In response to Mr. Hart's question regarding the number of vehicles kept at the property on a typical day, Mr. Moylan said there were four employees who worked at the administrative offices, and as many as 20 vehicles could be there on any given day.

In response to Mr. Hart's questions, William Mansour, 6222 Belleair Road, Burke, Virginia, said a vehicle could be processed within one day to a maximum of ten days with cars kept overnight on the site. He said

the units were transported in, and as soon as the paperwork was complete, they were transported out without being cleaned up or tires being changed.

In response to Mr. Hart's question regarding the number of tow trucks on the property, Mr. Mansour said there was not more than one at a time and it did not stay there overnight.

In response to Mr. Hart's question regarding whether oil changes were being done subsequent to the revocation of the oil tank permit, Mr. Mansour said no oil changes were being done there.

In response to Mr. Byers' questions concerning a photograph that depicted a significantly damaged automobile that appeared inoperable, Mr. Biedler said that during site visits, there had only been a couple of wrecked vehicles; however, the County Code defined an inoperable vehicle as any vehicle without County tags or a State inspection sticker, and there were approximately 20 to 25 of those on the site at any given time. Mr. Biedler agreed with Mr. Byers' statement that essentially there were two inoperable vehicles at any given time plus 18 or 19 other vehicles not properly tagged. Mr. Biedler said they were being parked or stored to the rear of the property. He stated that as of the prior Thursday, the main gates were open; there were blue tarps over units so they could not be seen, and there were still vehicles parked in the front with no tags.

Mr. Moylan explained his client's procedure when handling abandoned accident vehicles that were unclaimed, including submitting an application for an abandoned vehicle title, the need for a proper paper trail, and the ultimate demolition of vehicles that cannot be resold. He reminded the Board that vehicles were only taken to the subject property after they were purchased at the auction or paperwork was being started to re-title abandoned vehicles with the DMV.

In response to Mr. Byers' question regarding why the vehicles were not taken to the other storage yards owned by the appellant rather than to the administrative office, Mr. Moylan said the other lots were limited in size, and the vehicles on those lots were only there for an afternoon to a day or two because the owners came and picked them up after paying the fee. He said the vehicles that were not picked up after a time were taken to the subject property to clear space needed to perform on contracts at the other lots after the vehicles were purchased or the abandoned vehicle paperwork process had started.

Mr. Hammack said he thought that fit completely and squarely within the definition of a storage yard, and he asked Mr. Moylan if he was not contesting that it was a storage yard. Mr. Moylan stated that the property owner had purchased the vehicles, was parking the vehicles at his lot, and was not storing them for anyone. He said that if the appellant was keeping or storing the vehicles for someone else for profit in connection with his business, he would agree it was a storage yard. He stated that the business towed vehicles to the lot, and once the appellant purchased the vehicles at an auction, he then owned the vehicles, and that was generally when they were moved to the subject property, where the paperwork was done and records were kept.

Discussion followed between Mr. Hammack and Mr. Moylan concerning the Ordinance definition of a storage yard and Mr. Moylan's interpretation of storage as opposed to parking or keeping. Mr. Moylan said the Ordinance definition was overly broad. Mr. Hammack stated that the Board did not have the authority to make a determination on whether the Ordinance definition was overly broad, but to apply it the plain meaning of the definition.

Mr. Moylan said the definition could be argued, and his client had been cited for a violation of a State drafted statute that should be specific so his client would know what was or was not permissible.

In response to Ms. Gibb's question concerning the number of the appellant's cars that may be legally parked, Mr. Biedler said that technically none were allowed because there was no site plan or non-residential use permit, it was an I-I District, and for any vehicles to be legally kept on the property, each must be licensed and tagged. Mr. Biedler said his position was that the property was being used as a storage and junkyard, which was an illegal use in an I-I District.

Mr. Hart said he understood Mr. Moylan's argument was that even if the activity on the subject property was within the definition of a storage yard, there was a problem with the definition. Mr. Moylan stated that his client was attempting to comply and not use the property as a storage yard because he had other places for a storage yard, but if the definition was applied and it was determined that what his client was doing was storage, Mr. Moylan would argue that the statute was overly broad because his client could not tell what storage or keeping was or was not under the definition.

Mr. Moylan said that if someone visited his client's property for business purposes and parked in front, it would be considered keeping or storing the vehicle, and his client would be in violation. Mr. Hart said that if there was an approved site plan which showed the parking spaces, there would be no violation, but the problem was there was no paperwork to go with what was occurring.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said she believed the property was utilized as a storage yard, and she would adopt the Zoning Administrator's report. There were vehicles on the premises from one to ten days which had been brought there for the purpose of getting titled and licensed, but they sat there overnight. She said that would fall within the definition of keeping or storing.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

Mr. Hart requested that staff consider this case as another example for the necessity to clarify the Ordinance definitions concerning what constituted storage and junkyards.

Mr. Moylan requested the Board's clarification on the citation regarding the junkyard aspect and the appellant using the property as a repair facility. Ms. Gibb stated that her position was that the subject property was not a junkyard. There had been some vehicle maintenance in the form of oil changes that had been done, but was no longer occurring.

Discussion ensued among the Board members concerning the vehicle maintenance issue, the definition of a junkyard, staff's position on the appellant's business as set forth in the staff report, and the appellant's position and explanation of the activities onsite.

Mr. Hart stated that all three issues were substantiated in the staff report, and he supported Ms. Gibb's motion.

Ms. Gibb restated and clarified her motion, stating that the allegations made in the notice of violation were correct. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. MICHAEL A. GOODWIN AND J. DEANNE GOODWIN, A 2006-DR-036 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a stone wall erected on property at Tax Map 29-2 ((3)) 391 is obstructing surface drainage from an abutting lot, in violation of Zoning Ordinance provisions. Located at 1321 Macbeth St. on approx. 12,420 sq. ft. of land zoned R-2. Dranesville District. Tax Map 29-2 ((3)) 391.

Chairman DiGiulian noted that a request for a deferral had been received, and he called the appellants' agent to the podium.

Michelle A. Roseti, the appellants' agent, Holland & Knight, LLP, 1600 Tysons Boulevard, Suite 700, McLean, Virginia, said her clients were requesting a deferral, that they had agreed to modify the dry-laid stone wall to satisfy the Zoning Administrator, and they were currently seeking an attractive and effective design that would manage the water flow. She requested a deferral of a couple months to allow time to coordinate with the County regarding the design, construct the improvements, and withdraw the appeal.

In response to questions from Mr. Hart, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the deferral request had been submitted the Friday before the hearing, and it was staff's position that the Board could hear the public hearing and defer decision, if that was their desire. Staff recommended that the public hearing go forward because other departments had staff present to answer questions, and there were others present from the community who wanted to speak regarding the appeal. She indicated that the hearing had not been administratively moved or deferred previously.

Chairman DiGiulian called for speakers to address the question of the deferral request.

Chuck Lantz, 1319 Macbeth Street, McLean, Virginia, came forward to speak. He said he was present to address the ongoing problems with stormwater backup, lawn damage, and erosion that resulted from the

installation of a wall on the appellants' property. He described the wall's material, location, and size. He said that at the beginning of its construction in 2001, he had no reason to believe it was built in violation of any ordinances, and he never questioned the appellants' project. Mr. Lantz said he first noticed the water damage along the wall when he went outside during a heavy rain to unclog a downspout on April 2, 2005. Because no portion of the wall could be viewed from inside his home, that day was the first time he viewed the extent of flooding, diversion, and erosive channeling of water along the wall. He said he was concerned his property would be subjected to more erosion and problems if it was not quickly taken care of.

In response to questions from Mr. Hart, Mr. Lantz said the damage was worse in the winter, and there was no problem until after the wall had been built four years prior because before the wall was built, the water moved across the broad upper reaches of the yard, and there was a swale below that also channeled the water. He said he had established a ritual of repairing grass and filling in sod in the deepest part of the pocket.

In response to a question from Mr. Beard, Mr. Lantz indicated he was not adverse to a deferral to work out the problem, and he was glad to hear there had been progress. He said it would have been better if the progress had been made in advance instead of at the 11th hour.

Ms. Rosati stated that the appellants had been working with the County on a design solution for wecks. She explained that there had been a discrepancy between the County's numbers and the calculation of the appellants' first engineer of the amount of land flowing into the swale, and a second engineer's calculation was closer to the County's. Those evaluation processes had been the cause of the delay. She stated that the appellants were committed to coming into compliance, and it was not accurate to characterize the situation as an 11th hour attempt to resolve the issue.

In response to questions from Mr. Beard, Ms. Rosati clarified that the wall was dry-laid, but did have mortar along a couple inches at the top. She said she was unsure whether the County's suggestion of 12 six-inch PVC pipes laid in the wall was the best solution. The appellant was considering removing six inches in height out of the bottom for some linear length and needed to get specs for the right kind of steel to brace that at the bottom of the wall. She said both solutions would allow the water to flow through the wall.

In response to a question from Chairman DiGiulian concerning the length of the deferral requested, Ms. Rosati suggested that two months would be enough time for the appellants' engineers to coordinate with the County on an agreeable solution and have the improvement constructed and inspected before the worst of winter weather.

In response to questions from Ms. Gibb regarding the purpose of the wall, Ms. Rosati said the wall had been constructed to protect her clients' property from neighboring properties' maintenance equipment. Ms. Rosati said discussions with the County had taken place over two to three weeks prior to the deferral being requested on Friday.

In response to a question from Mr. Hart concerning whether weather conditions would prevent the wall modifications, Steve Aitcheson, Watershed Projects Implementation Branch, Department of Public Works and Environmental Services (DPWES), said the temperature should not affect the project, and DPWES staff had made themselves available to meet with the appellants' engineer any time they had asked and would expedite the project to get to construction as soon as possible. He said laying a steel beam underneath the stone would not require a lot of structural concrete or cement and should not be an issue.

Charlotte Basset-Zimmerman, 8106 Birnam Wood Drive, McLean, Virginia, Co-Chairperson for the Architectural Control Committee, came forward to speak. She stated that any plan for construction outside of the house must be submitted to the Architectural Control Committee for approval, and the appellants' wall had never been submitted. Once the committee became aware the wall was being constructed, the committee examined it, and the appellants were informed that it did not comply with the requirements. Ms. Zimmerman said the wall was a hazard, and children could trip over it. The committee believed that the wall was put up for spiteful reasons and requested that the walls on both sides be removed.

Chairman DiGiulian asked about Ms. Zimmerman's feelings for the request for a two-month deferral and Ms. Zimmerman said it was a waste of time, and putting pipes in the wall would not solve the issue.

In response to a question from Mr. Hammack regarding any actions taken to enforce the private covenants, Ms. Zimmerman said the County had been contacted. She said the community was not wealthy, and with dues of \$20 per year, they preferred to work with Zoning instead of attempting to take legal action. Mr.

Hammack stated that the Board did not have the authority to tell the appellants to remove the wall. Ms. Zimmerman said the wall was a hazard, and the wall on the other side of the property was also creating erosion and water damming.

Kirk MacChiavello, 1323 Macbeth Street, McLean, Virginia, came forward to speak. He said he had recently moved in and had not seen damage until the past weekend when he noticed a lot of water rushing alongside the wall and pooling of water on his side of the property. Mr. MacChiavello said he thought 60 days was too long for a deferral, and it would be better to get something in place before the cold weather started.

Chairman DiGiulian called for a motion.

Mr. Byers moved to deny the deferral request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

Chairman DiGiulian requested staff make its presentation.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as stated in the staff report. The appeal was of the determination that a stone wall erected on property located at Tex Map 29-2 ((3)) 391 was obstructing surface drainage from an abutting lot in violation of Zoning Ordinance provisions. She said that although the appeal number had been incorrectly noted on the cover of the staff report, the hearing had been correctly advertised. In response to a complaint, an inspection was conducted on May 3, 2005, which revealed that a stone wall approximately 12 inches in height had been erected along the north side of the subject property, perpendicular to the swale located in the rear and side yards of the subject property and Lot 392. Staff determined that the wall obstructed and interfered with the natural flow of surface drainage from upstream in such a way that surface drainage would back up into Lot 392. Based on the onsite inspection of the location of the stone wall and a review of the subdivision's development plan, staff concluded that in accordance with Par. 1 of Sect. 2-602 of the Zoning Ordinance, the appellants' construction and placement of the stone wall obstructed, interfered with, and changed the course of a natural drainage channel and obstructed surface drainage without providing adequate drainage. Ms. Stanfield said a photograph in the staff report clearly showed the wall had mortar between the stones which obstructed the surface drainage. Ms. Stanfield noted that a similar wall was also located on the other side of the property.

Mr. Hart asked whether it mattered if the wall was dry-laid or mortared as far the obstruction or interference of water flow was concerned. Mr. Aitcheson said the photographs and video clearly showed that the wall was obstructing, interfering with, and changing the direction of drainage, and even though parts of the wall could be dry-laid, it would fill up with sediment and could not handle the water coming to it.

In response to a question from Mr. Hert regarding whether there was a background policy that dry-laid stone walls were or were not acceptable, Mr. Aitcheson said that, to his knowledge, there was not, but running a wall perpendicular to a drainage way would clearly lend itself to blockage and obstruction of the water.

In response to a question from Mr. Hammeck regarding whether the violation was due to the natural contour of the land having been changed in order to build a swale, Joseph Bakos, Zoning Enforcement Branch, Zoning Administration Division, said the swale had been installed when the homes had originally been constructed as part of the development, which was in 1965.

Mr. Hammack stated that swales disappeared and changed all the time and the Ordinance required that they be maintained. He asked whether the swale that currently existed was in the same design configuration as the original swale. Mr. Bakos said the approved plans had been compared to what was existing during the inspection in May, and although the swale may have been shallower than it was originally, it remained in place and was still visible in the rear yard of Lot 392.

In response to a question from Mr. Hammeck regarding what portions of the wall contained mortar, Mr. Bakos said he had observed mortar between the stones at the top of the wall and on the both sides of the wall, but could not speak to whether mortar existed at the base.

Ms. Rosati said she had filed the appeal out of an abundance of caution, but she was uncertain whether the notice of violation was valid because it bore the wrong tax identification number, and the Board may want to consider granting the deferral request on that basis alone. She said it was correct the wall was constructed as a dry-laid stone wall, and her understanding was that the top one or two layers of stone of the 12-inch high wall was mortared to ensure the wall did not fall apart if it were struck, and there was mortar likewise at

the very ends of the wall. Ms. Rosati said land in excess of two acres drained into the swale, and conservatively that would be approximately seven cubic foot per second, which would be six inches deep at a hundred year storm. She said there would be a significant amount of water that would flow through a 12-inch high dry-set wall with the top two or three inches mortared and no vertical mortaring, although it may flow more slowly than if there was no wall. She had seen no calculations coming from the County saying the flow through the dry-set portion of the wall was a certain amount and what the required amount should be. All they had been told was what would accomplish drainage of 100 percent through the wall. Ms. Rosati said her clients had contacted the County to determine whether a building permit was needed to build the wall and were told it was not, and based on that, it was an interesting question how a property owner would know they were not in compliance with the Zoning Ordinance. She said the wall was built as a dry-set wall for the express purpose of allowing water to flow through. Ms. Rosati said her clients were willing to open the wall up to satisfy 100 percent of what was calculated and had been working with the County in good faith to try to do that.

Ms. Gibb said she had trouble with the concept that the County had to tell the appellants what was appropriate. If the wall was built and the effect was standing water that had not been there before, she thought it was the appellants' problem to resolve and would not be the County's duty to tell the appellants what to do. Ms. Rosati said the appellants were working on it. She explained that one of the County's proposed solutions in the violation notice was the construction of a 14-foot mortared bridge. The appellants consulted an engineer and offered the County alternative solutions of three sizes of PVC pipes. The County said it would probably work, but more pipes would be necessary. Ms. Rosati said the engineer calculated that three six-inch pipes were needed, but the County said twelve were necessary. The appellants consulted a second engineer, and it was found that the land area calculation done by the first engineer was based on an incorrect acreage. Ms. Rosati said it was not incumbent on the County to tell the appellants what to do with the wall. The appellants were willing to make a modification to bring the wall into compliance, but wanted to ensure it would satisfy the County before the modification was built.

In response to a question from Ms. Gibb regarding what was happening with the wall on the other side of the property, Ms. Rosati said that had not been part of the complaint. She said the hearing was the first she had heard there was an issue anywhere else, and that it was also the first she had heard there was any issue with the Architectural Control Committee.

Ms. Gibb asked whether staff had looked for a storm drainage easement in the land records. Mr. Aitcheson said staff had looked and did not find one.

Mr. Hart stated that it was the Board's function to determine whether the June 13, 2005 notice of violation was or was not correct. He asked whether there was any dispute that the wall which existed on the day of the inspection, May 3, 2005, obstructed, interfered with, or changed the drainage of the land without providing adequate drainage as determined by the director in accordance with the provisions of the Public Facilities Manual. Ms. Rosati stated the appellants' position was that there was no mechanism by which a property owner would have been alerted to the provision of "without providing adequate drainage in connection therewith" because a building permit was not required for the wall. She said her client had made a number of calls to the County to ensure she was doing what was necessary and been told a building permit was not needed.

Mr. Hart said the requirement was that the director makes the determination whether the provision was satisfied. Ms. Rosati stated that an amount of cubic feet per second flowed through the wall, and she had seen no calculation of what the amount was. The appellants' position was that water was flowing through it, and there was adequate drainage.

