

# 2009 BOARD OF ZONING APPEALS MEETING MINUTES

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 6, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ January 6, 2009, Scheduled case of:

9:00 A.M. WILLIAM C. VEALE AND DEBORAH C. VEALE, SP 2008-SP-088 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 22.8 ft. and 23.0 ft. from rear lot line and 5.0 ft. from side lot line such that side yards total 15.8 ft. Located at 9214 Bexleywood Ct. on approx. 9,744 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 246.

Chairman Ribble called the applicants to the podium.

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

Jeremy Flemming, the applicant's agent, 5795-B Burke Center Parkway, Burke, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a two-story addition with living space on the upper level and a garden center/storage area on the lower level, resulting in a two foot reduction of the minimum yard requirement. Staff recommended approval of this request. She noted that the applicants were also requesting approval of an upper level deck with lattice screening and storage below, resulting in 8.2 foot and 2.2 foot reductions of the minimum yard requirements. Ms. Caffee said that staff did not support approval of this request since it was not in conformance with applicable Zoning Ordinance provisions.

Mr. Hart and Ms. Caffee discussed the proposed patio and allowed extensions, the retaining wall, and the rear steps.

Mr. Flemming presented the special permit request as outlined in the statement of justification submitted with the application. He and his clients requested a dialogue with the Board in an effort to get approval in full; however, if the Board could not approve the project in full, they wished to defer the decision so that they could work on a redesign of the proposal. He then introduced his client, William Veale.

William Veale said he had worked with the homeowners association and architectural review board on the design of the addition. He noted that his property was buffered by park property to the rear with no neighboring property. Mr. Veale stated that proposed lattice deck structure was not directly adjacent to the adjoining property owner and that a draining easement had been provided to alleviate the impact of any runoff. He said the property owners across the street had no objection to the design.

Mr. Hart and Mr. Veale discussed the function of the space between the side of the house and the left lot line, including the width of the proposed rear deck.

Chairman Ribble called for speakers.

Pia Trigiani, representing the Barrington Homeowners Association, spoke in opposition to the application. She said the Association had not yet reviewed the proposal and the Architectural Review Board had not acted on the design.

Terrence Burns, president of the HOA, also spoke in opposition to the proposal. He said his major objection was that the deck protrudes from the side of the yard and was visible from the street.

In response to a question from Mr. Hart, Mr. Fleming stated that the HOA had not reviewed the design due to miscommunications with the ARB. He also stated that he was unsure of which procedure to do first, i.e., BZA or HOA approval.

Mr. Beard and Mr. Fleming discussed the placement of the deck door, with Mr. Fleming noting that the original door location was found objectionable by the HOA so it was deleted.

Mr. Hart suggested that the applicant address the HOA and ARB concerns before the BZA decision.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on SP 2008-SP-088 to April 3, 2009 at 9:00 a.m.

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

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~ ~ ~ January 6, 2009, Scheduled case of:

9:00 A.M. ISLAMIC FOUNDATION OF NORTH AMERICA, INC., SP 2008-LE-076 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yard. Located at 6521 South Kings Hwy. on approx. 1.27 ac. of land zoned R-2. Lee District. Tax Map 92-2 ((1)) 20. (Admin. moved from 10/21/08 for notices) (Decision deferred from 12/16/08)

Chairman Ribble called the applicant to the podium.

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

Shannon Caffee, staff coordinator, stated that the decision had been deferred so that Mr. Hart could visit the site to ascertain any site distance problems.

Mr. Hart noted his visit to the site. He said since then, the Board had received numerous letters and photographs indicating further violations on the site.

Mr. Byers and Roy Biedler, Senior Zoning Inspector, discussed a previous violation regarding the garage, with Mr. Biedler noting that the garage was no longer being used as a dwelling, but that it had not been converted back into a functioning garage, so it was still in violation.

Mr. Byers moved to deny SP 2008-LE-076 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

ISLAMIC FOUNDATION OF NORTH AMERICA, INC., SP 2008-LE-076 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in the front yard. Located at 6521 South Kings Hwy. on approx. 1.27 ac. of land zoned R-2. Lee District. Tax Map 92-2 ((1)) 20. (Admin. moved from 10/21/08 for notices) (Decision deferred from 12/16/08). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2009; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.27 acres.
4. The applicant did not comply with the standards contained in the Zoning Ordinance, specifically paragraphs 3, 4, and 5 of Section 8-923.
5. The application should not be approved unless and until the current violation is cleared, because, in some cases, it is very difficult to enforce development conditions.

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 appropriate sections 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 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ January 6, 2009, Scheduled case of:

9:00 A.M.        GEORGE K. ORTON, TRUSTEE, SP 2008-MV-089 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.3 ft. from side lot line such that side yards total 16.3 ft.. Located at 7924 Edinburgh Dr. on approx. 18,207 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-2 ((6)) 400A.

Chairman Ribble called the applicant to the podium.

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

George Orton, the applicant, 7924 Edinburgh Drive, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant wished to construct a two-story addition located 8.3 feet from the western side lot line, such that side yards totaled 16.3 feet. She said the application met the minimum side yard requirement of 8.0 feet, but did not meet the total side yard requirement of 20.0 feet, resulting in a modification of 3.7 feet (19%). Ms. Hedrick stated that staff recommended approval.

Mr. Hart, Ms. Hedrick, and Ms. Langdon discussed proposed Development Condition 5, with Ms. Langdon noting that the burning bush plant was not considered invasive and was common in this area.

Mr. Orton presented the special permit request as outlined in the statement of justification submitted with the application. He said he was requesting the two-story addition to provide living space to visiting children and grandchildren.

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

Mr. Hart moved to approve SP 2008-MV-089 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE K. ORTON, TRUSTEE, SP 2008-MV-089 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.3 ft. from side lot line such that side yards total 16.3 ft. Located at 7924 Edinburgh Dr. on approx. 18,207 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-2 ((6)) 400A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2009; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. This is an oddly shaped lot, and the house was originally placed at an odd angle to all of the lot lines so that the building envelope for this house is essentially a ring of triangles.
4. The side that the addition is requested for appears to be the logical side, and although it is described as a two-story addition, you can see from the drawings that it is actually somewhat underground in the front so the impact would be lessened.
5. The intrusion into the minimum side yard is really only at the rear corner and is just a few feet. The Board does not believe it would have a significant negative impact on anyone, particularly with the mitigation in the development conditions regarding the planting.

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 the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance and the additional standards set forth in the motion.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (680 total square feet) of a two story addition, as shown on the plat prepared by Larry N. Scartz, Ltd., dated August 27, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,205 square feet existing + 3,307.5 square feet (150%) = 5,512.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

5. A row of shrubs, such as Burning Bush, shall be planted between the proposed addition and Lot 395.

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

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

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

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~ ~ ~ January 6, 2009, Scheduled case of:

9:00 A.M.            DAVOOD MIRZAIEE, SP 2008-DR-090 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 structures to remain 0.5 and 3.1 ft. from side lot line and accessory storage structure 3.0 ft. from side lot line and 5.9 ft. from rear lot line. Located at 7415 Paxton Rd. on approx. 10,704 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5)) (H) 15.

Chairman Ribble called the applicant to the podium.

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

Davood Mirzaiee, the applicant, 7415 Paxton Road, Falls Church, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting three special permits, all to allow a reduction to minimum yard requirements based on an error in building location. Specifically permission to allow a carport to remain 0.5 feet from the side lot line, a treehouse to remain 3.1 feet from the side lot line, and a shed to remain 3.0 feet from the side lot line and 5.9 feet from the rear lot line.

In response to a question from Mr. Hart, Ms. Johnson stated that a notice of violation had been issued on the carport only. She also noted that they had received complaints about the carport from neighbors.

Mr. Mirzaiee presented the special permit request as outlined in the statement of justification submitted with the application. He said when he purchased the house in 1994, there was a dilapidated shed on the property which he fixed up. Mr. Mirzaiee subsequently built a carport on the side of the house, not knowing he needed a permit. He did not feel the carport was unreasonable, stating that he just wanted to shelter his car like his other neighbors.

Chairman Ribble called for speakers.

Paul Prados, Esquire, 10560 Main Street, Fairfax, Virginia, said he was an advisor to the applicant on this project. He stated that to move the garage and/or the driveway now would be extremely expensive. Mr. Prados noted that once the applicant received the notice of violation, he applied for the special permit to allow the carport to remain.

Mary Otis, 7120 Falcon Street, Annandale, Virginia, spoke in opposition to the carport, stating that she was the property owner next door. She stated there were safety issues with the carport, namely damage from water runoff from the carport tarp and constantly having a wet driveway to walk on. She asked that the BZA deny the application.

Mr. Beard, Mr. Hart, Mr. Hammack, and Ms. Otis discussed the carport tarp and water damage caused by the tarp runoff directly onto her property.

In rebuttal, Mr. Mirzaiee said the tarp was not a hard structure and drained on both sides. He did not feel it was unsafe.

Mr. Hammack, Mr. Hart, and Mr. Mirzaiee discussed the carport being used for storage, with Mr. Mirzaiee stating that he would remove the closet/cabinet under the tarp.

Mr. Smith and Mr. Mirzaiee discussed his contact with the tenants about the carport, not the owner, Ms. Otis.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve-in-part SP 2008- DR-090 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

DAVOOD MIRZAIEE, SP 2008-DR-090 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 structures to remain 0.5 and 3.1 ft. from side lot line and accessory storage structure 3.0 ft. from side lot line and 5.9 ft. from rear lot line. **(THE BZA DID NOT APPROVE THE CARPORT ACCESSORY STRUCTURE.)** Located at 7415 Paxton Rd. on approx. 10,704 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5)) (H) 15. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2009; and

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

1. The applicant is the owner of the land.
2. The application meets the requirements of Section 8-914.
3. The treehouse and shed will not be detrimental to the use and enjoyment of the property in the immediate vicinity.
4. The treehouse and shed were done in good faith.
5. It is consistent with the requirements of the Zoning Ordinance.
6. It will not create an unsafe 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-IN-PART** as to the treehouse and shed, with the following development conditions:

1. This special permit is approved for the location of the accessory structure (playhouse) and the accessory storage structure (shed) as shown on the plat prepared by Advance Structural Concepts, LLC, dated August 8, 2008, as submitted with this application, and is not transferable to other land. **(THE BZA DID NOT APPROVE THE CARPORT ACCESSORY STRUCTURE.)**

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.