Mr. Hart said the provision stated that it cannot be done unless as determined by the director in accordance with the Public Facilities Manual, and there was no limitation on the quantity in the language. He said that for the purposes of what the Board was to do, the question was whether the wall fell within the Sect. 2-602 problem on May 3, 2005. Ms. Rosati said the appellants' July 12th, 2005 letter which appealed the notice of violation had requested a determination from DPWES that the wall as built complied with Sect. 2-602, and no response had been received. She suggested that the Board consider a deferral pending a response.

In response to a question from Mr. Hart of whether there was a procedure for someone to ask DPWES for a determination under Sect. 2-602, Mr. Bakos said the purpose of the May inspections by Public Works and Zoning was to verify that there was a problem and that the director did not approve any modification to any pre-existing drainage conditions that were onsite.

Mr. Hart asked what would happen with the request for a determination Ms. Rosati had put in writing since she was saying no determination had ever been made. Mr. Bakos said he understood the appeal application was based on whether or not there was merit in the notice of violation, and once that issue was addressed, then any other secondary questions would be addressed separately.

Referring to a photograph which he said showed there was significant erosion on both sides of the wall, Mr. Byers asked whether Mr. Aitcheson had noticed that when he visited the site. Mr. Aitcheson said he had. Mr. Byers asked whether that had occurred around the timeframe of the inspection or had occurred every time there was a heavy rainstorm since it had been built in 2001. Mr. Aitcheson said there was clear evidence that during heavy rainstorms sediment had been taken from the area and deposited downstream. Mr. Byers said it looked like there was almost as much impact on the appellants as there was on the adjoining property, and a homeowner typically would say there was a problem with pooling of water, and something had to change. Mr. Aitcheson said that may be the typical reaction, but the appellants had blocked the water and caused it to divert onto the adjacent property which had increased the erosion on that property which clearly had been seen during his visit.

Mr. Hammack said it appeared some pooling would occur whether or not the wall was there, and he asked whether there was any history of pooling in the locations on both properties. He said he had seen situations in his neighborhood where whole yards had streams across them during heavy rains that stayed there for a couple days until it ran off or soaked in that had nothing to do with diversion, but rather had just settled there. Mr. Aitcheson said the area was actually a pretty steep hill, and it was his professional opinion that the wall significantly backed the water up on the upstream property. He said it was not uncommon to see drainage through neighborhoods, but it was clear in the subject case from the evidence viewed in the field, the topography, and the site plan originally approved that the water was intended to run from right to left and go down through the appellants' property.

Mr. Hammack referenced a photograph in Attachment 11 to the staff report and asked how long it would take for the water shown to run through the wall. Mr. Aitcheson said he did not know. He suggested that the property owners may be able to answer how long the water stood there, but even if it only stood there for a couple hours and then went through the wall, it was clearly being diverted and was causing diversion along the right side of the wall as it ran down the property line. Mr. Aitcheson said it was a function of diversion, not just a function of ponding. He said that when staff had visited the site, they met with both adjacent property owners, and the reason DPWES did some preliminary calculations was because they had been told that portions of the wall would be voluntarily moved. In order to avoid getting into a situation like the current one, DPWES was willing to help the appellants come up with a solution.

Mr. Hammack asked why the director had not responded to Ms. Rosati's request for a determination of the flow the swale should accommodate. Mr. Aitcheson said that in the original violation notice a proposed solution was given, and staff offered to meet with the appellants' engineers, but the engineers had not been available to meet with the County. He said staff's position was that they had provided one solution and done enough engineering and believed the appellants should provide their own engineers to perform the work.

Mr. Hammack asked whether the original swale showed what the volume of water should be. Mr. Aitcheson said it did not, but the site plan did show the drainage area draining to two portions of the swale, and there was enough information on the original site plans for the appellants' engineer to make an educated guess as to how much water was coming through the area. Mr. Hammack asked whether the director could as well make an educated guess. Mr. Aitcheson said he could, but there was an issue of providing engineering services for all residents of Fairfax County. He said staff tried to provide reasonable assistance to get some relief to the property owners, eliminate the ponding, and arrive at a reasonable solution, but if the appellants' engineers chose to dispute what staff was doing, they could sign, seal, and submit their own drawings which the County would be glad to review.

Ms. Rosati said that according to the language in the Ordinance, it was possible to build something that obstructed the flow of water if DPWES determined it was okay, but if there was no mechanism for a property owner to request and receive the determination, she did not see how the County could enforce the Ordinance provision. She said the request was made three months prior to the hearing, and she understood the issue of the County providing engineering services for private parties, but the Ordinance provision put the onus on DPWES and not the Zoning Administrator. She said the appellants had received a zoning violation notice from Zoning Administration. The appellants said the wall did not obstruct the flow of water or change its course, and they asked DPWES to provide that determination if it was needed.

Referring to a photograph of a tree contained in Attachment 7, Mr. Hart said it appeared its roots were being

exposed and the tree was tilting, and he asked whether the tree was being undermined by the flow of the water. Mr. Bakos said the tree was located on Lot 392 owned by Mr. Lantz, and the roots were being exposed by the runoff as well as the saturated ground and was being adversely affected by the runoff. Mr. Hart asked whether the tree was located in the same area shown in the photograph of the ponding against one side of the wall when it was raining, and Mr. Bakos indicated it was.

Chairman DiGiulian called for speakers to address the appeal.

Mr. Lantz returned to the podium. He said he contacted the County in July of 2005 with regard to building a similar wall and was told a permit was not necessary. After mentioning that the proposed wall may be going across a flow way, he was transferred to someone in Planning who told him he should bring in drawings, check with his homeowners' association, and that not requiring a permit did not relieve him from being considerate of other factors of the law. He was told he could put something up that did not require a permit that created a hazard to himself or a neighboring property. Mr. Lantz said he then spoke with the engineer of the day and was told that he needed to contact his homeowners' association or an Architectural Control Committee person, and if there was not one available, he should come to the County because the engineers were there to help so he could understand whether he would or would not be lawful, particularly if the wall was to go across a natural flow way of water.

Mr. Lantz said that over the previous ten years before the appellants' wall had been installed, all of the water flow had moved nicely over the contour of the land and ultimately went out to the street. He said the wall was liberally mortared, blocked and diverted the water, and the backflow caused a softening of the area around the tree. He said every spring there was deep root erosion that had to be repaired.

Ms. Zimmerman returned to the podium. She said the appellants had not met with the Architectural Control Committee, and the committee sent them a certified letter in 2001, but the appellants were not cooperative.

Ms. Stanfield said it may have been an oversight on her part that she had not specifically called out to Mr. Aitcheson the wording of the request included in the appeal application, but Mr. Aitcheson would be willing to provide the information in writing to the appellants.

In her rebuttal, Ms. Rosati said the appellants' stated intention was to modify the wall to satisfy the requirement, but she thought it would be preferable to defer the decision on the matter to allow the appellants to do so. If the Board needed a technical reason to grant a deferral, she said one would be that there was uncertainty that the notice of violation was valid, and the second was that the appellants had received no response to their request for a determination as to whether or not the wall complied with Sect. 2-602 and was acceptable to DPWES. Ms. Rosati said the appellants had repeatedly affirmed their desire to bring the site into compliance and had not previously requested any deferrals.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to defer decision on A 2004-DR-036 for 45 days. Mr. Ribble seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hart voted against the motion.

Mr. Beard moved to reconsider the motion. Ms. Gibb and Mr. Hart seconded the motion.

Mr. Beard said it was obvious that there was not adequate drainage, and the issues boiled down to being a good neighbor. Something was done that bordered on creating a catastrophe and it should be resolved by doing what was needed to be done without bringing bureaucracy into it. He said he would prefer to vote the issue rather than deferring it.

Mr. Hart stated that he had voted against a deferral. He said he thought the matter would eventually be resolved, but for purposes of the hearing, neither of the issues advanced as a justification for deferring decision would improve, change, or cause anything to happen during a 45-day deferral. The issue of the notice being invalid was to some extent waived by the way the case was appealed. He said he was more troubled because the deed showed the property was owned by two people, who were the grantees with right of survivorship, and the notice of violation was issued to only one of them; however, Ms. Rosati had appealed on behalf of both of them and waived that. To the extent there were problems with the notification, Mr. Hart said that had been overtaken by events because the appellants had appealed, and it was clear which property was involved. He said the appellants had not squarely raised in the paperwork that the proceeding was flawed because the violation notice reflected an incorrect tax map number.

Ms. Stanfield stated that there were two notices mailed.

Mr. Hart said a deferral of 45 days would not change anything regarding the validity of the original notice. Regarding the second issue articulated by Ms. Rosati of the request for a determination, Mr. Hart said it was clear there was a breakdown in communication, and staff had overlooked the reference in passing to the request in the midst of a long letter about what the appellants were appealing. If it had been a one-line letter or a letter with the request as the main topic, Mr. Hart said the result may have been different. He said there was no deadline for a response, and chronologically the request was made long after the May 3, 2005 inspection. Mr. Hart said the question was whether there was a violation as of the May 3 inspection, and a subsequent request for a determination had nothing to do with that question. He said he thought the Board had all the information it needed, and he was prepared to vote on the matter.

Mr. Byers said his concern was that in 2001 the Architectural Control Committee had advised the appellants by certified mail that they were in violation of the local covenants, which was ignored by the appellants. The situation had not changed for four years, and nothing had been accomplished. He said technicalities and notices of violation could be discussed, but the reality was erosion and a detriment to the environment. Mr. Byers said he was concerned that nothing would be done because nothing had been done so far. He stated that homeowners had a responsibility to take care of their property, and there was an issue of how much engineering services the County provides, which was a fine balance. Mr. Byers said it was not the County's responsibility to go out and definitize for a property owner and do all of the engineering services to tell them exactly how something should be fixed. It was the individual property owner's responsibility. Mr. Byers said he agreed with Mr. Hart that nothing would change in the next 45 days, and the Board was ready to move forward.

Ms. Gibb said she understood Sect. 2-602 to say that you do not build if drainage could in any way be interfered with or changed without getting permission first from the director as to how to provide adequate drainage. She said she did not doubt that the drainage had been changed, and she could not see how the appellants were in compliance on the date of the violation notice.

Chairman DiGiulian called for the vote on the motion to reconsider. The motion carried by a vote of 4-3. Chairman DiGiulian, Mr. Ribble, and Mr. Hammaok voted against the motion.

Mr. Beard moved to uphold the determination of the Zoning Administrator. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 11, 2005, Scheduled case of:

9:30 A.M. JAMES I. LANE AND/OR JOAN C. TOOMEY, JTWROS, A 2004-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 66-4 ((8)) 7 is in violation of Zoning Ordinance provisions. Located at 12419 Popes Head Rd. on approx. 25,276 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((8)) 7. (Continued from 11/16/04) (Decision deferred from 3/1/05, 5/3/05, 6/14/05, and 7/19/05) (Decision deferred from 8/2/05)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, informed the Board that the appellants were not present and had requested a deferral to a time after which any proposed Zoning Ordinance amendment which would affect fence heights would be in effect.

Mr. Hart moved to defer decision on Appeal 2004-SP-025 to February 28, 2008, at 9:30 a.m. Mr. Beard and Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 11, 2005, After Agenda Item:

Approval of April 5, 2005, and June 28, 2005 Minutes

Mr. Hart moved to approve the April 5, 2005 Minutes and defer approval of the June 28, 2005 Minutes for 30 days. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

Discussion followed among Board members and Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, concerning the acceptance of an appeal filed by Target Store T1005. Mr. Hart moved to defer consideration of the acceptance to October 25, 2005. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Antioch Church, Lake Braddock, and McCarthy matters, and BZA by-laws pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:50 a.m. and reconvened at 12:53 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

Mr. Hart moved that Mr. Hammack be authorized to send the letter discussed in Closed Session to Mr. Griffin. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

Mr. Hart moved that Chairman DiGiulian be authorized to send the letter discussed in Closed Session concerning the Lake Braddock case. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

Mr. Hart moved that the Board of Zoning Appeals adopt the resolution discussed in Closed Session concerning the request of Mr. Bobzien and transmit it to the Mr. McCormack. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:55 p.m.

Minutes by: Paula A. McFarland / Kathleen A. Knoth

Approved on: September 19, 2012

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 25, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy Gibb; John Ribble; James Hart; Norman Byers; and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:02 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ October 25, 2005, Scheduled case of:

9:00 A.M. JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., roofed deck 32.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18. (Decision deferred from 8/9/05 and 9/13/05)

9:00 A.M. ABDUL SLAM, VC 2005-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17. (Deferred from 8/9/05 and 9/13/05)

9:00 A.M. HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 16-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Greene Dr. on approx. 26,982 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A. (Deferred from 8/9/05 and 9/13/05)

Mr. Hart indicated that he would recuse himself from the public hearings for VC 2005-MV-002, VC 2005-MV-003, and VC 2005-MV-005.

Michelle Rosati, Holland & Knight, 1600 Tysons Boulevard, McLean, Virginia, agent for the applicants, asked that VC 2005-MV-002, VC 2005-MV-003, and VC 2005-MV-005 be heard at the end of the agenda because the engineer who was to speak had not arrived due to traffic issues.

Chairman DiGiulian indicated the Board would comply with Ms. Rosati's request.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:00 A.M. CHAN S. PARK, SP 2005-SP-012 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church. Located at 12219 Braddock Rd. on approx. 3.55 ac. of land zoned R-Cand WS. Springfield District. Tax Map 67-1 ((1)) 57. (Admin. moved from 5/17/05 and 7/19/05 at appl. req)

Chairman DiGiulian noted that SP 2005-SP-012 had been administratively moved to December 20, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION, INC./ FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-91-77 previously approved for a community swim club to permit the parking of Fairfax County school buses. Located at 3451 Gallows Rd. on approx. 3.63 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (Admin. moved from 10/11/05 at appl. req.)

Chairman DiGiulian noted that SPA 77-P-091 had been administratively moved to November 15, 2005, at 9:00 a.m., for ads.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:00 A.M. LAUREL HIGHLANDS, LLC, SP 2005-MV-029 Appl. under Sect(s) 8-919 of the Zoning Ordinance to permit noise barrier height increase. Located at Laurel Highlands W. of I-95 and E. of Furey Rd. on approx. 1.35 ac. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) F1 pt. and G pt. (Deferred from 9/27/05)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Inda Stagg, the applicant's agent, replied that it was.

Steve Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the construction of two noise walls along its eastern property line to satisfy proffers for rezoning application RZ 2000-MV-019, granted in 2001 for the development of a 542 dwelling-unit subdivision.

Under the rezoning, the applicant was required to provide a revised noise analysis based on final site grades and construct a sound attenuation wall to mitigate the impacts of highway-related noise for residential and leisure areas within Laurel Highlands. The noise study indicated that two (2) noise walls were required. Both proposed walls exceeded the maximum seven (7) foot height limit permitted by the Zoning Ordinance without a Special Permit.

The northern wall, approximately 276 feet long, wrapped around the eastern side of a multi-use court and tennis court. It was an acoustical barrier, proposed to be constructed of wood or concrete, measuring eight (8) feet in height.

The southern noise wall ran north-south, parallel to I-95 for approximately 345 feet, then westward for an additional 50 feet, terminating just south of Lot 1. This wall would be between 10 and 20 feet in height, featuring double raked concrete facing I-95, and exposed aggregates facing Laurel Highlands' residents.

Staff concluded that the application was in harmony with the Comprehensive Plan and was in conformance with the Zoning Ordinance provisions. Staff recommended approval with the adoption of the proposed development conditions contained in Appendix 1.

Mr. Hart asked if the noise walls would be located on the Homeowners Association (HOA) common area. Mr. Varga answered that they would.

Mr. Hart asked about the maintenance of the walls. Mr. Varga answered that both of the walls would have maintenance needs and fell under the responsibility of the HOA. If they did not maintain it and it fell apart it would be a violation against the HOA.

Mr. Hart asked about the maintenance cost for wood versus concrete. Mr. Varga answered that either material met the requirements set forth in the Zoning code. He said the applicant's intent was to build a concrete barrier. Staff had no preference as to the material.

Ms. Stagg presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant's wanted a concrete barrier.

Mr. Hart asked why the development conditions had wood as the material and not concrete. Ms. Stagg answered that it was because it was located next to a tennis court and it was only 8 feet in height, but after costing out the maintenance it was decided that concrete was the better option. Ms. Stagg said the option of wood could be amended in the development conditions.

Mr. Hart asked what the \$12,000 maintenance figure covered. Ms. Stagg answered that it was in case the wall failed, it would cover the cost to reconstruct the wall. Mr. Varga added that staff was okay with the cost amount of \$12,000. Staff had determined that 10% of the cost of the construction was a sufficient amount for Laurel Highlands to provide to the HOA.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SP 2005-MV-029 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LAUREL HIGHLANDS, LLC, SP 2005-MV-029 Appl. under Sect(s). 8-919 of the Zoning Ordinance to permit noise barrier height increase. Located at Laurel Highlands W. of I-95 and E. of Furey Rd. on approx. 1.35 ac. of land zoned PDH-12. Mt. Vernon District. Tax Map 107-2 ((12)) F1 pt. and G pt. (Deferred from 9/27/05) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 25, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-12, and the area of the lot is 1.35 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-919 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Laurel Highlands, LLC and is not transferable without further action of this Board, and is for the location indicated on the application, east of Furey Road, and west of I-95, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by David H. Steigler dated May 5, 2005 September 27, 2005 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The Applicant shall construct the southern sound wall on common open space as permitted by Fairfax County Zoning Ordinance Section 10-104(F), as shown on Sheet 2 of 3 behind Lots 1, 14, and 24. The design shall be double-raked concrete facing eastward and exposed aggregates facing westward. The wall shall not exceed a 20 foot maximum height. The location, size and design of the sound wall shall be disclosed in writing to all potential buyers for Lots 1, 14, and 24 in prior to their entering into a contract of purchase from the Applicant and within all Homeowner Association (HOA) documents.
6. The Applicant shall construct the northern sound wall on common open space as permitted by Fairfax County Zoning Ordinance Section 10-104(F), as shown on Sheet 2 of 3 to the east of the multi-use court and tennis court. The design shall be an acoustical concrete barrier, reaching a maximum of 8 feet in height. The location, size and design of the sound wall shall be disclosed in

writing to all potential buyers of Lot 175 prior to their entering into a contract of purchase from the Applicant and within all HOA documents.

7. The noise walls shall be constructed in conformance with the Public Facilities Manual ("PFM"). The Homeowners' Association shall be responsible for the maintenance of the noise walls. All prospective purchasers shall be advised of this maintenance obligation prior to entering into a contract of sale and said obligation will be disclosed in the HOA documents. The Applicant shall deposit the sum of \$12,000 into a maintenance account prior to the time the Applicant turns over control of the HOA to the homeowners that will be available for utilization by the HOA for noise wall maintenance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

//

~ ~ ~ October 25, 2005, Scheduled case of:

- 9:00 A.M. JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., roofed deck 32.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18. (Decision deferred from 8/9/05 and 9/13/05)
- 9:00 A.M. ABDUL SLAM, VC 2005-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17. (Deferred from 8/9/05 and 9/13/05)
- 9:00 A.M. HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Greene Dr. on approx. 28,982 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A. (Deferred from 8/9/05 and 9/13/05)

Mr. Hart indicated that he would recuse himself from the public hearings for VC 2005-MV-002, VC 2005-MV-003, and VC 2005-MV-005.

Chairman DiGiulian noted that the hearing had been deferred to obtain additional information.

Michelle Rosati, Holland & Knight, 1600 Tysons Boulevard, McLean, Virginia, agent for the applicants, said they were asked by the Board to go back and review the engineering and design of the sites and confirm whether or not any reasonable beneficial use of the property taken as a whole could be made of the lots without the approval of a variance. Ms. Rosati said that no such use was possible without the approval of a variance of some kind. She discussed the constraints of the sites, including that half of the land area was in the Resource Protection Area (RPA), there was a significant amount of floodplain, and a steep slope towards the back of the lot. She stated that all three lots had poor soils, unsuitable for construction, and were significantly smaller than the R-E minimum. Ms. Rosati said that those factors would make it difficult to build even on a flat lot. She stated that the possibility of building a retaining wall had been discussed at the last hearing and that there could be built some configuration of a house that would not require a retaining wall and would still comply with the 50-foot setback.

Ms. Rosati stated that Paul Hoofnagle, the applicants' engineer, would testify that it was not the size or the shape of the house that dictated the need for a retaining wall, but rather the combination of the grade and the placement from front to back on the lot. She said that even a house of extraordinary limited dimensions would require a retaining wall, and Mr. Hoofnagle would show that the retaining wall that would need to be built would by necessity encroach on both the side and rear lot lines. She said it would be an 18-foot retaining wall with a six-foot fence on top of it, which by itself required a variance. Ms. Rosati said there was no way to build a house on the lots without a variance of some kind.

Ms. Rosati referred to a variance that was approved after the Cochran decision, which was the Gunston Manor property on River Road. She said the Gunston property was similar in that it was a shallow, nonconforming R-E lot with bad grade in the rear, and soil, wetlands, and RPA issues. She said that there had been a structure on the property, and there was a question as to whether an expanded house could be built on the property. Ms. Rosati stated that the hardship was equally apparent in the subject case where the testimony was that no house at all could be built on the property without the approval of a variance, which she said made the subject case distinguishable from Cochran and Hickerson. She noted that the Hickerson case had been cited in the record for the Weigel variance.

Ms. Rosati stated that the legal standards set out in the Code and the Ordinance had not changed with the Cochran case, and the findings of fact made at that time were to the same standards that were currently used by the BZA. She said the cases cited in the Cochran decision regarding the constitutional standards that the Board was to use in reviewing variances were not new; Packer vs. Hornsby from 1980 and the Commonwealth vs. County Utilities from 1982. She stated that the standard of all reasonable beneficial use taken as a whole did not change in Cochran. Ms. Rosati said that what Cochran emphasized was the jurisdictional or threshold question, which was that a hardship needed to be found before the Board could consider the good things that an applicant presents at a public hearing. She interpreted Cochran to say that a case had to be made for hardship before the Board had jurisdiction, but it did not change the standard used by the Board to consider variances, which had been the same for the past 20 to 25 years. She stated that the Board had approved variances for over 20 years based on the Packer vs. Hornsby standard, the same constitutional standard that was consistent with the Ordinance and the Virginia Code, and to interpret the standard substantially differently, in and of itself, was an unreasonable restriction, especially considering that the variances were approved once on the very same standards and upon findings of fact that would currently justify the approval of the variance. Ms. Rosati said that would thwart the purpose of variance law by essentially depriving landowners of the safety valve intended to help them avoid unintended, unfair consequences of a Zoning Ordinance that does not fit in an odd case where the property was really unique. She said the Board had made certain findings of fact when the variances were initially approved, and the facts had not changed.

Ms. Rosati said Mr. Hoofnagle would address the more technical aspects. She said her comments also applied to VC 2006-MV-003 and VC 2005-MV-005.

Mr. Hammack asked to see the building footprint that would be permitted with all the zoning district rules applied. Ms. Rosati answered that the applicant's testimony was that there was no building envelope that could be constructed without a variance because the retaining wall had to be there and would require a variance of its own.

Mr. Ribble asked if the three lots were approved at one time and later were denied. Ms. Hedrick responded that they had been approved in 1983 and expired in 1988. She later clarified that applications for Parcels 16 and 16 had been before the Board in 1977 and were denied, but came back to the Board in 1983 and were approved. She said they were granted an extension in 1988 to December of 1988.

Mr. Beard asked Ms. Rosati to clarify a statement from a letter she had written regarding that if a house could be constructed without a variance, it would be so shallow as to be unmarketable. He said he did not know whether the Cochran decision concerned itself with marketability when it stated all reasonable use. Ms. Rosati answered that even if theoretically a very shallow house could be built, the retaining wall would be needed. She said that a variance would be needed no matter where the structure was located.

Ms. Gibb remarked that she wanted to see the building envelope on a plat. Ms. Rosati answered that there was no building envelope consistent with every setback requirement on the property that could be built because the retaining wall that had to be built to build the house 50 feet back from the front lot line encroached on the rear and side lot lines.

Mr. Hammack said he could not get to Ms. Rosati's argument until she could show that a house could not be

built. He said he had to know specifics, and it had to go beyond the argument that the retaining wall would require a variance. He added that the Weigel variance, to which Ms. Rosati had earlier referred, was completely different than the subject case. He said that in the Weigel case, there was an existing deteriorated structure, and the applicant was permitted, under an extraordinary set of circumstances, to get a building permit to continue to live in a house that was probably going to be considered uninhabitable. He said the approved variance was to build on the same footprint.

Ms. Rosati said she wondered why it would be more of a hardship to have a house that needed to be torn down to be rebuilt than to not have one to begin with.

Mr. Byers asked Mr. Breidenstine what he was told when he looked at the property. Mr. Breidenstine indicated that he was told a significant amount of the property was in a floodplain and half of the property was in an RPA. He said he was not told a variance was required, but he was told by the developer and the real estate agent that it was possible to build a house on the property.

Paul Hoofnagle, Alexandria Surveys, 6343 South Kings Highway, Alexandria, Virginia, came forward to speak. He explained the factors that led to the proposed width of the house, which included the drop of 10 to 16 feet from the front of the house to the 50-foot rear setback line and the requirement that the driveway could not exceed 15 percent, which he said set the first floor elevation. He reported that Bison Builders had decided to decrease the width of the house to as much as would be appropriate and sellable, so the house had been reduced to 30 feet in width, and with a garage width of 24 feet, that left six feet beyond the garage for the width of the house and would lead to small rooms unless they went from front to back. Mr. Hoofnagle said the plans were originally submitted with a 35-foot setback, which came from an old plat that had been established at the time of the recordation of the subdivision, but they had been told by the County that the 35-foot setback did not take precedence over the County setback because it was new construction. He said at that point they moved the houses to 50 feet. He explained that a grading plan and soils report were submitted, but Fairfax County said a 3:1 walkable slope in the back needed to be provided, which required a retaining wall at the rear of the property in order to do so, and side walls would also be needed to tie the rear retaining wall into the side grades. Mr. Hoofnagle said there were considerable wet areas of soil, which made the slopes susceptible to slide and movement, and it would be best to minimize the amount of disturbance of the slopes. He said that even if a minimum rear yard could be provided with the retaining wall, it would be extremely difficult to bring in heavy equipment to dig footers, place the foundation, and pump in the concrete to the wall. He noted that most of the houses on the street had approved variances in the setback from the front, and a prior owner had an approved variance for the subject property, which had expired.

In response to Ms. Gibb's question regarding whether a house could be longer and narrower, Mr. Hoofnagle replied that even on a 20-foot house, there would be a significant elevation change between the front and back, and a retaining wall would still be needed. He explained that the retaining wall was not predicated on the size of the house, but rather the slope of the existing ground and what Fairfax County deemed necessary to safely walk on it and maintain it. He said that if they were required to hold a 50-foot setback, there would have to be a retaining wall regardless of the house type.

Mr. Hammaok asked if every retaining wall needed a variance if it was outside the building envelope. Ms. Hedrick answered that not every retaining wall required a variance because it depended on the height of the retaining wall, but the approximately 18-foot tall retaining wall Ms. Rosati stated she expected would require a variance.

Mr. Hammack asked Mr. Hoofnagle to show the Board the building footprint of what could be constructed without a variance. Mr. Hoofnagle said that regardless of the size of the house, a variance still would be required because of the retaining wall would have to go around the back and the side of the property. He said he did not have a footprint, but a 10-foot by 10-foot building could be constructed with minimal grading, but it would not be something anybody would buy. He said he was not prepared to give the Board a footprint of that nature, and he asked the Board's understanding that he had to meet the needs of his client.

Mr. Hammack stated that the applicant had to satisfy the Board that there were no other options, and he felt he was not meeting the burden of proof.

Chairman DiGiulian asked whether a retaining wall would still be needed if the variance was granted. Mr. Hoofnagle answered that if the variance was granted, then the house could be moved further up to where the slope was less severe, and it could be worked out without a retaining wall.

A discussion ensued regarding whether a variance was needed for a retaining wall. Mr. Hoofnagle indicated that he believed the retaining wall would be a critical structure and would require a variance. Susan Langdon, Chief, Special Permit and Variance Branch, said a retaining wall that served the purpose of retaining the soil did not require a variance; however, if a fence was located on top of the wall, the fence part would have to meet the maximum height requirements. She said a seven-foot tall fence could be put on top of the retaining wall on the rear and side yards without a variance. Mr. Hoofnagle said a fence would be needed on top of the retaining wall as a safety mechanism.

Ms. Gibb said she wanted to see the building envelope on a piece of paper. Ms. Rosati stated that there was no such by-right envelope. She said it did not exist because in order to have the retaining wall, a safety fence would be needed, and it would be a structure 18 to 24 feet above grade.

Chairman DiGiulian and Mr. Hammack said they were not convinced that the houses could not be built without a variance. Chairman DiGiulian said he was not convinced that a variance was needed for the retaining wall. Ms. Rosati commented that building the retaining wall in the RPA involved another whole set of approvals.

Mr. Beard commented that if the applicant said they could build a 10-foot by 10-foot house, as far as he was concerned, the applicant had lost all beneficial use of the property, and he would be in favor of granting a variance. Ms. Rosati said that if the Board wanted the applicant to look at the retaining wall, the Ordinance, and the RPA and come back and show what the size of the structure would be, they would be willing to do so.

Chairman DiGiulian said he wanted to know whether a permit to build the retaining wall in the RPA could be obtained and whether a variance was needed for the wall and/or the fence on top of it. Ms. Rosati answered that she would find out.

Mr. Byers asked who Mr. Hoofnagle's client was. Mr. Hoofnagle answered that it was Bison Builders.

Ms. Hedrick said an exception with the Department of Public Works was required for a retaining wall in the RPA.

Ms. Langdon described the building envelope as the front of the house being 50 feet back with a 20-foot side yard outside the RPA, but she said that did not take into consideration the RPA, slope, whether a retaining wall was needed. She said it was a building envelope outside the RPA that met both the minimum side and front yard requirements. She said there was an additional 170 feet in the rear, and according to zoning, it could go back within 25 feet, but because of the floodplain and the RPA, it could not. Ms. Langdon said she was describing a basic envelope on a flat piece of paper that met the minimum yard requirements. Ms. Rosati commented that the property was not flat.

A discussion ensued regarding the information the Board wanted and the scheduling of the next hearing.

Mr. Hammack moved to defer decision on VC 2005-MV-002 to November 15, 2005, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

Ms. Rosati requested that the Board likewise defer VC 2005-MV-003 and VC 2005-MV-005.

Mr. Hammack moved to defer VC 2005-MV-003 and VC 2005-MV-005 to November 15, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding BZA Bylaws, and other applicable cases, McCarthy, Demetriou, Lake Braddock, and correspondence with the County Executive regarding legal matters pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

The meeting recessed at 10:15 a.m. and reconvened at 11:20 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

Mr. Hart moved that the Board adopt the resolution to hire Ms. Pandak that had been discussed in closed session. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Ms. Oibb moved to have any official BZA mail be addressed to Chairman DiGiulian's home address, 6807 Springfield Drive, Lorton, Virginia 22079. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:30 A.M. JOHN NASSIKAS, A 2005-DR-022 Appl. under sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, which is located in the front yard of property located in the R-2 District, is in violation of Zoning Ordinance provisions. Located at 6115 Ramshorn Pl. on approx. 1.4 ac. of land zoned R-2. Dranesville District. Tax Map 31-2 ((5)) A. (Deferred from 7/26/05) (Decision deferred from 9/27/05)

Mary Ann Tsai, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the memorandum dated October 14, 2005. The 10-foot outlet road satisfied the definition of a front yard. The 7-foot fence, located on the 10 foot outlet road was in violation of Paragraph 3b of Section 10-104 of the Zoning Ordinance. Staff recognized that a pending Zoning Ordinance Amendment was currently proposed which would permit a fence higher than 4 feet in height to be located in a front yard by special permit approval. However, the previously advertised amendment that dealt with the fence would only permit a fence 6 feet in height in a front yard. The appellant's fence located in the front yard of the subject property was approximately 7 feet in height and may not benefit from the Zoning Ordinance Amendment. Therefore, staff recommended that the BZA uphold the Zoning Administrator's finding that a fence in excess of 4 feet in height located in the front yard of a property in the R-2 District was in violation of Paragraph 3b of Section 10-104 of the Zoning Ordinance.

Mr. Beard remarked that had the appellant's neighbor built the fence it would have been okay because it was the neighbor's backyard. Ms. Tsai answered that that was correct.

Ms. Tsai stated that Mr. and Mrs. Nassikas had recently requested a deferral. Mr. Nassikas was out of town during the hearing so he was not present.

Mr. Hart had questions about Lot A on the 1946 and 1964 plats. He said he thought the boundary of Lot A ended at the power pole. Mr. Hart said the June 1953, December 1964, and the 1946 plats all showed parcel A with the same boundary as on the tax map and the L-shaped strip was not a part of it. Ms. Stanfield responded that it appeared to be attached. Mr. Hart said it was contiguous and was conveyed in the same deed, but the parcels were never consolidated and the boundary line was not adjusted. There was a separate reference to it in the deed, saying that it conveyed with parcel A.

Mr. Hart stated that the issue was that someone owned parcel A and also owned the scrap of land next to it, which did not have a principle use on it, but was contiguous with parcel A. Ms. Gibb said it was a separate parcel and a title issue. Ms. Stanfield responded that if it was a separate parcel, Ms. Gibb was correct and it could not be there because it could not be an accessory use without a principle use. Mr. Hart said that the wrong notice of violation was sent saying that he had a fence over 4 feet in the front yard instead of it saying that the appellant fenced an unbuildable out-lot. Ms. Stanfield answered that the notice could be reissued.

Julie Andre, 1225 Somerset Drive, McLean, Virginia, came forward to speak in opposition to the application. Ms. Andre said the original fence was constructed in 1965 by Mr. Potts and stopped at the north-west corner of the lot line where the L-shaped scrap of land was located, and then later Mr. Nassikas extended the fence 32 feet towards her property and ended where Lots 31 and 32 met. Mr. Potts said he stopped where he did because that was where his lot line ended. Mr. Nassikas put up an 8-foot fence.