Mr. Smith then moved that the Board of Zoning Appeals **DENY** the portion of the special permit pertaining to the carport, in that the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance, and the Board cannot find that the carport will not be detrimental to the use and enjoyment of other property in the immediate vicinity. While drainage is not an issue because there would be the same drainage as would otherwise be with the blacktop driveway and safety is not an issue, the carport is a somewhat large and obtrusive structure very close to the lot line.

Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ January 6, 2009, Scheduled case of:

9:30 A.M. JOHN DENNIS HALL JR., CYNTHIA R. BAUSO, A 2008-LE-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Appellants are maintaining outdoor storage, have erected a fence in excess of four feet and an accessory storage structure all in the front yard, and are allowing the parking of a vehicle on the unpaved surface of the front yard on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62. (Deferred from 7/1/08, 8/5/08, and 10/7/08 at appl. req.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the Appellants had requested a deferral to April 14, 2009 so that they could have time to apply for a special permit.

Mr. Beard moved to defer A 2008-MV-057 to April 14, 2009 at 9:30 a.m.

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

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~ ~ ~ January 6, 2009, Scheduled case of:

9:30 A.M. LUANNE AND W. JEFFERY KIRKLAND, A 2008-MV-057 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Appellants have established a contractor's offices and shops on property in the R-3 District and have not complied with the use limitations of Home Occupation Permit O-2004-06312, in violation of Zoning Ordinance provisions. Located at 8515 Riverside Rd. on approx. 529 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 33A.

Chairman Ribble gave a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Ray Sparrow, Esquire, 3900 University Drive, Fairfax, Virginia, introduced himself to the Board, stating that he had been retained by the Appellants four days previously.

Mr. Hart then gave a disclosure, but also stated that he did not believe his ability to participate in the case would be affected.

Brian Parsons, Staff Coordinator, presented staff's position as set forth in the staff report dated December 22, 2008. He said it was staff's position that the Appellants were using the renovation of their personal residence as a pretense from which they operate a contractor's office and shop. Mr. Parsons noted that the Appellants were general contractors by trade. He said that since the notice of violation, the construction equipment had been removed, but there was still a great deal of construction material in the rear yard and the flatbed truck was still parking in front of his neighbor's house.

Mr. Beard and Mr. Parsons discussed the age of the building permit (four years old) and the fact that the permit can remain open until construction is complete. Mr. Beard stated that he felt this was a way for someone to work the system.

Mr. Hart and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed Rebecca Goodyear's name on the permit and the "X"s on the plat.

In response to a question from Mr. Hart, Ms. Stanfield said that the shed and stable encroachment was a non-issue since they were built in 1925 and predated the house.

Mr. Parsons, in response to a question from Mr. Hart, stated that the work at the house had been inspected, but not finalized. He did not know when it was last inspected.

Mr. Beard and Mr. Parsons discussed the home occupancy permit being erroneously issued, with Mr. Parsons stating that the revocation of the home occupancy permit would be addressed once the appeal was resolved.

Mr. Sparrow presented the arguments forming the basis for the appeal. He stated that the building permit was issued in 2004, but that construction was not commenced until late 2005 or early 2006. Mr. Sparrow provided a handout showing the inspection status for work being done on the residence and explained the permits issued for the site. He said there were still some items left to be completed on the house, namely a back porch and a half bath. He said the aerial photos in the staff report showing construction material on the property were dated April of 2007, which was when work was being done on the house, specifically deck material and framing. Mr. Sparrow referred to Attachment 7 in the staff report, which was a letter from Anthony Cipollina stating that he had worked with Kirkland Contracting and confirmed that they were indeed operating a business from the residence. He stated that Mr. Cipollina was a former business associate of Kirkland's and had been involved in several construction disputes with them.

In response to a question from Mr. Hammack, Mr. Sparrow introduced Jeff Kirkland who discussed the business office address for Kirkland Construction at 2 Duke Street. Mr. Kirkland said they conducted business out of that office and stored materials there. He stated that he never saw clients at his home, but had seen a few subcontractors there, primarily during the construction of the house addition.



Mr. Beard said that he had been to the property several times and noted a business sign and various scaffolding on the property. He stated that the roll-off dumpster had been in the front yard for quite some time and that the property had an unkempt appearance. Mr. Kirkland said after he received the violation notice, the sign was moved to the back of the property behind temporary fencing. He said the sign was within the guidelines for a temporary sign, to which Mr. Beard replied that the sign he saw was much larger and was visible on the property less than two weeks ago.

In response to a question from Mr. Hart, Mr. Kirkland said that all of the material or equipment on site was for the house addition.

Mr. Hart and Mr. Kirkland discussed the business relationship between Kirkland Construction and Kirkland, LLC. Mr. Kirkland said he projected the addition to be completed within six months and noted that the dumpster would be removed that week.

In response to a question from Mr. Hammack, Mr. Kirkland said he obtained the Duke Street business office only a month ago.

Mr. Hammack and Mr. Kirkland discussed meetings with subcontractors at his home, the number of projects from 2002 to 2007, and the amount of space at 2 Duke Street (40' x 20' area).

Chairman Ribble called for speakers.

Frank Ferris, 2201 Pennsylvania Boulevard, Alexandria, Virginia, spoke in support of the Zoning Administrator's determination, noting that he had lived across the street from the Appellants for 30 years. He said there was no doubt in his mind that Mr. Kirkland's home was his place of business. Mr. Ferris said he could produce half a dozen witnesses who would attest to the flatbed truck sitting in front of the property for four months.

In response to a question from Mr. Hammack, Mr. Ferris said he has seen dozens of contractors entering and leaving the site.

Anthony Cipollina, 2508 Sherwood Hall Lane, Alexandria, Virginia, stated that he has worked with Kirkland and met with him at his home, but had been asked to park on Pennsylvania Avenue.

In response to a question from Mr. Hart, Mr. Cipollina said he was at business meetings at the Kirkland house monthly during the three years he worked with him, with two to three people at each meeting.

In rebuttal, Mr. Sparrow said that subcontractors picking up checks or bringing by contracts to the house was not in violation of the Zoning Ordinance. He then submitted current photos of the site.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator for reasons that had been substantiated, not only by staff, but by the testimony of neighbors, letters that had been received, and by the Board's own site visitations. He said the appellants had so much as admitted to it being a contractor's office, notwithstanding their stationary and the website that attests to the same. He contended that by upholding the Zoning Administrator, the Board was in no way negating Mr. Kirkland's ability to finish his ongoing project. Mr. Beard saw this as a gaming of the system and that the Zoning Administrator had it right.

Mr. Smith seconded the motion.

Mr. Hart said he would support the motion. He felt that despite the length of the hearing, the issue on the appeal was quite narrow. If the Board looked only to the status of the property as of August 26, which was the time of the letter, that should be the focus of the Board's determination. He said there was evidence that there had been some mitigation or clean-up since then, but there had also been the other office opened on Duke Street; he did not think that in and of itself showed that the August 26 letter was plainly wrong. Mr. Hart said based on the record in front of the Board, that was the office of the business at that time. He did not think the appellants had rebutted the circumstances that the staff and Zoning Administrator had shown regarding the use of the property at that time. Mr. Hart agreed with Mr. Beard that this did not preclude the completion of the ongoing construction project and did not necessarily preclude a home occupation permit

subsequently being issued, if the paperwork was done correctly, within the use limitations, which did not involve storage of materials, equipment, meetings on site, or that sort of thing. He believed you could answer a telephone if that paperwork was completed. He said maybe this would all be for a judge to sort out, what can be done and what cannot in the meantime, but on the question before the Board, cutting away all the side issues, was the Zoning Administrator's August 26, 2008 letter correct? He thought it was and that it has not been rebutted, so he would support the motion.

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

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Chairman Ribble recessed the meeting at 11:27 a.m. and reconvened at 11:40 a.m.

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~ ~ ~ January 6, 2009, Scheduled case of:

9:30 A.M. FCW, LLC, A 2008-PR-027 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, not a permitted use, has erected structures without an approved Building Permit, and has conducted land disturbing activity that exceeds area and depth limitations without an approved grading plan or site plan, all on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 3543, 3546, 3547 and 3550 Marseille Dr. and 11100-11115 Phoenix Dr. on approx. 16.46 ac. of land zoned R-1. Providence District. Tax Map 47-3 ((1)) 39, 41, 42A, 42B and 43. (Admin. moved from 9/23/08 for ads) (Deferred from 11/4/08 at appl. req.)

The following is a verbatim transcript of the proceedings had in this matter:

**CHAIRMAN RIBBLE:** The next case is FCW, LLC, Appeal 2008-PR-027. This was deferred from November 4th, 2008, at the applicant's request. Mr. Hanes. Everybody's already been sworn in, so ...

**GRAYSON HANES:** For the record, Gray Hanes, attorney, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, represent the appellant. Reaffirm any affidavits that are pending there.

**CHAIRMAN RIBBLE:** Thank you. Staff, I think the deferral had something to do with aerial photographs; is that correct?

**MAVIS STANFIELD:** Yes, sir, there was a deferral requested so that they could have a -- provide an analysis of aerial photographs, and Mr. Tadesse is here to present staff's position.

**CHAIRMAN RIBBLE:** Thank you.

**GETACHEW TADESSE:** Thank you, Mr. Chairman and Members of the Board. My name is Getachew Tadesse, with the Department of Planning and Zoning, Zoning Administration Division. This is an appeal of a determination that the appellant has established a storage yard, erected structures without building permit, and did not obtain an approved grading or site plan for land disturbing activities on the subject properties, which are located in the R-1 District, all in violation of Zoning Ordinance provisions. The subject properties are located at 3543, 3546, 3547, and 3550 Marseille Drive and 11100, 11- -- through 11115 Phoenix Drive, north of (inaudible) Oakton Road and west of Jermantown Road, on five lots with a combined area about 16.5 acres. Lot 39 and Lot 42 are vacant. Lots 42B and Lot 43 are occupied by single-family detached dwelling units, and accessory structures are located on Lots 41 and 42B.