Ms. Tsai said that Tax Administration had told her that Mr. Nassikas paid taxes on the outlet road.

Doug Sheeran, 1227 Somerset Drive, McLean, Virginia, said he hoped that the Board could rule on the letter and then he could file a complaint on the outlet road.

Ms. Stanfield explained after consulting with Bruca Miller, Zoning Inspector, Zoning Administration Division, that in cases where there was an outlet road attached or owned by an adjacent or abutting property, it was viewed as part of the lot whether it was a separate lot or not, and the fence was viewed as accessory to that principle use which it was attached to.

Chairman DiGiulian asked if there was an ordinance provision for that. Ms. Stanfield answered that there was no provision, but there was an interpretation.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She stated that based on the testimony, it was uncontested that the fence was over 6 feet in height in a front yard on parcel A; and, the out-lot road which Mr. Nassikas acquired contained no principle use, so the fence on the property should not be there. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

Mr. Hart supported the motion, however, did not agree that the fence was on a front yard which was the violation Mr. Nassikas was given.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:30 A.M. MARC SEGUINOT, A 2004-PR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height located in the front yard of property located at Tax Map 59-3 ((7)) 45 is in violation of Zoning Ordinance provisions. Located at 3807 Prosperity Ave. on approx. 29,154 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((7)) 45. (Notices not in order - Deferred from 1/11/05) (Decision deferred from 4/19/05)

Chairman DiGiulian noted that there was a request for deferral to February 14, 2006.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that staff supported the deferral request.

Mr. Beard moved to defer decision on A 2004-PR-035 to February 14, 2006, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:30 A.M. DAVID T. FREEMAN AND SHANA VON ZEPPELIN, A 2005-SP-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Contractor's Office and Shop on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 4819 Spruce Av. on 1 ac. of land zoned R-1 and WS. Springfield District. Tax Map 56-3 ((2)) 45. (Admin. moved from 6/2/05 at appl. req.)

Elizabeth Porry, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated October 18, 2005. The appellants were in violation of Paragraph 5 of Section 2-302 of the Zoning Ordinance which stated that no use shall be allowed in any district which is not permitted by the regulations for that district. On August 10, 2005, the subject appeal was administratively moved by staff to October 25, 2005, to accommodate a scheduling conflict for the appellants. Since then staff had been working with the appellant to explore options and issues related to bringing the property into compliance, but had been unable to resolve the violation.

Aristotelis A. Chronis, Esq., Lawson, Tarter, & Charvet, P.C., agent for the appellant explained that

Mr. Freeman had been looking for a new location for his business and requested a deferral to continue his efforts to March 15th.

Mr. Beard remarked that Mr. Freeman knew he was operating his business in violation over the past 7 years.

Ms. Gibb questioned why Mr. Chronis had said in his letter that there was no contractor's office and shop as defined within the Zoning Ordinance on the subject property, and therefore the Notice of Violation must fail. Mr. Chronis responded that he said that because there were no retail sales.

Mr. Hart asked for staff's position regarding the deferral. Ms. Porry answered that since the Zoning Administrator determined that there was a violation onsite and since there had been no activity by the appellant, staff did not see a reason to delay determination on the notice and staff supported a decision to uphold the Zoning Administrator.

Mr. Byers stated that Zoning Enforcement conducted the inspection on March 15, 2005; 7 months ago, and now the Board was being asked to defer it for a period of a year. The appellant had known he was in violation of the Zoning Ordinance for seven years and he could have taken action during that period reasonably to relocate his business and questioned whether another five to six months would help the appellant. Mr. Chronis responded that Mr. Freeman had been diligently looking, but there were not many I-4, I-5, I-6, and C-8 properties available in the county. Even if they were feasible, he ran into problems with the parking of his 20 employees.

David Freeman, 4819 Spruce Avenue, said that this past March 2005, upon receiving the notice, was the first time he was made aware of the violation.

Mr. Beard asked what happened if the BZA denied Mr. Freeman's appeal. John Zemlan, Senior Zoning Inspector responded that Mr. Freeman would need to comply with the notice of violation or it would be sent over to the County Attorney's office for legal action.

Chairman DiGiulian closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He stated that the Zoning Ordinance prohibited the establishment of a contractor's office and shop in the R-1 District, as defined in Section 300 of Article 20, and a contractor's office and shop is not a use permitted by right, special exception or special permit in the R-1 District; the appellants were in violation of Paragraph 5 of Section 2-302 of the Zoning Ordinance which states that no use shall be allowed in any district which is not permitted by the regulations of that district; and, the appellant acknowledged that he was in violation and that the violation had been ongoing. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ October 25, 2005, Scheduled case of:

9:30 A.M. ENRIQUE LOPEZ, A 2005-MV-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located at 10014 Richmond Hy. On approx. 23,311 sq. ft. of land zoned C-8. Mount Vernon District. Tax Map 113-2 ((1)) 65. (Admin. moved from 5/10/05 at appl. req.) (Decision deferred from 7/12/05)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant was not there and that staff supported a deferral so that he could talk to the Branch Chief of the Special Exception and Rezoning area of the Zoning Evaluation Division to determine if there was a possibility that he could rezone the property. The appellant spoke with Regina Murray and she wanted him to clarify the comprehensive plan language with the planning staff. Staff had not heard from him since then so it was uncertain that he wanted to pursue a rezoning.

Mr. Beard moved to defer decision on A 2005-MV-006 to November 6, 2005, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ October 25, 2005, After Agenda Item:

Approval of January 20, 2004 Minutes

Mr. Beard moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 4-0-1. Mr. Byers abstained from the vote. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ October 25, 2005, After Agenda Item:

Approval of September 20, 2005 Minutes

Mr. Hart moved to approve the Minutes. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

//

~ ~ ~ October 25, 2005, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by Target Store, T1005

Mr. Hart questioned that the notice of violation was delivered on August 15, because the notice was dated August 15. Mavis Stanfield said the notice referenced the right to appeal within 30 days of the date of the letter. Mr. Byers noted that Target had a market capitalization of \$46 billion with 1400 stores in 47 states and essentially they were coming in one day late.

Joseph Bakos, Senior Zoning Inspector for Zoning Administration Division said that Target received the notice on August 18, 2005.


Mr. Hart moved to not accept the appeal. Mr. Byers seconded the motion, which carried by a vote of 7-0.

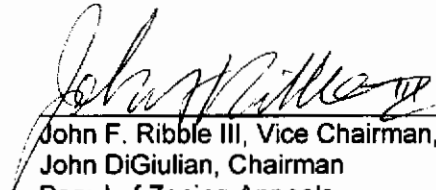
//

As there was no other business to come before the Board, the meeting was adjourned at 12:45 p.m.

Minutes by: Vanessa A. Bergh

Approved on: September 26, 2006


Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 1, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 1, 2005, Scheduled case of:

9:00 A.M. CHANTILLY HEALTH CLUB, INC. D/B/A/ OLYMPUS ATHLETIC CLUB, SPA 2002-SU-067 Appl. under Sect(s). 5-503 of the Zoning Ordinanca to amend SP 2002-SU-067 previously approved for a health club to permit a change in permittee and development conditions. Located at 14531 Lee Rd. on approx. 28.58 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lindsay Shulenberg, the applicant's agent, Cooley Godward LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 2002-SU-067, previously approved for a health club, to permit a change in permittee from Dupont Fabros Development to Chantilly Health Club, Inc., d/b/a Olympus Athletic Club, and to revise Development Condition 1 to include its "successors and assigns." Staff had no objections to the new language, and there were no other changes to the site or the development conditions.

Ms. Shulenberg presented the special permit amendment request as outlined in the statement of justification submitted with the application. The applicant was seeking an amendment to a previously approved special permit that permitted the establishment of the health club. She stated that the club was one of six buildings within an office park. The original special permit was granted to Dupont Fabros, an affiliate of the landowner, and now that Dupont Fabros was seeking to sell its interest, the special permit would be invalid. The applicant sought to change the permittee to name the athletic club as the permittee. Ms. Shulenberg noted that the club had a successful operation over the past several years and was a part of the community for 20 years. The applicant also requested that Development Condition 1 be revised to allow the permit to be assigned to its successors or assigns, and Ms. Shulenberg concluded her presentation with the assurance to the Board that the applicant would continue to abide by all previous conditions.

In response to Mr. Hart's question, Ms. Hedrick pointed out that page 3 of the staff report indicated staff's standard language for development conditions in special permit cases, which the Board usually adopted; however, if the Board chose to accapt the applicant's suggested language concerning successors or assigns, the Board would do so through its motion. Susan Langdon, Chief, Special Permit and Variance Branch, said the standard special permit language was frequently used by staff to make clear whether other uses would be allowed under certain conditions, and it sought to prevent confusion concerning by-right uses and the necessity for an amendment to a special permit.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to approve SPA 2002-SU-057 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHANTILLY HEALTH CLUB, INC. D/B/A/ OLYMPUS ATHLETIC CLUB, SPA 2002-SU-057 Appl. under Sect(s). 5-503 of the Zoning Ordinanca to amend SP 2002-SU-067 previously approved for a health club to permit a change in permittee and development conditions. Located at 14531 Lee Rd. on approx. 28.58 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 34. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 1, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the land is the applicant.
2. The present zoning is I-5 and WS.
3. The area of the lot is 28.58 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-503 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Chantilly Health Club, Inc. d/b/a Olympus Athletic Club, and its successors or assigns only and is not transferable without further action of this Board, and is for the location indicated on the application, 14531 Lee Road (28.58 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the site without a Special Permit Amendment, if such uses do not affect this Special Permit approval.
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 Rinker-Detwiler & Associates, P.C., dated January 2003, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The hours of operation for the health club shall be limited to 5:00 a.m. to 11:00 p.m., seven days per week.
6. There shall be a maximum of 20 full time and part-time employees associated with this use on the property at any one time.
7. All signs shall comply with the provisions of Article 12, Signs.
8. The maximum height of the proposed building shall be 35 feet.
9. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance and be provided on-site within the business park subject to this application.
10. The proposed building architectural façade shall be consistent with the general style and quality shown on Sheet 2 of the Special Permit plat.
11. Outdoor lighting fixtures used to illuminate the parking area and walkways shall not exceed twenty-five (25) feet in height, shall be of low intensity design and shall focus directly on the subject property. All other outdoor lighting fixtures shall be full cut-off, focused downward and shielded to minimize glare, and meet the Performance Standards set forth in Article 14 of the Zoning Ordinance.

12. Banners, balloons, and neon signage shall not be permitted at 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 1, 2005, Scheduled case of:

9:00 A.M. WESLEY UNITED METHODIST TRUSTEES, SPA 68-M-877 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 68-M-877 previously approved for a church with nursery school to permit an increase in enrollment and hours of operation. Located at 8412, 8413, 8416, 8417, 8420, 8421, 8424, 8425 Richmond Ave. on approx. 3.43 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((8)) (B) 31; 101-4 ((8)) (B) 1-4, 32, 33 and 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Darlene Spurlock, the applicant's agent, 6842 Boot Court, Lorton, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed to amend SP 68-M-877, previously approved for a church with a nursery school, to permit an increase in enrollment from 25 to 75 students, and hours of operation of 9:00 a.m. to 3:00 p.m., Monday through Friday, August through May. No other changes or new construction was proposed with the application, and staff recommended approval. Mr. Varga noted that the current hours of operation throughout the staff report should have read 9:00 a.m. to noon, Monday through Friday.

Ms. Spurlock presented the applicant's request as outlined in the statement of justification submitted with the application. She said the school was at full capacity, having outgrown the additional space the church provided, and they sought to increase enrollment because they hoped to provide an extended day kindergarten.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 58-M-877 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WESLEY UNITED METHODIST TRUSTEES, SPA 66-M-877 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 68-M-877 previously approved for a church with nursery school to permit an increase in enrollment and hours of operation. Located at 8412, 8413, 8418, 8417, 8420, 8421, 8424, 8425 Richmond Ave. on approx. 3.43 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((8)) (B) 31; 101-4 ((3)) (B) 1-4, 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 November 1, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Wesley United Methodist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 8412, 8413, 8416, 8417, 3420, 3421, 8424, 8425 Richmond Avenue 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 Bryant L. Robinson dated October 7, 2003, revised through October 6, 2005 and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 150.
6. The total maximum daily enrollment in the nursery school shall be 75.
7. The maximum hours of operation of the nursery school shall be 9:00 A.M. - 3:00 P.M., Monday through Friday.
8. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.
9. Transitional screening shall be modified along all lot lines to permit existing vegetation and landscaping as shown on the special permit plat to meet the transitional screening requirements.
10. The barrier requirement shall be waived along all lot lines.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless a new Non-Residential Use Permit (Non-RUP) has been approved. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

//

~ ~ ~ November 1, 2005, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SP 2004-SP-052 Appl. under Sect(s). 03-C03 of the Zoning Ordinance to permit a place of worship. Located at 12501 and 12519 Braddock Rd. on approx. 7.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25 pt. (Admin. moved from 11/30/04, 1/11/05, 2/8/05, and 3/15/05 at appl. req.) (Decision deferred from 4/5/05, 4/26/05, 6/28/05, and 10/11/05)

Chairman DiOuliani noted that SP 2004-SP-052 had been administratively moved to November 29, 2005.

//

~ ~ ~ November 1, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF WASHINGTON FARM UNITED METHODIST CHURCH, SPA 75-S-177 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S-75-177 previously approved for a place of worship to permit the addition of a private school of general education, building additions, site modifications including changes in parking layout, an increase in land area and the addition of a columbarium. Located at 3921 Old Mill Rd. on approx. 2.38 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 32A (formerly known as 110-2 ((1)) 9B, 32, 33, 36 pt., 39; 110-2 ((10)) 60A pt.) and 110-2 ((9)) 11B. (Admin. moved from 1/25/05, 3/1/05, 3/22/05, 4/19/05, 6/7/05, 6/14/05, and 8/9/05 at appl. req.) (Decision deferred from 9/13/05 and 10/11/05)

Mr. Ribble said this application was deferred for decision for additional information. He said he met with Ms. Strobel and Mr. Berdux, and the applicant revised the plan to improve parking and had eliminated the school. He said he had issues with the Fellowship Hall's bulk and the safety concerns involving traffic. Mr. Ribble explained that revising a plan was a time-consuming process with no overnight resolution. When he considered the two adjacent homeowners, Mr. Ribble stated that he had serious problems with the originally proposed size of the hall, and another plan must be considered that lessened the impact. Mr. Ribble moved to defer decision on SPA 75-S-177 to May 2, 2006, at 9:00 a.m.

Mr. Beard seconded the motion. He recommended that the community form an ad hoc committee to work with the applicant and have open communication with active involvement throughout the renewed process.

At Mr. Hart's request, Susan Langdon, Chief, Special Permit and Variance Branch, utilizing the overhead, explained the applicant's proposed parking changes, as staff understood them.

Explanations by Ms. Langdon and the applicant's agent, Lynne Strobel, followed which addressed Mr. Hart's question concerning the proposed plat change that noted an inclusion of the cellar, which was specifically cited as a cellar and not a basement, and the Ordinance definitions of cellar and basement, and floor area ratio. Ms. Strobel noted that the new building's construction would affect the grade, and she stated that the applicant would continue to comply with Ordinance requirements.

In response to Mr. Hammaok's question concerning re-advertisement, Ms. Langdon said the change in the plat would not require re-advertisement, adding that there often were plat changes, but as long as what was depicted was within the scope of the advertisement, re-advertisement was not required.

In response to Mr. Hammack's question regarding whether the applicant had comments on the matter of a further deferral, after conferring with her clients, Ms. Strobel thanked the Board for the deferral and stated that they appreciated the opportunity to continue work on the proposal.

The motion to defer SPA 75-S-177 to May 2, 2006, at 9:00 a.m., carried by a vote of 7-0.

//

~ ~ ~ November 1, 2005, After Agenda Item:

Request for Additional Time
Trustees of Harvester Presbyterian Church, SPA 83-S-102

Mr. Hart moved to approve 12 months of Additional Time. Mr. Ribble seconded the motion, which carried by a vote of 7-0. The now expiration date was September 3, 2006.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in the Fisenne case, the Lake Braddock case, the McCarthy case, the Lewinsville Heights case, employment of counsel, and the by-laws pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Ribble seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:32 a.m. and reconvened at 11:28 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

Ms. Gibb stated that her October 25, 2005 motion regarding Board of Zoning Appeals (BZA) correspondence needed clarification. She moved that a copy of any correspondence from the County Attorney's Office or County Executive's Office be addressed to Chairman DiGiulian and sent to his home address with the original being sent to the BZA staff, and copies of any such communications be immediately facsimiled to all BZA members. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Ms. Gibb moved that a copy of any pleading in the case of the Board of Supervisors versus the BZA and McCarthys would be sent to Brian McCormack, the BZA's attorney in that matter. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

Mr. Hammaok moved that the BZA accept the letter of engagement from Sharon Pandak, Esquire, with the firm of Sands Anderson, Marks & Miller, PC, for the preparation of the BZA by-laws. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//


As there was no other business to come before the Board, the meeting was adjourned at 11:31 a.m.

Minutes by: Paula A. McFarland

Approved on: June 17, 2008



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 8, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals.