Zoning inspection on March 3rd and April 23rd, 2008, (inaudible) properties have been used as a storage yard, have been continued a previous violation of erected accessory structures without building permits, and have distributed land -- disturbing land in excess of 2500 square feet and more than 18 inches in depth. As a result, a Notice of Violation dated May 6, 2008, was issued to the appellant. As shown in the photos, there is a storage yard on Lot 39, accessory structures built without building permit on Lot 41 and 42B, a land disturbance on Lot 41. A storage yard is defined in Part 3 of Article 20 of Zoning Ordinance as a use of any space without -- whether inside or outside of the building, for the storage or keeping of construction

equipment, machinery, vehicles, or parts thereof, boats and/or farm machinery. The appellant cannot restore trucks in order to do his construction, equipment such as boom cranes and commercial vehicles, which constitute a storage yard. That is not a permitted use in the R-1 District. Paragraph 5 of Section 2-302 of the Zoning Ordinance states no use shall be allowed in any district which is not permitted by the regulations for the district.

With regard to building permits, the appellant believes that copies of the building permits provided with appeal application are for the existing accessory structures on the referenced properties; however, except for one accessory storage structure, no structure dimension on the properties match with the building permits.

I would note that the subject properties were in violation since 1966 until April 3rd, 2007, when the Board of Zoning Appeals took action to uphold-in-part the Zoning Administrator's determination for Appeal Application A 2006-PR-048. The Board recommended only the land disturbance issue to be decided by a jury. It should be noted that prior to purchasing the properties, the appellant had a meeting with staff from DPWES to discuss the land disturbance issue and a restoration plan for a residential purpose in a future development; therefore, the appellant was well aware of the existing violation of --on the site. As the current owner of the property, the appellant is responsible for the existing violation on the site and is required to remove the fill or otherwise submit a restoration plan prior to developing these properties for any use permitted in R-1 District. Paragraph 1 of Section 2-601 provides that sod or soil may be removed from or added to any lot to a depth of not more than 18 inch, but only in an area not exceeding 2500 square feet.

The appellant claims to have the right to a nonconforming use. Staff doesn't believe the properties enjoy legal nonconforming status. The fact that the properties were not developed until 1950 and 1966 and both the Planning Commission and the Board of Supervisors took action not to allow non-residential use on these properties in 1963, the Zoning Administrator's consistent actions not to issue non-residential use permit, and absence of any documentation which proves the Zoning Administrator's approval of the nonconforming claim are some of our fundamental reasons that the properties do not enjoy nonconforming status.

The appellant is in violation of the Zoning Ordinance provision of Fairfax County, trying to reestablish uses which are not permitted by right, special permit, or special exception in the R-1 District; therefore, staff respectfully recommends that the Board of Zoning Appeals uphold the Zoning Administrator's determination. I along with staff from Zoning Enforcement, (inaudible) Department of Public Works, are here to answer any questions you may have. Thank you.

**CHAIRMAN RIBBLE:** Thank you. Any questions?

**MR. HAMMACK:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Yes, sir, thank you. According to the staff report -- of course, we heard Shenandoah's Landscape Services' appeal and on April 3rd, 2007, upheld the Zoning Administrator's determination, and in that paragraph, the bullet under background, on the first page of background, it said that the property owner renounced any prior claim of a nonconforming use, but going on down two more bullets, you say before FCW, LLC, purchased the subject property, all illegal uses ceased completely, so that's with respect to Shenandoah Landscape. What I'm asking is what the photographs and things we've seen that are attributable to FCW is all activity that's taken place since they purchased the property on October 4th, 2007. There's no residual issues from Shenandoah Landscape. If you say all that -- was the property cleared following Shenandoah Landscape?

**MS. STANFIELD:** Mr. Hammack, I would defer to Zoning Enforcement. It's my understanding from my last conversation with the County Attorney involved at that time that the property was entirely cleared before the purchase to the new owners.

**MR. HAMMACK:** All right. Thank you.

**CHAIRMAN RIBBLE:** Ms. Epstein, if you'll identify yourself, I can tell you have something to say.

**SUSAN EPSTEIN:** Okay. I'm Susan Epstein. I'm a property maintenance and zoning enforcement supervisor with the Zoning Enforcement Branch. When Shenandoah Landscaping Services left the property,

all of their uses had ceased, and all their equipment associated with their business had also ceased. The structures without permits remained, as well as also the grading issues remained.

**CHAIRMAN RIBBLE:** Thank you. Mr. Hart.

**MR. HART:** Yes. Thank you. Let me stick with that for a minute. Excuse me. My recollection of the previous case was that it was extraordinarily detailed and complicated, and there were different -- there were many different structures which were in play. And different portions of the site had different things going on, and there were several different tax map numbers. And as I recall also, there was some contention that VDOT was really the villain or that VDOT had done something, and I seem to recall several deferrals. And ultimately we upheld-in-part and overturned-in-part, but it's been a couple of years, and I can't remember what now we upheld on and what we didn't. And although I saw that there's a letter in the staff report that says we took action to uphold-in-part and overturn-in-part, there wasn't a verbatim or something of the motion explaining what we did and what difference it made as to what structures.

And I remember Supervisor Faust was the lawyer for the -- I think it wasn't the owner. I think it was the tenant, and I seem to recall that the owner -- the owner may have had an attorney also, but the -- it seemed like the owner was taking staff's side, and the owner was fighting with the tenant. There's some reference also in the staff report to a letter from the owner renouncing the -- or waiving or some giving up the right to some sort of nonconforming use. I kind of remember. It was an older woman, and I kind of remember that drama playing out, that the owner wanted no responsibility for any of this, wanted to get whatever it was out of the picture.