//

BOARD MATTERS:

Mr. Byers stated: "In 1938 the United States Congress authorized legislation establishing November 11th as Armistice Day, a day to honor those who had fought in the First World War. In 1954 the 83rd Congress amended the 1938 act by striking out the word 'Armistice' and inserting the word 'Veterans,' thus honoring American veterans of all wars. This coming Friday, we will continue that proud tradition by honoring America's 26 million living veterans and those who have made the ultimate sacrifice by remembering their service to our country. I would remind all those here today the very fact we can have a public hearing in a free society and vote in an election is the result of the sacrifice of those who have gone before. Today we find American troops far from home, many of whom are in harm's way. May all our thoughts be with them and their families on this Veterans Day and may they come safely home."

Chairman DiGiulian indicated that he had a flyer from the Citizens Planning Education Association of Virginia relative to a seminar for certified Board of Zoning Appeals graduates, which he said he would make available to anyone interested.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:00 A.M. ROBIN AND EILEEN MARCOE, SP 2005-BR-031 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.1 ft. with eave 3.4 ft. from rear lot line and 3.2 ft. with eave 2.4 ft. from side lot line. Located at 5646 Inverchapel Rd. on approx. 13,337 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2 ((3)) (3) 49.

Chairman DiGiulian noted that SP 2005-BR-031 had been administratively moved to December 6, 2005, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF PEACE EVANGELICAL LUTHERAN CHURCH, SPA 98-M-050 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-050 previously approved for a church to permit a correction in building height. Located at 6368 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110. (Admin. moved from 9/20/05 at appl. req.)

Chairman DiGiulian noted that SPA 98-M-050 had been administratively moved to December 5, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 8, 2005, After Agenda Item:

Request for Additional Time
Carolyn Jolly, VC 00-D-112

Mr. Ribble moved to approve 12 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was November 8, 2008.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding a resolution that the BZA recently adopted, the Smith/Lee, Lake Braddock, Fisenne, and McCarthy cases, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Oibb seconded the motion, which carried by a vote of 7-0

The meeting recessed at 9:06 a.m. and reconvened at 10:01 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Byers were not present for the vote.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:30 A.M. MARY CAROLYN THIES, A 2005-SU-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has constructed an addition which does not meet the bulk regulation as it applies to the minimum side yard requirement for the PDH-2 District in violation of Zoning Ordinance provisions. Located at 13187 Ashvale Dr. on approx. 10,494 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-3 ((24)) 14. (Deferred from 8/2/05)

Chairman DiOulian noted that A 2005-SU-019 had been withdrawn.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:30 A.M. ENRIQUE LOPEZ, A 2005-MV-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and an accessory use (a fence) on property which does not have an approved principle use in the C-8 District all in violation of Zoning Ordinance provisions. Located at 10014 Richmond Hy. On approx. 23,311 sq. ft. of land zoned C-8. Mount Vernon District. Tax Map 113-2 ((1)) 65. (Admin. moved from 5/10/05 at appl. req.) (Decision deferred from 7/12/05 and 10/25/05)

Diane Johnson-Quinn, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in a memorandum dated November 7, 2005.

Mr. Hart called attention to Attachment 2 of the June 30, 2005 staff report. He said the fence shown on the plat was located on the adjacent property, not the appellant's property, and asked staff if that was a different fence than the one mentioned in the Notice of Violation dated January 19, 2005. Ms. Johnson-Quinn replied in the affirmative. Mr. Hart asked if the fence referenced in that notice was inside the triangle. Ms. Johnson-Quinn said she assumed that the plat dated March 30, 2004, was the one the appellant received when he purchased the property and that the fence he erected came afterward.

Mr. Beard noted that the November 7th memorandum referenced that the appeal had been administratively moved at the appellant's request to enable him to seek legal counsel. He asked if the appellant had done so. Ms. Johnson-Quinn indicated that she thought the appellant had made contact with an attorney and suggested that the question be directed to the appellant. She said staff had never been consulted by an attorney on his behalf.

Enrique Lopez, the appellant, 10014 Richmond Highway, Lorton, Virginia, presented the arguments forming the basis for the appeal. He stated that he had spoken with two land use attorneys, one of whom had suggested that he contact Ms. Johnson-Quinn; however, he said he was not able to contact her. The appellant said that the attorney had told him that Mr. Lopez could not afford to have him represent him. The appellant said he did not feel that he had been given a straight answer with respect to the interpretation of the regulations as they pertained to his land. Mr. Lopez stated that the fence to the right of his property did not belong to him. He said he had asked County staff if he could build a fence in front of his property, and he

had been told that as long as he did not go over six feet in height, he could do so. He said no one had told him he was not allowed to do that.

Mr. Ribble asked Mr. Lopez if he had contacted Gerald Hyland, the Mount Vernon District Supervisor. Mr. Lopez stated that he had met with Mr. Hyland and his assistant, Brett Kenney, and they had told him that he should consider asking the County to rezone the land so that he could use his property in a legal manner.

Ms. Gibb asked Mr. Lopez if he had been talking to the lawyer who said he could not afford his representation with respect to trying to rezone his land and what the cost would be. Mr. Lopez replied that his first meeting with him was a consultation. He said he thought the lawyer had looked into the matter and contacted the County, but later turned him down because of the expense. Ms. Gibb asked if the appellant thought he had been turned down because it would cost too much to do the rezoning or that it would be very difficult to obtain a rezoning because it was a difficult issue. Mr. Lopez said that the attorney had said that based on his experience, it would cost him too much for the attorney's expenses and the rezoning.

Ms. Gibb asked for staff's opinion regarding the possibility of rezoning the property. Ms. Johnson-Quinn explained that she was not one of the staff who made recommendations on rezonings, but she thought that the elements that would have to be taken into consideration were the surrounding zoning and types of uses; however, there was a heavy emphasis on the Comprehensive Plan language. She said that the appellant would have a big hurdle to overcome because the Plan specifically stated that there would be no expansion of industrial uses, and she interpreted that to mean that there would be no changing from commercial to industrial zoning. In answer to Ms. Gibb's question, Ms. Johnson-Quinn indicated that the "gateway" language was used to encourage improvement of the neighborhood. She said that given the new residential properties to the north, it was her opinion that was probably driving a lot of the language.

Mr. Beard asked if the immediate neighbors were in conformity with the Zoning Ordinance and the Comprehensive Plan. Ms. Johnson-Quinn stated that she was not aware of any current complaints. She pointed out that the zoning map indicated that to the west, south, and across the street from Mr. Lopez, the properties were zoned industrial, and his property was located at the southern tip of a commercial swath on the west side of Route 1. She noted that there were small areas of residential properties located within that swath, and further to the north on Lorton Road was where most of the residential properties were located. She said she did not know if there were any other violations that were being investigated. She said that on the east side of Route 1 near Gilas Run Drive, the properties were all designated as industrial. Ms. Johnson-Quinn said that even though there was a lot of industrial zoning within close proximity to Mr. Lopez's property, it was unfortunate that the property he had purchased, which was right next to industrial zoned sites, was not industrial zoned.

In response to Ms. Gibb's question concerning whether there were any Comprehensive Plan amendments pending for the subject area, Ms. Johnson-Quinn stated that she was unsure. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff had talked to the Planning Division's Planner of the Day as well as to one of the branch chiefs about the language and had not been told there were any amendments pending. Ms. Gibb asked when the region would come up for review. Mr. Hart stated that the deadline for submissions of changes to the Comprehensive Plan had passed and that staff was currently writing reports on the South County cycle that included the Mt. Vernon District.

In answer to Mr. Hart's question, Ms. Johnson-Quinn said that in order to have the storage yard use, a property would have to be designated I-5 or I-6.

Mr. Hart said that as he understood staff's position in this case regarding the fence, it was that an empty lot could not be fenced because a fence was an accessory use, and there needed to be a principal use on the lot in order to have an accessory use. He asked if that was still the rule and whether an amendment was pending because he thought there were other empty lots that were fenced. Ms. Stanfield stated that there was another appeal scheduled later in the hearing that was similar where there was no principal use. She said she was not aware of any amendment that would allow empty lots to be fenced without buildings on them; however, she would check on it.

Mr. Hart said the violation had been issued for a seven-foot fence and that the appellant had testified that he had been told that he could erect a six-foot fence on his property. He asked whether the property was located on one of the roads where a fence was permitted and was staff sure that the measurement was seven feet. Ms. Johnson-Quinn replied that she thought that where the fence was currently located would be considered the rear yard. She said that if there was a reverse frontage lot and the rear yard backed up to a major thoroughfare, then an eight-foot fence could be built, and while it was technically the front yard, if it

was a reverse frontage, it was actually a rear yard. Mr. Hart asked how a yard could be determined if there was no structure on the property. Ms. Johnson-Quinn replied that under the current provisions a fence was not permitted without a structure or without a use on a property. In answer to another question posed by Mr. Hart, Ms. Johnson-Quinn confirmed that it was not a question of the height of the fence, but that there could be no fence. She said the violation was that the appellant could not have a fence at all because he did not have an approved permitted principal use.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. He said he was sympathetic to the appellant's problem, but could not see any solution on the horizon. He said he had respect for people who were trying to run small businesses and provide for their families, but unfortunately the Board did not have the authority to provide equitable relief. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:30 A.M. BATAL CORBIN, LLC, A 2005-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of the order contained in a February 10, 2005, Notice of Violation directing the appellant to immediately cease all development activities until such time as legislative action is secured from the Board of Supervisors to resolve the violation. Located at 2346 Gallows Rd. on approx. 7.69 ac. of land zoned R-2. Providence District. Tax Map 39-4 ((1)) 26. (Admin. moved from 6/7/05 and 9/20/05 at appl. req.)

Chairman DiGiulian noted that A 2005-PR-007 had been administratively moved to November 29, 2005, at 9:30 a.m., at the appellant's request.

Later in the meeting, Mr. Hart stated that he thought the Board of Supervisors (BOS) had approved the Proffor Condition Amendment (PCA) on this case a few weeks ago, and that had been the end of it. He asked staff what was still happening with the goat farm. Elizabeth Perry, Zoning Administration Division, said that the appeal had been officially withdrawn, and staff had sent out the confirmation. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the agenda for November 29, 2005, showed the appeal had been withdrawn.

In response to another question posed by Mr. Hart, Ms. Perry stated that the appeal had been withdrawn with the recognition that the PCA that had been approved by the BOS resolved the issue that was in the Notice of Violation and was being appealed by the appellant, who had been appealing the action of the Zoning Administrator which was a Notice of Violation on a specific issue. The PCA addressed that issue. Mr. Hart said he thought the issue was whether the Zoning Administrator could stop work or had to go to court to do that. Ms. Perry confirmed Mr. Hart's comment that it had been left unresolved.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:30 A.M. SHAH ABBAS, A 2005-HM-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is leasing an affordable dwelling unit to a tenant and is not occupying the dwelling as their domicile in violation of Zoning Ordinance provisions. Located at 2559 Peter Jefferson Ln. on approx. 1,409 sq. ft. of land zoned PDH-12. Hunter Mill District. Tax Map 25-1 ((21)) 127. (Deferred from 9/13/05 at appl. req.)

Chairman DiGiulian noted that A 2005-HM-029 had been withdrawn by the appellant.

Mr. Hammack asked whether staff had withdrawn the complaint against the appellant or the appellant had withdrawn the appeal.

Elizabeth Perry, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had made an appointment with staff to re-inspect the property, and it had been determined that the violations that had been cited in the Notice had been resolved. She said the appellant agreed to withdraw the appeal since the case would be closed, and staff had received his request in writing the prior day.

Ms. Perry responded to Mr. Hammack's questions concerning staff's procedure for issuing a Notice of Violation as well as the procedure for withdrawing an appeal. Mr. Hammack noted that the appellant had contested staff's Notice and asked how the violations would be treated. Ms. Perry said there was a violation at the time the Notice was issued, the appellant worked to clear the violation and requested that the staff from the Zoning Enforcement Branch re-inspect his property to ensure that all circumstances listed in the Notice had been cleared, and at that point everything had been rectified and the case closed from an enforcement perspective. Ms. Perry stated that the appellant then officially withdrew his appeal of the Notice because the issue became moot. Mr. Hammack stated that he wanted to see copies of letters from people who had withdrawn their appeals because the appellant had contested a violation, and if the County determined that there was no violation, he said he did not know if there was an actual violation or not. He said staff was still saying that there was a violation, but the appellant had cured it, and the appellant's point was that he never had a violation; however, staff continued to say there had been one. Mr. Hammack noted that information was maintained in the County records, and if the County could not prove that there had been a violation, then it should not be carried as a violation, even if it was withdrawn. He said he did not think the appellants realized the implications of that.

Ms. Perry explained that in a situation like this, if the same violation occurred on the property at a later date and since the appeal had been withdrawn, the appellant did not have appeal rights, and he was aware of that. In answer to Mr. Hammack's question, Ms. Perry stated that there was nothing to enforce at this point because the appellant was in compliance with the Zoning Ordinance as of the re-inspection.

Mr. Hammack said it was his opinion that when an appellant was asked to withdraw, he/she should know their rights, and if staff had not proven the case, he did not think it should be carried in the County records as a prior violation. Mr. Hammack again stated that in the future he wanted to see the appellants' letters of withdrawal. He said that if staff withdrew the Notice of Violation, it was all right because they did that in some cases.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that in the future staff would endeavor to provide the Board with a paper trail in circumstances like this. She said she thought by requesting the re-inspection, the appellant could prove that the tenant had left and he had, in fact, taken up his residence there, and although the appellant was not explicitly saying he was in violation, he had admitted that he had done the violation. Mr. Hammack repeated again that the appellant had never admitted to leaving the residence, but he had said that he had a friend staying there. He said the appellant had submitted many documents showing that he never gave up his residency, and County records stated that there was a violation that he cured. He said he was not sure that the appellant was in violation. Mr. Hammack stated that the appellant had the right to withdraw his appeal if he chose to do that.

Mr. Hammack asked staff how long a person had to be away from his residence before he lost his residency under the Ordinance and where in the statute it gave a date or an amount of time. Ms. Perry stated that the Notice of Violation had been based on an inspection of the property where there was a family living there who had communicated to an inspector that they were paying rent to the property owner, and, therefore, the appellant was renting out an Affordable Dwelling Unit and not maintaining that property as his primary domicile. Mr. Hammack repeated his earlier comment that the appellant had contested the fact that he had ever given up his residency.

Mr. Beard asked how significant the situation would be if staff withdraw a Notice of Violation as opposed to having an appellant withdraw his appeal. Ms. Perry said it was her understanding that it was not that a Notice had been withdrawn. It could be rescinded and reissued if there was an error involved, and it was not a case of the Notice ever being withdrawn. She offered to obtain clarification from the Zoning Enforcement Branch staff. Mr. Beard said that the respondent, by the right of his appeal, had said that he had done nothing wrong; however, it was staff's conclusion that there was a violation. He asked if there would be a problem with addressing the situation as suggested by Mr. Hammack. Ms. Perry stated that this was the only time that she had ever seen where the appellant did not wish to pursue an appeal, but chose to come to a resolution without a public hearing. Ms. Perry agreed with Mr. Beard that after the re-inspection there was no violation. Responding to Mr. Beard's comment, she said staff had not asked the appellant to withdraw his appeal. She said observations made by staff at the time of inspection were what had led to the issuance of the Notice. Ms. Perry stated that the violations were no longer present, so the case could be closed. Mr. Beard asked if the violation was withdrawn, would the issue of the appeal then be moot. Chairman DiGiulian stated that otherwise the only recourse the appellant had was that he appear before the Board, go through the hearing, staff would state that the appellant was in violation, and the Board would then overrule the Zoning Administrator. He said that seemed odd to him.

Ms. Stanfield said staff's position was that there was a violation at the time of inspection, and after the re-inspection, the violation had been cleared; therefore, staff would not withdraw the Notice because at the time the Notice was issued, as far as staff was concerned, there was a violation. Mr. Beard stated that Mr. Hammack's point was that by the fact that the appellant had filed the appeal, he had said that he did not have a violation.

Mr. Hammack stated that if the appellant withdrew his appeal, he had waived his appeal rights. He said the inspection occurred on one day to determine that the appellant was not residing on his premises. He said the appellant had submitted documentation that he had allowed a friend to stay on the premises temporarily, and among other things, they showed that he had been receiving all his mail at that address. Ms. Perry said the letter from the appellant contained one sentence, and she understood Mr. Hammack's concerns. She noted that the appeal was not going forth as a public hearing, and staff had more information to counter that provided by the appellant. She stated that there was much more information that staff had prepared to defend the Zoning Administrator's determination. Ms. Perry said staff would look into the procedure on how they handled withdrawals of appeals and how they were addressed.

Mr. Hart stated that once a Notice had been issued, it could not be retracted, and the problem was that if someone dropped an appeal in a vague way, they may not realize that there was still a blemish on their permanent record. He said what the Board was struggling with was how to end this type of case gracefully without leaving the issue in limbo. He indicated that in this case there were loose ends to be taken care of.

Mr. Byers referred to the second page of the appellant's letter which stated that "Essentially only two pieces of evidence, in part because they were the only two factors highlighted in the Notice of Violation dated May 3, 2005, an inspection by Senior Zoning Administrator Steve Mason and a search for my name in some sort of Registry of Deeds." Mr. Byers said the appellant went on to say "However, Inspector Mason failed to further inquire whether this 'moving in' was the equivalent of a lease or rental agreement, which it was not. Just a bit more asking one more logical and legitimate question would have yielded the information." Mr. Byers referred to page 4, bullet 2 of the staff report which stated, in part, "Zoning Enforcement staff determined that the appellant is leasing the ADU to a tenant." He asked if the "tenant" did indeed have a lease. Ms. Stanfield stated that Mr. Mason was not present at the hearing, and staff had not anticipated this line of questioning, so she could not answer the question. Mr. Byers said he understood the inspector's position; however, the appellant was basically justifying his appeal on two technicalities, and he was attempting to determine whether one of those technicalities was incorrect. Ms. Perry said that staff did not have an official lease, and nothing had been surrendered by the person the inspector had spoken to. She said it was the tenant's statement to the Zoning Inspector that was the basis of the Notice. Mr. Byers asked if the tenant had indicated that she had a lease. Ms. Perry stated that it had been her understanding that the tenant had communicated to the inspector that she sent her rent to the appellant at a specific address where staff was able to track him.

//

~ ~ ~ November 8, 2005, Scheduled case of:

9:30 A.M. MVQ TRUCKING, LLC, A 2005-MA-041 Appl. under sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and an accessory use (a fence) on property which does not have an approved principal use in the C-2 District all in violation of Zoning Ordinance provisions. Located on approx. 13,867 sq. ft. of land zoned C-2, HC, SC and CRD. Mason District. Tax Map 61-2 ((17)) (D) 3.

Elizabeth Perry, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report dated November 1, 2005.

Christian Orndorff, the appellant's agent, 6059-C Arlington Boulevard, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He stated that the lot currently used by MVQ Trucking LLC was formerly a vacant, unimproved piece of property that was adjacent to an abandoned house on one side and an access road and auto claims center on the other side. He noted that to the rear of the property there were some residential properties. He said that one of the problems in the Culmore area was the presence of drunks and vagrants who had used the abandoned house on the property in question. Mr. Orndorff said that from the standpoint of public safety, at least the lot and its current use denied access by unsavory people and contributed in a small way to the reduction of criminal activity in that area. He said there was an area along the Leesburg Pike corridor that had a wide variety of uses that included other vehicle storage type facilities. He said that those lots had principal structures on them, but from the standpoint of intensity of use,

those nearby locations seemed to be a mere intensive use and would create more of a traffic load and hazard on Leesburg Pike than the appellant's trucking lot. He pointed out other sites where vehicles were stored within close proximity to the subject lot, and based on the maps he had looked at, there was no I-6 zoning. He said there was some C-5 zoning, which was the classification for the U-Haul lot immediately across the street from the appellant's trucking lot. Mr. Orndorff stated that the appellant's lot had a privacy fence which was structurally in conformity with the Zoning Ordinance, even though it did not have a principal structure on it, and the fence provided privacy and did not expose the vehicles to the traffic on Leesburg Pike, as others located within close proximity did. With respect to the complaints the County claimed it had received, he said the appellants had not received any. He said they had received expressions of pleasure that the property prohibited illegal uses of the lot by those he had mentioned earlier. He noted that the residence behind the property had a privacy fence on part of the property because the owners did not want a complete privacy fence. He said there was a use that was restricted to I-6 or industrial zoned uses, but he did not think there were enough I-6 zoned areas throughout the County to accommodate small operators. Mr. Orndorff stated that the appellant was interested in relocating the small trucking company within a relatively brief period of time; however, there were many problems involved in doing so, including how far they would have to go to find a new place, hiring new personnel in a new area, and the expense that would be incurred. He asked that the Board consider a 60-day deferral to allow the appellant to relocate and remove the fencing. Mr. Orndorff said when that happened, no further appeal or pursuit of further action by the appellant would be necessary.

In answer to Mr. Hart's question, Mr. Orndorff confirmed that the appellant was the tenant rather than the owner of the lot. He said he did not represent the owner of the property, Leesburg Pike Partnership, and indicated that the appellant had made inquiries of them, but they did not come forward. He said the appellant was not aware of any prior violations on the property having been issued to the owner. Mr. Hart said he was thinking about the procedural implications of the owner of the property who did not appeal the letter, but relied on the tenant to do so. He asked if there was any dispute that the current use of the property fell within the storage yard definition in Section 20-300 of the Zoning Ordinance. Mr. Orndorff said he thought the property fit within the storage yard use. Mr. Hart asked if there was any Ordinance provision the appellant was relying on that would allow the fence on an empty lot without a principal use. Mr. Orndorff stated that based on prior discussions this morning, he had not been able to find any provision that would allow that use, although in practical effect the benefits would be very favorable for the community. Mr. Hart asked if the appellant was looking for authority that when the Board of Zoning Appeals was considering an appeal of a Notice of Violation, they could consider those sorts of things as a basis for concluding that the Zoning Administrator was incorrect. Mr. Orndorff said he could not point to any particular case, but he pointed out that there were indications that there seemed to be some disparity in treatment as to certain uses that were more intensive than the appellant's and the prohibition of their use on the property. Mr. Hart said there may be other enforcement activities on other sites that he was not aware of at this time.

Mr. Hart asked whether there had been any discussion with the Supervisor's Office regarding either an amendment which would allow something to occur at the appellant's location or a rezoning. Mr. Orndorff said no because the appellant was in the position of a permittee as opposed to being the landowner, and it would be difficult for him to compel the landowner to engage in those discussions.

In response to Mr. Hammack's question, Mr. Orndorff confirmed that he did not represent Leesburg Pike Partnership. Mr. Hammack indicated that the appeal letter that was attached to the staff report had notations indicating that Mr. Orndorff was counsel for the partnership as well as a reference to the appeal having been submitted for MVQ Trucking, LLC. He noted that the Notice of Violation had been sent to Sharam Yavari, general partner of Leesburg Pike Partnership, and that the deed listed Hosein Shaghghi as the trustee of the partnership, who holds it for the benefit of the Leesburg Pike Partnership. Mr. Hammack said that by the partnership's not having submitted its own appeal, they were admitting that there was a violation. Mr. Orndorff stated that throughout the process in MVQ's application for appeal, he had listed the name of the appellant as MVQ Trucking, LLC, and that they were an aggrieved person as a permittee of the owner. Mr. Hammack stated that on page 4 of the appeal, Mr. Orndorff had listed himself as counsel for Leesburg Pike Partnership. Mr. Orndorff said that also on page 4 it showed that he was counsel for MVQ Trucking, LLC. He stated again that he did not represent Leesburg Pike Partnership. He said the notation to the partnership probably was a typographical error that was based on the appellant's hope that at some point they would be able to persuade the owner to join in this matter.

Chairman DiGiulian called for speakers.

Frank Sellers, President of the Bailey's Crossroads Revitalization Corporation, no address given, came forward to speak. He said that it was very important to the Commercial Revitalization District established by the Board of Supervisors that the properties remained commercial in zoning and not industrial.

Mr. Hammack said the owner of the property was the trustee of the Leesburg Pike Partnership, and he wanted to know why the trustee was not sent a Notice. He said that the trustee held the property for the benefit of the partnership, but according to the deed, the owner of the property was Hosein Shaghaghi, Trustee. Ms. Perry explained that prior to issuing the Notice of Violation, there was some discussion between staff and Sharam Yavari, who had identified himself as being the trustee for the Leesburg Pike Partnership. She said Mr. Yavari had been notified that if the violations were not cleared, the Notice would be issued, and it was on that basis that the Zoning Enforcement Branch issued the Notice in that manner.

Mr. Hart stated that not everyone who identified themselves as an owner of property in a conversation either said the correct thing or understood what their legal interests were. He said that often deeds of trust were prepared for clients who did not entirely understand what they meant. He said he did not understand who Mr. Orndorff was representing, but if Mr. Hammack was correct looking at the deed, the person who got the violation, Leesburg Pike Partnership, appeared to have owned the property until March of 1992; however, the deed was recorded in Book 8066, page 0611, and was conveyed to Hosein Shaghaghi, Trustee, and nothing more. Mr. Hart said that it seemed to him that the violation should have gone to Mr. Shaghaghi if he was the owner as of 1992 and asked staff for clarification. Ms. Perry said she said the Notice was based on page 0812, which had been signed for by Leesburg Pike Partnership, Sharam Yavari, Partner. Mr. Hart said the partnership had given the property away, they did not or were not receiving any remuneration in return, and that was why they had signed the deed over. He stated that in 1992 when the deed was passed, the trustee was the owner, not the partnership, because they were then out of it, unless there was another deed that gave it back to the original owner. Ms. Perry stated that when she looked into the Notice issue, she had been told that everything had been done appropriately. She said that if there was a question about the Notice, she could not defend it any other way than to go back and check with the people who made the decisions on how Notices were issued. Mr. Hart indicated that if this was all the paper that was available, it seemed to him that the previous owner, rather than the current owner, was served with the Notice, and he did not understand how they would be the correct addressee. Ms. Perry stated that when she asked questions about who had been noticed, she was under the impression that both persons referenced in the deed had been talking with staff regarding the violations of the property and that the Notice had been appropriately issued. She said the Zoning Enforcement Branch would have more specific details on who should have been noticed and offered to ask them for more information.

Mr. Hart said that there had been other cases heard by the Board where the Notice of Violation went out to a property that had multiple owners, most recently a husband and wife who jointly owned a junkyard and only the husband had been noticed. He also said there had been cases where there was confusion between an owner and a tenant. Mr. Hart said that in this case it seemed that the tenant was the appellant, who did not get a letter, the owner did not get any Notice, and the person who got the Notice was not responsible. Mr. Hart said a Notice had to be given to the owner or the tenant and most likely both, but he did not understand what had happened with the case. He said that, in his opinion, something was missing.

Jim Ciampini, Senior Zoning Inspector, Zoning Enforcement Branch, stated that Mr. Yavari was the owner of the property. Mr. Hart asked why Mr. Ciampini was stating that Mr. Yavari was the owner if he was not the grantee on the deed. He asked whether ownership was determined by looking into the land records or the Department of Tax Administration's records. Mr. Ciampini said that the Leesburg Pike Partnership had been dissolved, and Mr. Yavari was at one time the trustee of the partnership. Mr. Hart asked who Mr. Shaghaghi was. Mr. Ciampini said he could not prove it, but he thought the two men were one and the same based on his investigation from the prior zoning violations on the lot dating back to 2003. Mr. Hart asked if there was another deed. Mr. Ciampini stated that there were three deeds. Mr. Hammack and Mr. Hart asked where the other deeds were. Mr. Hart asked Mr. Orndorff who Mr. Shaghaghi was. Mr. Orndorff stated that his inquiries had been indirect with the owner through MVQ Trucking. He said that basic property and real estate law would indicate that the person given notice would be the grantor under that deed that was provided by the County, and the grantee was a trustee, Mr. Shaghaghi, and he thought the true party of interest was the trustee. Mr. Orndorff said that it appeared to him there was some notice defect.

Ms. Gibb asked Mr. Orndorff whether his client had a lease with Mr. Shaghaghi. Mr. Orndorff replied that it was his understanding that there was no written lease, and MVQ had a month-to-month, verbal agreement. He said there may be some future plans by the owner to develop the property based on discussions with MVQ Trucking. In reply to another question posed by Ms. Gibb, Mr. Orndorff stated that MVQ had a tenancy without any apparent payment of rent to the owner. He said that basically it was an exchange in recognition

of past services provided to the property owner, who had in turn given MVQ permission to use the property temporarily until they could locate another site for their business. He stated that no money had exchanged hands.

Mr. Ribble called attention to page 4 of the deed and indicated that it looked like Mr. Orndorff's background information showed two entities had acquired the property, and that was not the case in the 1992 deed. He noted that one conveyed the property to the other person, and he thought that was where the problem was.

Ms. Gibb asked Mr. Orndorff if he knew whether Mr. Shaghghi and Mr. Yavan were one and the same person. Mr. Orndorff said he had no information to indicate that they were.

Mr. Byers said that page 4 of the deed indicated that on May 21, 2003, there was a Notice of Violation issued to Mr. Shaghghi, the owner of the Leesburg Pike Partnership; therefore, at some point in time the County did have the correct name.

Mr. Orndorff stated that the appellant had indicated to him that the two men in question could be brothers.

Mr. Hammack stated that in the background information provided by staff, it stated that on May 21, 2003, a Notice of Violation for allowing the storage of vehicles was sent to the Leesburg Pike Partnership and to Hosein Shaghghi, Trustee. He noted that staff had indicated that the case was closed because the violation was cured; therefore, staff had given notice to the legal title owner. He said there was no explanation given in any of the documents provided by staff that indicated why the partnership and Mr. Shaghghi were not given notice again.

Mr. Hart asked whether staff had a copy of the 1997 deed. Ms. Perry said she had not included a copy of the 1997 deed with the documentation and apologized for not doing so. At the Board's request, she displayed the 1997 deed on the overhead viewer. After looking at the 1997 deed, Chairman DiGiulian, Mr. Hart, and Ms. Gibb noted that the property had been deeded back to the Leesburg Pike Partnership. Mr. Hammack indicated that the information being displayed by Ms. Perry would have been helpful to the Board if it had been contained in the staff report.

A brief discussion among Board members determined that there were more deed conveyances after 1997, and they questioned whether the notary was the same person who signed off on all of them. In response to Mr. Hart's question, Mr. Ciampini said that the 1997 deed was the last one he knew of unless things had changed prior to his issuing the current Notice.

Mr. Hart stated that the Board had requested on many occasions that they be provided with hard copies of deeds and other pertinent information rather than to have staff give them a narrative to explain what had taken place in any particular case. He said that the subject appeal was an example of what could result in confusion if the Board did not receive all the information they needed to make a determination.

Mr. Hammack noted that the information concerning the 1997 deed had been omitted from the narrative in the background that jumped from 1992 to 2003. He said that information would have indicated that there was a very significant transfer of property and would have saved the Board a lot of time. He asked whether staff would like to make the 1997 deed part of the record in the appeal. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, replied that they would like to do so.

Chairman DiGiulian closed the public hearing.

Mr. Byers noted that on the staff report no address had been assigned and that in the documentation 5885 Leesburg Pike was listed. He asked which was correct. Ms. Perry replied that there was no address assigned, but staff did check, and the fact that the tax map reference was correct was sufficient to not require the Notice to be reissued with no address assigned. In answer to Mr. Byers' question, Ms. Perry indicated that staff preferred to have "no address assigned" as the reference.

Mr. Byers moved to uphold the determination of the Zoning Administrator as set forth in the Notice of Violation and, therefore, deny the appeal. He said the Board had made the following findings of fact: The owner of the property is not the appellant; he is the lessee; the present zoning is C-2, H-C, SC, and CRD; the area of the lot is 13,867 square feet.

A brief discussion ensued concerning who the appeal was being heard against, the owner or the tenant. Ms. Stanfield stated that the appellant in this case would be the tenant, and the appeal was related to the tenant.

In response to a comment made by Mr. Beard, Chairman DiGiulian stated that the property owner did not appeal, so the question was moot; however, the tenant did appeal.

Mr. Hammack seconded the motion. He said there had not been any evidence or anything shown that the property was not being used as a storage yard in violation of the C-2 District. Mr. Hammack said the owner had conceded the point by not appealing, the tenant had not introduced anything probative, and there had been no effective appeal grounds shown; therefore, he would support the Zoning Administrator.

Chairman DiGiulian called for the vote. The motion carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Minutes by: Kathleen A. Knoth / Mary A. Pascoe

Approved on: June 17, 2008

K.A. Knoth

Kathleen A. Knoth, Clerk
Board of Zoning Appeals

John F. Ribble III

John F. Ribble III, Vice Chairman, for
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 15, 2005. The following Board Members were present: Chairman John DiGiulian; V. Max Beard; Nancy E. Gibb; John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman DiGiulian called the meeting to order at 9:01 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman DiGiulian called for the first scheduled case.

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. KINGDOM HALL OF JEHOVAH'S WITNESSES MOUNT VERNON CONGREGATION,
SPA 99-V-013

Chairman DiGiulian noted that SPA 99-V-013 had been administratively moved to December 13, 2005, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, SP 2005-LE-033 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 10.2 ft., roofed deck (open porch), 0.4 ft. with eave 0.0 ft., carport 1.0 ft. with eave 0.3 ft. and roofed (covered) deck 0.0 ft. from side lot line, deck (concrete and stone patio) 0.4 ft. from side and 2.2 ft. from rear lot lines and accessory storage structure 2.2 ft. with eave 1.9 ft. from rear and 8.2 ft. from side lot lines. Located at 7320 Bath St. on approx. 10,062 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Isreal Larios, 7320 Bath Street, Springfield, Virginia, replied that it was.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 10.2 ft., roofed deck (open porch), 0.4 ft. with eave 0.0 ft., carport 1.0 ft. with eave 0.3 ft. and roofed (covered) deck 0.0 ft. from side lot line, deck (concrete and stone patio) 0.4 ft. from side and 2.2 ft. from rear lot lines and accessory storage structure 2.2 ft. with eave 1.9 ft. from rear and 8.2 ft. from side lot lines. A minimum side yard of 12.0 feet with permitted extensions of 3.0 feet for eaves and 5.0 feet for the carport and deck are required; therefore, modifications of 1.8 feet, 11.6 feet, 9.0 feet, 6.0 feet, 8.7 feet, 12.0 feet and 6.6 feet are requested. A minimum rear yard of 11.0 feet and side yard of 12.0 feet with permitted eave extension of 3.0 feet are required for the shed; therefore, modifications of 8.8 feet, 8.1 feet and 3.8 feet was requested.