My question is, if you're with me to this point, do we have a copy of something showing the particulars of the motion as to what we were upholding and what we were denying and also what exactly happened with the -- I don't remember her name, but it was an older woman, as I recall, and maybe there were letters or there were children involved in the --

**MS. EPSTEIN:** Yeah.

**MR. HART:** -- something. Do we have copies of what all that was?

**CHAIRMAN RIBBLE:** Mr. Congleton, if you'll identify yourself.

**MICHAEL CONGLETON:** My name is Michael Congleton. I'm the Senior Deputy Zoning Administrator here in Fairfax County. Mr. Hart, your recollection is correct. The Byrd family owned the property since the 1960s. Ms. Dennis was Mr. Byrd's daughter. She was the young lady that was here that day, and what the situation was basically in the appeal in April 2007 we had a variety of illegal uses. The initial claim was that they were established legally nonconforming uses. Mrs. Dennis, on behalf of her family as she was the owner, stated that no, none of the uses were ever legally established, and if there had been any compla- -- contention that there was a legal nonconforming use by both the testimony here at the BZA and in writing, she renounced any nonconforming rights to the property whatsoever. It was a series of car dealerships, contractor storage yard, moving companies, and a septic company.

What the BZA ruled, and this is from memory, is they upheld the Zoning Administrator in regards to all of the illegal uses, but did not uphold the Zoning Administrator regard to the land disturbing activities. I don't think it could be fully determined when it occurred and who was responsible for it, but the crux of the appeal was that all of the illegal uses had to be removed. The owner of the property admitted they were illegal, and there were no nonconforming uses on the property, so it was really an issue between the tenants and the County.

**MR. HART:** Did anything go to court after that? Did the Zoning Administrator or the County Attorney go to court following what we did?

**MR. CONGLETON:** Again, this is from memory. I think some suits were filed, but all of the tenants were quite cooperative in removing it. Craig Van Lines moved, all the car dealerships moved, and Shenandoah Landscaping moved out within a few months. I don't think there was any final court action.

**MR. HART:** Let me come back to -- my question was about the documents. Do we have copies of either this letter or declaration from -- whatever it was, and I --

**MR. CONGLETON:** I believe there's a copy in the staff report.

**MR. HART:** Well, there's a reference to it. Oh, I missed that. I don't have that, but is there a verbatim or minutes of the meeting or anything about our motion?

**MS. STANFIELD:** Mr. Hart, I have on the screen the letter from the staff report, the previous staff report. I believe that's what you're looking for.

**MR. HART:** I can't quite read it at this -- I can almost read it.

**CHAIRMAN RIBBLE:** Want to use my glasses?

**MR. HART:** No.

**MR. BYERS:** The rest of us.

**MR. HART:** Thank you. Okay. Is there anything about our minutes or a verbatim of what of we did that day? It seems to me we deferred it, but ultimately when we made the motion, do we have that?

**MR. CONGLETON:** Mr. Hart, we could get a copy of the minutes. I don't think we have them available today.

**MR. HART:** All right. Thank you.

**MS. STANFIELD:** Mr. Hart.

**MR. HART:** Yes.

**MS. STANFIELD:** We do have a copy of the clerk's letter.

**MR. HART:** I saw that.

**MS. STANFIELD:** Oh, okay.

**MR. HART:** But it was this other letter I was asking about.

**CHAIRMAN RIBBLE:** Mr. Hanes.

**MR. HANES:** Mr. Chairman, Members of the Board, for the record again, Gray Hanes, represents the appellant. With me is Jane Kelsey and also Dick Graham who has done some photography analysis of maps and photographs.

**MR. HART:** Saw that.

**MR. HANES:** You went off on a tangent I didn't anticipate, but let me see if I can help you with respect to the Shenandoah case, which was less than two years ago. And if they did abandon it at that time, it takes two years, as you know, before the nonconforming use status expires, and it's not expired.

Also with respect to the letter that was indicated that Mrs. Dennis submitted, I've a letter from Mrs. Dennis to Mr. Coddling (phonetic), who was one of the applicants, that says she didn't know what she was signing when she signed that. Whether or not she has a right to withdraw a legal nonconforming use is questionable in my own mind, but this withdraws that completely, which was, I think, introduced in the Shenandoah case, and I'll give this to the staff.

So let me go back to what this case really is about. Whole background, Ms. Kelsey brought me into this when it appeared to have more legal issues than normal because nonconforming uses are local issues, you deal with them every day, and you know the law on it, but she was concerned that she might be accused of practicing law. Of course, she's better than I am in practicing law anyway, and she went about trying to find out what and where the documents were. We went to the County after receiving the violation notice and tried to get their files. Matter of fact, we filed a Freedom of Information request, and they finally responded to that.

There is a file still outstanding. If you look at the documents, there's a nonconforming use file in the County on this case that evidently they can't find or cannot be produced. The evidence that we found primarily came from the files of Doug Nichol, who had fi- -- who had represented the Byrds years ago. That's where we got the affidavits. Without his files, we would never have found those affidavits. So be that as it may, those affidavits I say are now being attacked as being a question about the, quote, legitimacy of 'em.