Mr. Larios presented the special permit request as outlined in the statement of justification submitted with the application. He apologized to the board for his ignorance regarding building an addition to his house without acquiring a building permit first. He said he was willing to make any changes that the county deemed necessary.

Mr. Hart stated that one of the criteria that needed to be met was the non-compliance had to be done in good faith or through no fault of the property owner. And with respect to the carport, in the statement of justification, Mr. Larios had said that he did not seek a permit because he feared that he would not be allowed to construct the carport. Mr. Hart asked Mr. Larios if he was aware that a building permit was required for the carport. Mr. Larios answered that he was aware.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Byers moved to deny SP 2005-LE-033 for the reasons stated in the Resolution.

Mr. Hammack said he had not heard any justification from the applicant for any part of what he did. Mr. Larios had obtained building permits in one or two cases, but then he built a bit more, and in one of his

statements Mr. Larios said he had not obtained a permit because he thought the ones he obtained previously were sufficient, although he did not state this at the hearing. Mr. Hammack said he supported the motion in the absence of justification shown for the special permit. He would also support a deferral for the applicant to obtain counsel in order to present his case.

Mr. Hart said he would grant the carport and dining room, per the justification in the staff report, but the second carport was not built in good faith. He said there were a couple things that would be a hardship, because they had been constructed.

Mr. Byers said he based his vote on the information he read that stated that Mr. Larios was in construction for 20 years, which meant to him that he would understand the permitting process in Fairfax County. Mr. Larios said that he consulted with his neighbors and they were okay with the addition, but one did not support it. Mr. Byers brought up Mr. Hart's earlier comments that Mr. Larios did not seek a permit for the carport because he feared that he would not be allowed to construct the carport which was deliberate in going around the Zoning Ordinance for one's own benefit.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ISRAEL LARIOS, SILVIA LARIOS AND ANTONIO LARIOS, SP 2005-LE-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 10.2 ft., roofed deck (open porch), 0.4 ft. with eave 0.0 ft., carport 1.0 ft. with eave 0.3 ft. and roofed (covered) deck 0.0 ft. from side lot line, deck (concrete and stone patio) 0.4 ft. from side and 2.2 ft. from rear lot lines and accessory storage structure 2.2 ft. with eave 1.9 ft. from rear and 8.2 ft. from side lot lines. Located at 7320 Bath St. on approx. 10,062 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (34) 20. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 15, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The error exceeds ten percent of the measurement involved.
3. The noncompliance was not done in good faith.
4. The noncompliance was the fault of the property owner.
5. The noncompliance was not the result of an error in the location of a building subsequent to the issuance of a building permit because such was required at least in one instance and was obtained.
6. The granting of the special permit will impair the intent and purpose of the Zoning Ordinance, and it will be detrimental to the use and enjoyment of other property in the immediate vicinity.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

That the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion, which carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Ribble did not cast a vote.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., roofed deck 32.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18. (Decision deferred from 8/9/05, 9/13/05, and 10/25/05)

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearings for VC 2005-MV-002, VC 2005-MV-003, and VC 2005-MV-005.

Chairman DiGiulian noted that VC 2005-MV-002 had been deferred several times and asked whether there was any additional information from the County's standpoint. Deborah Hedrick, Staff Coordinator, replied that the case was before the Board for decision only. She said that Michelle Rosati, the agent for the applicant, had submitted the requested information, and it had been distributed to the Board.

Ms. Rosati explained that the best case building envelope on the property would be extremely limited and would not permit the construction of any reasonable house. She said that even if all the pending site and regulatory issues were resolved in favor of construction, the resulting building envelope would be 14 feet deep.

In regard to the retaining wall, Ms. Rosati said the county required it in order for the slope of the property to be in compliance. She said the size or shape of the house was not related to the need for a retaining wall. She discussed what would be required in order to build a retaining wall and whether a variance would be required to do so. She said the location of the back wall of the house was dictated by having to come up the slope to the point where the basement wall and the pilings beneath it could be constructed. She presented a drawing showing the slope, the retaining wall, and the building envelope. She stated that a 14 foot deep house would not be considered reasonable and was a hardship approaching confiscation.

Susan Langdon, Chief, Special Permit and Variance Branch, said she had spoken with the Zoning Administration Division regarding the lots and the issue of the retaining wall, and if it was truly a retaining wall, there would not be a minimum yard requirement for a retaining wall, so a variance would not be needed. She stated that the height of any fence on top of it would be measured from the top of the retaining wall to the top of the fence.

Ms. Oibb asked whether Ms. Rosati had seen a letter and photographs that had been submitted to the Board and if she had any comments. Ms. Rosati replied that she had and stated that on none of the lots could a garage be built because the houses would not be deep enough. She said a standard garage was 20 feet deep, and the house would not even be as deep as a garage.

Mr. Hammack asked why the retaining wall could not be built farther back to allow a deeper house. Ms. Rosati said the wall was required for lot grading, and its location would not change the building envelope. She noted that the grading on the proposed houses had been approved without a retaining wall because they were far enough uphill that the grade behind them was acceptable to the County, and no further waivers to the Resource Protection Area (RPA) would be needed.

A discussion ensued regarding the drawing, and Ms. Rosati described the building envelope with the house being located 50 feet back from the front lot line.

Mr. Hammack asked what the rear lot line setback was according to the Zoning Ordinance. Ms. Rosati answered that it was 25 feet, but it was in the flood plain. Ms. Langdon added that there was a 15-foot setback from the edge of the flooded plain line without a variance.

Mr. Hammack asked whether Ms. Rosati had any legal authority that said her arguments were a valid basis for a variance. Ms. Rosati answered that she did have legal authority based on the condition of the property, which included the topography, size, shape, flood plain, RPA, and physical constraints. She said Cochran used the same constitutional tests as Packer versus Hornsby. There were constraints to construction that were not purely Ordinance based, and there were constraints that were not purely monetary. It was a physical constraint in which it was not buildable further back. She said the examples listed in the State Code were mostly physical. She stated that because of the combination of the setbacks, flood plain, RPA, soils, and slope, a reasonable house could not be built.

In response to a question by Mr. Beard, Ms. Rosati said building a house in a 14-foot envelope was not reasonable and would be an unreasonable restriction and a clear and demonstrable hardship approaching confiscation.

Ms. Gibb stated that she had expected to see the setbacks and measurements on the drawing of the building envelope. A discussion ensued regarding the drawing and the building envelope.

Paul Hoofnagle, engineer with Alexandria Survey, said the building envelope was determined by using the front 50-foot setback as the criteria for setting the houses back, and then he determined the buildable area from where the basement elevation intersected the slope, which gave the back and front of the building pad. He said a house can be put two levels underground, but it may not be marketable. In response to questioning by Mr. Hammack, Mr. Hoofnagle said theoretically building could be done up to the RPA, but he would not consider it viable.

Chairman DiGiulian called for speakers.

Ernest Vanhose, 10501 Greene Drive, Lorton, Virginia, came forward to speak in opposition to the application. Mr. Vanhose said his home was next door and was built in 1983 on the same topography, but his house was built according to zoning requirements and was set back 50 feet, nine inches from the front property line. He said he disagreed with the applicants' justifications and thought there were architects and builders that could design and build homes while meeting zoning requirements. He said building a large house 20 feet closer to the court would block part of his view from his house, and his house and property would be unnecessarily diminished.

Steve Thompson, 10500 Greene Drive, Lorton, Virginia, came forward to speak in opposition to the application. He said 167 houses were built in the subdivision and maintained the 50-foot setback requirement. In 1983, eight houses were built close to the road, and his August e-mail addressed why it was a bad idea. In 1984, a house was built on Lot 15 in the cul-de-sac that maintained the 50-foot, nine-inch setback, backed up to wetlands, was steep in the back, and had the same soil content as vacant Lots 15A, 16, 17, and 18. He explained that in order to comply with the setback requirements, the builder of Lot 15 filled in the lot and selected a house that was appropriate for the lot. Mr. Thompson said he had been a contractor in Virginia since 1986. He said the first responsibility as a contractor was to put forth a design for any project that maintained the setbacks, and only when all possibilities were exhausted would an application for a waiver be recommended.

Ms. Rosati stated in her rebuttal that 20 years ago when the neighboring houses were built an approved Board of Supervisors RPA waiver would not have been needed, and the rules had become much more stringent. She said the Board needed to weigh whether it was reasonable in light of the circumstances to disrupt the RPA and require the improvements regardless of the size of the house on the lot. Ms. Rosati asked the Board to consider past approved variances. She said the legal standard which stemmed from the Code of Virginia had not changed, nor had the constitutional standard in the case law. She said she thought it was fair, reasonable, and consistent with the law for the Board to consider what variances it had approved and what it had considered a hardship in the past because the law on that point had not changed.

Mr. Beard asked whether Ms. Rosati was asking the Board to make the determination as to whether a 14-foot or 20-foot house was a reasonable use of the property. Ms. Rosati answered that they needed to consider it and whether the setbacks and other restrictions on the property, as strictly applied, were reasonable or unreasonable and whether or not they were confiscatory. She said that to say that a variance was warranted here was consistent with case law and consistent with the way the Board had traditionally granted or denied variances. She said a variance was more warranted now because the sum total of the regulatory constraints on the property was greater. Ms. Rosati said that prior to Cochran decision, the approval of a variance in this case would not have been a difficult process, which was unfortunate because the purpose for a variance in Virginia was to find a fair result when the Ordinance did not make sense. She said she had seen far less justification for hardship approved readily in the past, and the underlying law for hardship, what is confiscatory and what is an unreasonable restriction, had not changed.

A discussion ensued regarding prior denials, approvals, and expirations of variances on the properties.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 2005-MV-002 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Ms. Gibb stated that she would support the motion because she was not persuaded that the applicant was being denied all reasonable beneficial use of the property.

Mr. Beard stated that he would not support the motion because he agreed with Ms. Rosati that in cases like the subject cases, if these did not require a variance, was there any such thing as a variance in Virginia. He said they met the test of loss of all beneficial use and were tantamount to a taking notwithstanding Cochran.

Chairman DiGiulian stated that he would support the motion because he said he believed a 30-foot deep house could be constructed. It would be three levels, but it had been done, and the only argument he had heard against that was marketability, which was not criteria for a variance.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN H. BREIDENSTINE, JR., VC 2005-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., rected deck 32.1 ft. and bay window 34.1 ft. from front lot line. Located at 10517 Greene Dr. on approx. 22,110 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 18. (Decision deferred from 8/9/05, 9/13/05, and 10/25/05) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 15, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. Standards have tightened up, and Cochran changed the way the Board grants or does not grant variances.
3. The applicant should think about a legislative remedy.
4. There is a great deal more building envelope available to build in than the applicant has presented to the Board.
5. The 14-foot depth on the building is over a grade that is at the outside about six feet in grade change.
6. Houses are built in Fairfax on six-foot grade changes all the time.
7. If the applicant wanted to build a little deeper house, it would only be another two feet of grade change.
8. The topography on the lot is not so severe as to restrict the construction of a reasonable dwelling on the property without a variance.
9. Cost of construction is not supposed to be a factor that the Board considers and is not part of the Ordinance or part of Cochran.
10. The requirements for a variance, particularly Standards 3, 4, and 5, have not been satisfied.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hart recused himself from the hearing.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. ABDUL SLAM, VC 2005-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17. (Deferred from 8/9/05, 9/13/05, and 10/25/05)

Ms. Rosati, agent for the applicant, said the presentation, discussion, and materials regarding VC 2005-MV-002 applied to VC 2005-MV-003, and she asked that they be incorporated by reference.

Mr. Hammack moved to deny VC 2005-MV-003 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ABDUL SLAM, VC 2005-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 34.2 ft. and roofed deck 32.3 ft. from front lot line. Located at 10513 Greene Dr. on approx. 23,089 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 17. (Deferred from 8/9/05, 9/13/05, and 10/25/05) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 15, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The reasons as set forth in the companion case, John H. Breidenstine, Jr., VC 2005-MV-002, apply to this case.
3. The applicant has not satisfied the requirement that the strict application of the Ordinance prohibits all reasonable use of the property.
4. In looking at the topographical map, there is great depth behind the 17-foot depth that the applicant contends could only be constructed.
5. The 17 feet for the most part is only over a four-foot grade.
6. A three-story house that is 30 feet in depth could be constructed.
7. Cost may be a constraining factor, but with respect to the building envelope and the topographic conditions, there is no extreme grade that would prohibit construction of some reasonable house on the property that would be marketable.
8. The failure to grant a variance does not approach confiscation 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 difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hart recused himself from the hearing.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Greene Dr. on approx. 28,982 sq. ft. of

land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A. (Deferred from 8/9/05, 9/13/05, and 10/25/05)

Ms. Rosati, agent for the applicant, said the presentation, discussion, and materials regarding VC 2005-MV-002 and VC 2005-MV-003 applied to VC 2005-MV-005, and she asked that they be incorporated by reference. In addition, she indicated that if the RPA waiver was denied and the retaining wall could not be built, a house could not be built in the proposed location and could only be built 35 feet from the front lot line without the retaining wall. She said she felt it was unlikely the RPA waver would be approved, so it was not just an issue of reducing site constraints to cost because there was another regulatory approval required.

Mr. Hammack moved to deny VC 2005-MV-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HORACE COOPER, VC 2005-MV-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 35.5 ft. with eave 34.5 ft., bay window 33.5 ft. and roofed deck 30.5 ft. from front lot line. Located at 10505 Oreene Dr. on approx. 28,982 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 15A. (Deferred from 8/9/05, 9/13/05, and 10/25/05) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 15, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The reasons as set forth in the two companion cases; John H. Breidenstine, Jr., VC 2005-MV-002; and Abdul Slam, VC 2005-MV-003; apply to this case.
3. The subject lot has less severe topographic conditions from the plats presented to the Board.
4. There is some sort of a triangular footprint that only has grade elevations of about eight feet on one side that would require a house to be cited a little offskewed to one side of the property, and it gives some depth on one side and might require a footprint of a house to be something different.
5. Looking at the triangular footprint, a house could be built almost 40 feet deep on one side of the property to the east.
6. The RPA line is longer, and it would have to be somehow tapered back.
7. The Board cannot conclude that all reasonable use of the property would be denied if the variance was not granted.
8. It is not believed that the strict application of the Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.
9. In regard to the applicant's argument that it is unknown whether the County Board would grant waivers from construction in the RPA, the BZA cannot speculate about what the County Board would do.
10. The BZA is well aware that the County Board thinks that no variances ought to be granted.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or

- G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the strict application of this Ordinance would produce undue hardship.
- 5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- 6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
- 7. That authorization of the variance will not be of substantial detriment to adjacent property.
- 8. That the character of the zoning district will not be changed by the granting of the variance.
- 9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is DENIED.

Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hart recused himself from the hearing.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF THE FULL GOSPEL FIRST CHURCH OF WASHINGTON, SPA 89-M-041-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 previously approved for a church to permit a child care center, building addition, increase in land area and site modifications. Located at 6401, 6405 and 6407 Lincolnia Rd. on approx. 3.89 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 59, 59C and 59D.

Chairman DiGiulian noted that SPA 89-M-041-02 had been administratively moved to January 10, 2006, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. ESFANDIAR KHAZAI, VC 2004-DR-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed Lot 2 having a lot width of 20.0 ft and to permit existing dwelling 9.0 ft. from front lot line. Located at 7072 Idylwood Rd. on approx. 1.27 ac. of land zoned R-2. Dranesville District. Tax Map 40-1((1)) 12. (Admin. moved from 11/2/04, 3/15/05, 5/17/05, and 8/9/05 at appl. req.)

Chairman DiGiulian noted that VC 2004-DR-111 had been administratively moved to March 14, 2006, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. JOHN B. LOGRANDE, VC 2005-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain less than eighteen inches above 100 year

flood plain level. Located at 1212 I St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (38) 30. (in association with SEA 78-V-115)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. LTC John B. Logrande, 1212 I Street, Alexandria, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested permission to allow an existing dwelling to remain less than 18 inches above the 100-year floodplain level. It was at least 7 inches below that level.

The existing dwelling, constructed in 1980, was not constructed to the appropriate floor elevation. This property was subject to Special Exception 78-V-115, which included a condition requiring the lowest level of the floor be at least 18 inches above the water level of the 100 year flood plain.

The applicant filed an SEA which was heard by the Planning Commission the previous week and requested deletion of the development condition. The Planning Commission deferred decision until December 7th. Even if the development condition is deleted, this is a requirement of the Zoning Ordinance, hence the variance request.

Mr. Hart asked whether the application was proper in accordance to Sect. 18-406. Susan Langdon, Chief, Special Permit and Variance Branch, explained that although the language in Sect. 18-406 referred to no variance shall be authorized for a use otherwise not permitted in a floodplain, the subject use of a single-family dwelling on a residential lot was a permitted use in a floodplain; however, a special exception was needed as well.

Colonel Logrande presented the variance request as outlined in the statement of justification submitted with the application. He said the variance application was being filed in conjunction with the special exception amendment 78 V-115. The variance application was an initiative offered by Fairfax County Planning and Zoning officials. The Planning department was told by the County Attorney's office that obtaining a variance would be a viable one since it clearly constituted a hardship by virtue of the fact that they had been taxed and been living in the house.