As you know, in a nonconforming use case, we have to establish and we accept that burden of establishing what the use was either prior to the first Zoning Ordinance or the Ordinance in effect as of the time of the violation. I go back to March of 1941, which was the first Zoning Ordinance in this County. I provided you, by the way, a number of documents, and I'm going to run through as quickly as I can with you, but I found subsequent to the filing of this case, because we've had a hard time getting these documents, and this is a document case, one of those documents, inside Ordinance, and that Ordinance also provides for a nonconforming use.

Our position on this case very simply is that we have eight affidavits, and it's getting more and more difficult to get affidavits because going back before what was -- before 1941 takes a pretty old person to qualify at this point, and this goes back almost 68 years as to what was on this property. You have eight affidavits, and they deal with this property. The affidavits are -- interestingly, they're part of the staff report, and I'm gonna turn to those first so that we can talk about what they do establish. They're found in the exhibits as Exhibits A through H, and they are done in 1978.

Dates are important because it makes the Zoning Ordinance that is of importance was the Zoning Ordinance that is in effect now that was passed on August 14, 1978, and it's not without some significance. These documents, these affidavits were executed in 1978, the latter part, and they refer to the fact that prior to the first Zoning Ordinance, either 1937 or 1927, there was a construction company operating with equipment and with trucks and with construction equipment on this particular property, either 20 pieces of construction equipment and vehicles or as many as 50 according to one affidavit.

There's a suggestion that these affidavits only apply to one of the parcels. That's not true. If you look at the top of the affidavits, they apply to and they reference to two addresses, 3546, 3547, and then they refer also to Tax Map 42B. And they are sent to Lenn Konecsny, who some of you may recall worked for the County.

What was going on and the reason for this was that there was a violation suggested that this property was not nonconforming in 1978 because a new Ordinance had been passed. You'll find in the documents submitted that there is a report from Mr. Konecsny that he finds that this is a lawful nonconforming use in 1978 after the Ordinance that we're presently under was in effect. You find not only does he find out, but Mr. Shoup, he finds that in one of the reports that you have before you. You find also that Jane Gwinn, who was the Zoning Administrator, made that same determination, and the matter goes on. In fact, in 1991 you have a letter from Mr. Mackall, who was representing Mr. Byrd, who states that the property was a legal nonconforming use.

Tell me why, if that was the case, the County waited until now to bring this suggestion that there is no longer a non- -- legal nonconforming use. They made the determination back in 1978. They gave every opportunity to the staff to challenge that. It went forward, but with various complaints. Every time there -- that people looked at it, they went back to the fact that the most recent ability of a person to remember something is the most recent time to do it, and so you go back from '78. You look at the affidavits. You look at the -- what has been applied for for the property with respect to building permits. You look at what's on the property with respect to paying of permit fees. All of these support the fact that this property has been used for vehicles and for equipment storage ever since 1937 -- or '27, and certainly in effect there's a 1941, and even more importantly it's certainly in effect as of August 14, 1978.

It's a document case. I provided you with those documents that I found, other than what's in the staff report. I suggest that you look at the affidavits and see what they relate to. And they relate to at least three of the five parcels. And I suggest that when you look at the plat that you have in the staff report, it shows all five parcels. The first parcel is 3546 Marseilles Drive. That's where the Byrds lived. The Byrds, by the way, are related to the Alexanders. There's also a suggestion by the staff that since my client didn't -- since the Byrds or the Alexanders did not own the property, Parcel 39, that that can't be a nonconforming use. Nonconformity has nothing to do with ownership of property, but as -- in order to solve that question, I've submitted to you a derivation of title to all of these properties, and you will see that Parcel 39 was in the Alexander family and

then the Byrd family before 1941. It was foreclosed upon and got back into the Byrd family recently, and it was conveyed then as one of the parcels to my client. The uses have continued.

The Shenandoah case, we attempted to find the verbatim. It's not been typed. We listened to it. Jane Kelsey was kind enough to type the verbatim. I can give that to you. It was up- -- the Zoning Administrator was upheld on two issues, none of which had to do with a nonconforming use. The issue was who should have gotten the violation notice, who made the improvements on the property, who put the dirt on the property. That's what you were referring to. It was a VDOT situation when they were constructing prop- -- no, their improvements.

So I've got limited time. I've got a number of documents that I've handed to you, and I really would like for you to look at those. And I'd like to explain them, but with the limited time, I guess I can't. I would at least, if I can have two or three more minutes --

**CHAIRMAN RIBBLE:** Well, if you'll get the documents to us, we can ask questions, and you can talk, you can answer.

**MR. HANES:** I'm sorry?

**CHAIRMAN RIBBLE:** If you get the documents to us, we'll look at 'em, and we'll ask questions.

**MR. HANES:** They should be before you now. I gave you a whole set of documents that support this nonconforming use. I would like to briefly put on my expert, which was the reason for continuing this case. His testimony will be basically that there's nothing in any of the prior photographs, prior to 1978, that is inconsistent with the finding that the property was used for truck storage, maintenance, and equipment.

With that, it's a document case. Sorry I couldn't get the documents before you today, but I -- we've had a devil of a time getting them, and I still think that there are documents out there with the County. There's a nonconforming use file somewhere, and nobody -- they can't find 'em. But they're referred to in the documents that you have before you, and I don't -- I can't tell you that there's any reason why they're not produced. I'll just say that there's one that existed and that that file was relied upon by the prior people in the Zoning staff that found this property to be a nonconforming use.