Col. Logrande had been asking for two years for the certificate of occupancy and was told there was no certificate of occupancy. If the Zoning Administrator that approved and signed the certificate of occupancy on June 29, 1981, did not check the house elevation, that constitutes a violation of the Zoning Ordinance on the part of Fairfax County. He was never notified on any non-compliance issues when he purchased the house 6 years ago and he only found out that his house did not meet the elevation requirements when he started applying for a building permit for a garage and was given a copy of the original special exception and the development conditions. The fundamental issue was not whether he could apply for the building permit or not, but whether he had been occupying the house legally since it was purchased. He had the same use of the house and property as any compliant property owner would and it was the county and not him that should be liable for any issues derived from the elevation discrepancy created by the fact that Fairfax County officials did not follow procedures as stated in the Zoning Ordinance. Col. Logrande was a member of the United States Armed Forces and could have to relocate at any time without much notice, and he would be unable to sell the house.

Mr. Beard asked if he occupied the house during the flood. Col. Logrande said that he did and had actually started the process prior to the flood. His property was the only one in the neighborhood that did not get any water.

Mr. Hart asked about whether a certificate of occupancy was issued. Mr. Varga answered that it was.

Mr. Hart asked if there were inspections by various departments. Mr. Varga answered that there were and that they were signed off prior to 1986, which included Zoning.

Mr. Hart asked if zoning should not have signed off since the house was too low. Ms. Langdon responded that there was nothing to show what the elevation was for an inspector to check against.

Mr. Hart said in a situation such as with Col. Logrande in which a house was built pursuant to a special exception we could not rely on the builder and it has to be someone's responsibility in the county to verify that the development conditions had been complied with because then the end result is that an innocent

homeowner, such as Col. Logrande, buys a house and does not know that it was not built pursuant to the development conditions. The homeowner is then stuck with the house which is in violation. Mr. Hart said a red flag should go up if there was a special exception at least before the last approval was signed off on.

Mr. Hart explained to Col. Logrande that the Board was very sympathetic to his situation and it was at least in part something of the county's making. A better job could have been done when the house was built to verify that the development conditions were complied with.

Mr. Hart asked Col. Logrande if there had been any discussion with Supervisor Hyland regarding a Zoning Ordinance amendment that would allow the house to remain where it was. Col. Logrande responded that he had spoke to Mr. Hyland's assistant, Mr. Kenney. Mr. Kenney had thought the house would be recognized as defacto, where people had been occupying it for 30 years. Mr. Hart said it needed to be revisited.

Mr. Hart said Justice Russell went through the rationale as to the reason the BZA had no authority to grant a variance in the Cochran case unless the effect of the Zoning Ordinance as applied to the piece of property under consideration would, in the absence of a variance, interfere with all reasonable beneficial use of the property taken as a whole. Justice Russell went through several factors; one was the greatly increased expense to the owners if the plans were reconfigured to meet the requirements of the Zoning Ordinances; it would be more expensive in Col. Logrande's case to build a new house; lack of opposition or even support of the application by neighbors, which there had not been any letters of opposition in this case; serious personal need by the owners for their proposed modification was described by Justice Russell, which Col. Logrande met as well. Justice Russell said the threshold question for the BZA in considering a variance as well as for a court reviewing its decision was whether the effect of the ZO upon the property under consideration as it stands interferes with all reasonable beneficial uses of the property taken as a whole. What Justice Russell had said was unless it was a total wipeout, the BZA was not allowed to consider the cost to the applicant or the serious personal need. It did not meet the Cochran standard much as the Board would like to be able to grant it.

Col. Logrande asked if he needed a variance given that he had a certificate of occupancy. Mr. Hart responded that he did not think it appropriate for him to answer. Mr. Hart said Col. Logrande was entitled to some relief and probably from the Board of Supervisors.

Ms. Gibb asked staff about the certificate of occupancy and why the applicant would need anything more. Ms. Langdon answered that she thought that was the question posed to the County Attorney's Office in which they responded that he did need a varianco to make it legal. It was a requirement in 1980 and was also a requirement in the Zoning Ordinance at that time and it is also a requirement of the previous special permit that was approved. Ms. Gibb asked what would happen if he did not get a varianco. Ms. Langdon responded that if he did not make it legal, the county could take him to court for not meeting the Zoning Ordinance, for the lowest level to be 18 inches above the floodplain level. That was the Zoning Ordinance requirement when the house was built and now. Even if the Board of Supervisors amended the SE to delete that condition, the applioants still needed a variance to vary that provision of the Zoning Ordinance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny VC 2605-MV-006 for the reasons stated below. Ms. Gibb seconded the motion.

Mr. Hart said it was a very difficult conclusion because the facts were so sympathetic to the applicant, but he could not reconcile a conclusion that would be otherwise with Justice Russell's clear instructions to the Board in the Cochran case that the kinds of factors that compel sympathy for this applicoant are exactly the ones that the court had said the BZA could not consider. It stipulated that the house could be built 16 inches above the floodplain. The house was 7 inches short of that. It was something that unfortunately should have been checked 25 years ago and was not. The 60-day rule did not apply. It did not meet the standard that the ordinance interfered with all reasonable beneficial use of the property taken as a whole.

Ms. Gibb supported the motion for disoussion purpeses and said it was a case they would have had no trouble with 18 months ago before the Cochren ruling. The BZA was not allowed to consider the hardship unless the applicant was deprived of all reasonable beneficial use.

Chairman DiGiulian asked why it could not be a special permit for an error in building location. Ms. Langdon responded that special permit language was specifically to minimum yard to relieve an error to the minimum yard requirement and this was not the same, it was in terms of the elevation of the home.

Mr. Beard said he could not support the motion. He felt the BZA should be a buffer between the good citizens of Fairfax County and unduly harsh regulations and circumstances as they apply on an individual basis.

Mr. Byers said he could not support the motion. He said he did not believe that the law intended to take away the house from its owner. If that was what the law intended to do then it was a case that should go to court. Part of the culpability was on the county because it was not measured by the county or if it was measured it was not done correctly. And 25 years later, the homeowner was put in an impossible situation which was approaching confiscation. It was unreasonable. Col. Logrande had done everything he could do to make it work by talking to Zoning and the County Attorney, therefore he would not support the motion and if given the opportunity he would approve the variance.

Mr. Hammack said he could not support the motion. He preferred to see the case deferred. Mr. Hammack pointed out that Ccl. Logrande's house was the only one that did not suffer flood damage, yet it was the only one being punished for not being built as high as it should have been. Mr. Hammack said he thought Col. Logrande asked a good question when he asked what would happen if he did not get a variance. Mr. Hammack said it would serve Col. Logrande well to get legal counsel. Mr. Hammack said he wanted to defer decision on the case so that Col. Logrande could explore other alternatives and to find out what happens on the SEA, whether the provision would be deleted or if something else could be locked at under the Ordinance. If the BZA denied the variance, it would be tantamount to condemning his property or close to it.

Mr. Hart said he had considered a deferral as well, but thought it was a bad idea because it was his understanding from staff that the SEA was contingent on the variance and not the other way around. If the SEA was granted and the variance was denied, the applicant had nothing. The second reason was Col. Logrande said he did not want any further delays. Mr. Hart said it was obvious that this case cried out for a Zoning Ordinance Amendment like what was done with another case in which another homeowner could not rebuild after a hurricane. If the case was deferred for 6 months, that would defer a Zoning Ordinance Amendment for 6 months. It did not seem that anything had happened yet on a Zoning Ordinance Amendment that would say for everybody who had a house that had been there for 25 years where staff did not check the elevation when the house was approved. A very narrow Zoning Ordinance Amendment would have to be crafted to bless this without further hardship to the owner. It would be entirely unreasonable that anybody would want to tear the house down. Mr. Hart said he thought a deferral left hope that a variance would be granted when it should not under Cochran. Mr. Hart said what needed to happen was a Zoning Ordinance Amendment to allow for this and deciding now versus 6 months from now would get things moving faster.

The applicant was asked what he thought of a deferral. Col. Logrande answered that he was not sure what would happen if it was delayed.

Mr. Hammack pointed out that if the BZA took action to deny the variance, then Col. Logrande would have a ruling that was against him and he would need to appeal it to the court within 30 days. Filing a deferral would give the applicant an opportunity to gain some analysis from an attorney knowledgeable in land use law.

Col. Logrande responded that he would prefer a shorter deferral and he would secure legal counsel so that he could decide how best to proceed and the implications of it.

Mr. Hart said he was fine with the shorter deferral if that was what the applicant wanted. Action needed to be taken to find out whether they could add in floodplain height to mistake and building location or some other slight amendment that would fix this. It was his understanding that the SEA decision was deferred for decision only to the second week in December so the package could go before the Mount Vernon council citizen's association so that they could make a recommendation.

Mr. Ribble asked staff to research further the fill and who may have inspected it and what they did years ago.

Mr. Hammack made a substitute motion to defer decision on VC 2005-MV-006 to January 31, 2006, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. TRUSTEES OF TRINITY UNITED METHODIST CHURCH, SPA 87-D-074 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 87-D-074 previously approved for a church and child care center to permit deletion of child care center and addition of a nursery school, increase in land area, building additions, columbarium, and site modifications. Located at 1201 Dolley Madison Blvd. on approx. 7.30 ac. of land zoned R-at 2. Dranesville District. Tax Map 30-2 ((32)) A, 1 and 5.

Chairman DiGiulian noted that SPA 87-D-074 had been administratively moved to January 10, 2006, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 15, 2005, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION, INC./ FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-91-77 previously approved for a community swim club to permit the parking of Fairfax County school buses. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 5 and 7. (Admin. moved from 10/11/05 at appl. req.) (Admin. moved from 10/25/05 for ads)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norman Gottlieb, 3332 Elm Terrace, Falls Church, Virginia, replied that it was.

Stephen Varga, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant, Holmes Run Acres Recreation Association, Inc. and Fairfax County Public Schools, requested an amendment to Special Permit S-91-77, previously approved for a community swim club, to permit the parking of eight Fairfax County school buses within the existing parking lot during the club's non-operational season, September through May each year, due to insufficient space for bus storage at Woodburn Elementary School.

No new buildings or construction were proposed with the application.

Staff concluded that the subject application was in harmony with the Comprehensive Plan and applicable Zoning Ordinance provisions with the adoption of the development conditions set forth in Appendix 1 of the staff report.

Ms. Gibb asked about violations. Mr. Varga responded that Holmes Run was not currently in violation but acknowledged they had been in the recent past and cleared in March 2005. Ms. Langdon added that if an applicant were in violation at the time of their special permit application staff would work to try to clear it through deferral or address it in the development conditions. Mr. Ribble asked what the violations had been. Mr. Varga answered that they had to do with the sale of firewood on site.

Mr. Hammack asked if there were other recreational associations that allowed the storage of school buses on the property. Susan Langdon, Chief, Special Permit and Variance Branch, responded that she was not aware of any others.

Dean Tistadt, Assistant Superintendent of Schools, Fairfax County, for facilities maintenance and transportation for Fairfax County Public Schools. Mr. Tistadt's department was responsible for the transport of 110,000 students per day. The school bus fleet contains about 1577 school buses to accomplish the transportation. Bus parking is a major problem in Fairfax County. The use of the Holmes Run Acres Recreation Association (HRARA) was a creative solution to the parking problem.

Mr. Tistadt said that buses had been parked at schools, libraries, commuter lots, and government centers and anywhere people would allow them to park. At times parking at the schools becomes a hardship for the school because it takes away parking necessary for the school's own use.

Mr. Gottlieb, President of the Holmes Run Acres Recreation Association, Inc., answered Mr. Beard that it was an annual contract with renewal that had been arranged in which the Chairman of the Providence school district supported it. Mr. Tistadt said that after analysis and pending improvements by his Department it was concluded that the parking surface would be sufficient for bus use.

Ms. Gibb asked about the bus runs. Mr. Tistadt answered that the hours of operation were 6:00 a.m. to 5 p.m., with athletic field trips that would go into the evening as necessary.

Mr. Tistadt explained that after Memorial Day the buses would return to Woodburn School because the pool would be open at HRARA. He said there was no way to reconfigure the parking at Woodburn, but they would look at it once the renovation started.

Chairman DiGiulian called for speakers.

Catherine Johnston, President of the Holmes Run Civic Association, came forward to speak in support of the application. Ms. Johnston said they had problems with the buses parking at the Woodburn School due to very limited parking.

Lynn Petrazzuolo, Woodburn PTA President, came forward to speak in support of the application. She said school started at 8 a.m. The scheduled construction was 2 years away. Gravel parking lots were considered, but the neighbors opposed it. Ms. Petrazzuolo said that even though the buses started out at 6 a.m. they returned to the school in the middle of the day to park which meant no one could use the parking spots but the buses.

Mr. Hammack questioned the fact that the buses parked at Woodburn were not transporting Woodburn students. Ms. Petrazzuolo said all the schools were overcrowded as well. Mr. Tistadt explained further that it was done this way based on an operational/logistical point of view and to only park buses at each school that served that school would be a nightmare. The buses were parked according to where it was logical from an operational perspective and did not worry what school they supported. Mr. Tistadt said he would like to park the buses in a large compound, but did not have that option so they must park buses all over the county.

Mr. Gottlieb had the audience members raise their hands in support of the application.

Chairman DiGiulian noted that there were two letters in opposition to the application; from Eric Scheider, and Louis Chaconas.

Chairman DiGiulian closed the public hearing.

Mr. Ribble said he thought it was not good for the neighborhood and was a nuisance.

Mr. Ribble moved to deny SPA 77-P-091. Mr. Hammack seconded the motion for discussion purposes. He said he had sympathy for the schools. Mr. Hammack said he preferred to do a test run for two years, while Woodburn was reconfiguring the lot. Mr. Hammack said he agreed with Mr. Ribble that the neighbors did not intend to buy in to being next to a recreation center where buses would be coming and going all year. He had apprehension about setting a precedent where other recreation centers may do the same and become a quasi commercial or public use that it was not before.

Mr. Hart said he could go along with approving it for a period of time with a periodic review.

Mr. Byers said he agreed with Mr. Hart and suggested that the board initially approve it for one year and after that year review how it worked. The issue of parking school buses is a tough one, and Mr. Byers said he was sympathetic to the Asst. Superintendent of the schools, who was responsible for it, because it was factually accurate when the Asst Superintendent had said that he would like to have large consolidated lots where all the buses could be parked because it helped from the operational and security standpoint, but there was not that option and 1500 buses had to be put some place. Mr. Byers said he had seen all the emails from the neighbors and their concern over it, and the prudent way to proceed was to approve it for one year.

Mr. Byers made a substitute motion to approve SPA 77-P-091 for one year for the reasons stated in the Resolution and review it after that time.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOLMES RUN ACRES RECREATION ASSOCIATION, INC./ FAIRFAX COUNTY PUBLIC SCHOOLS, SPA 77-P-091 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-01-77 previously approved for a community swim club to permit the parking of Fairfax County school buses. Located at 3451 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (Admin. moved from 10/11/05 at appl. req.) (Admin. moved from 10/25/05 for ads) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 15, 2005; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Holmes Run Acres Recreation Association Inc. / Fairfax County Public Schools and is not transferable without further action of this Board, and is for the location indicated on the application, 3451 Gallows Road, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Hamid Matin dated April 24, 2005, revised September 14, 2005, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of memberships shall be 400.
5. The hours of operation shall be from 9:00 a.m. to 9:00 p.m. daily, Memorial Day through Labor Day.
6. No more than eight (8) Fairfax County School buses shall be parked in the parking lot at any given time.
7. Notwithstanding that which is marked on the plat, the alternate spaces along the eastern lot line shall be deleted.
8. Transitional Screening 1 shall be provided along the western lot line, between the parking lot and the lot line. All plant material shall be maintained in a healthy condition and any dead, dying or damaged plat material shall be replaced with like kind.
9. The number of After Hours Parties shall be limited to SIX (6) per year with the prior written permission from the Zoning Administrator for each individual party.
10. Fairfax County School buses shall park in Holmes Run Acres Association's parking lot ONLY between Labor Day weekend and Memorial Day weekend each year.

11. This special permit is approved for ONE (1) year.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion which carried by a vote of 7-0.

//

~ ~ ~ November 15, 2005, After Agenda Item:

Approval of June 28, 2005 Minutes

Hart moved to approve the Minutes with minor typographical corrections. Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding West Lewinsville, McCarthy, Lake Braddock, Fisenne, By Laws, and correspondence with the County Executive pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Hart seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:44 a.m. and reconvened at 12:13 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

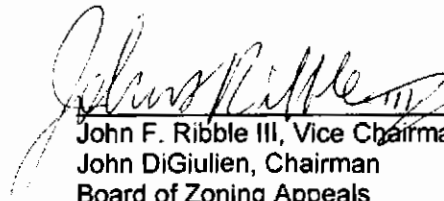
As there was no other business to come before the Board, the meeting was adjourned at 12:15 pm.

Minutes by: Vanessa A. Bergh

Approved on: June 26, 2007



Kathleen A. Knoth, Clerk
Board of Zoning Appeals


John F. Ribble III, Vice Chairman, for
John DiGiulien, Chairman
Board of Zoning Appeals