Let me at this point turn to Mr. Burrough, if you'll give him a few minutes. He's spent a lot of time on this, and I told him it runs very quickly. He's got a report. He's got his photo bios. He's got how he did it. Surprisingly, there are lots of available aerial photographs. They are snapshots, but they are helpful, if I can produce that. And then if you go through those documents, I can show you, I think --

**MR. HAMMACK:** Mr. Chairman.

**MR. HANES:** -- where that nonconforming use status --

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HANES:** -- was established.

**MR. HAMMACK:** Before we go on to that, I have a question or two.

**CHAIRMAN RIBBLE:** Go ahead.

**MR. HAMMACK:** Mr. Hanes, you mentioned that these documents show that the nonconforming use applies to at least three of these sub- -- of these parcels.

**MR. HANES:** Yes, sir.

**MR. HAMMACK:** Now, which three do you contend that they apply to?

**MR. HANES:** Well, first I suggest that the documents referred to 3546 Marseilles Drive, that that's the home where the people lived. And you didn't have separate tax parcels back in 1941, and so when these are referred to as that address, my first position is it refers to all five of them. Second position is 3546 is Parcel

43. 3547, which is the next one mentioned on some of these affidavits, is either Parcel 41 or 42B, and you'll see in the heading of some of these affidavits, it also refers to Tax Map 42B, all right. So at least those three are specifically referred to, well, in these affidavits, and I say there's an argument that all five could be -- should be.

**MR. HAMMACK:** The follow-up question is: Do you contend or concede that it might not apply to some of the parcels; it just could be the other two?

**MR. HANES:** If -- if it -- if 41 -- the other two would be -- excuse me -- 41 and 39, they are not specifically mentioned in the affidavits, but I say the reference to 3546 covers all because they weren't segregated in parcels back in 1941.

**MR. HAMMACK:** And the other question I had --

**MR. HANES:** Of course, you can find three parcels were nonconforming, legal nonconforming, one, two, three, four, five, whatever you want.

**MR. HAMMACK:** Well, I mean, since we're asked to do that, you know, it's good to try to identify --

**MR. HANES:** Right.

**MR. HAMMACK:** -- what may or may not apply now. You also said that there had been no discontinuance for two years.

**MR. HANES:** Correct.

**MR. HAMMACK:** And I guess having heard the Shenandoah Landscape case --

**MR. HANES:** Right.

**MR. HAMMACK:** -- and I realize that that case was decided in 2007 and that the property was then sold roughly six months later --

**MR. HANES:** Right.

**MR. HAMMACK:** -- so there's a six-month gap there, but how do you contend that, first, let's say the year and a half period before that ruling, I mean, because Shenandoah was bringing its property into compliance, and it might have had other uses from the FCW uses. So, I mean, you're asking us to make, it seems to me, a leap in assuming that FCW gets the benefit of all of the Shenandoah uses and that they're the same. Why do I -- why should I assume that -- that there hasn't been a discontinuance for two years?

**MR. HANES:** Well, let me just cover --

**MR. HAMMACK:** Just cover some of them.

**MR. HANES:** Let me cover the uses that were on there when you heard the Shenandoah case. Shenandoah, as you may recall, leased most of the property. The difficulty they had, they subleased a lot of this property for the uses that were established back in 1927, 1939, whichever date you want to take of these affidavits. They had construction companies on it. They had Phoenix -- you may recall Phoenix Construction Company did a lot of things like William A. Hazel. They had their trucks stored there. They had Craig Van Lines, you may recall was there. They stored trucks and equipment as well. So you've got a continuous use of the property right through the time that you heard Shenandoah, and they were the same uses. What Shenandoah was doing was running a landscape business, and that -- that -- as I read the transcript of what I could get, you found that that -- that was one of the two issues that you've found in favor of the Zoning Administrator for, which was complicating, is what Mr. Hart said. It dealt with the subtenants, whether or not they got notice, whether they were in violation, and those kind of things.

**MR. HAMMACK:** There were complications --

**MR. HANES:** There were.



**MR. HAMMACK:** -- to be sure. The -- I guess the question I have, to restate it a little bit differently, is, of course, you can establish a nonconforming use.

**MR. HANES:** Right.

**MR. HAMMACK:** But you can't expand it.

**MR. HANES:** Correct.

**MR. HAMMACK:** And then if any of it's discontinued, then you lose the right to that use.

**MR. HANES:** It's not been discontinued.

**MR. HAMMACK:** Well, but how do we know that it hasn't been discontinued because I've seen --

**MR. HANES:** Talking about a year and a half since you -- since these people moved out, so that's not two years, plus we are -- we're putting equipment on that property and storing it right now. Mr. Williams is one of -- Frank Williams is one of the participants in this FWC (sic). He has his development equipment on the property. He takes it on and off, just like you'll find that what happens during the day good contractors, if they're any good, they're using that equipment. It's not on this site.

**MR. HAMMACK:** All right.

**MR. HANES:** So there is no discontinuance. And as to expansion, I think that's a good issue, and that is an issue always in a nonconforming use case. The most important case on that issue came out of Fairfax County, *Browning Ferris versus Nolton* in 1977, where Justice Poff stated that nonconforming uses are not static. And they were dealing with vehicles, and the fact that you may have 20 vehicles on there now and 40 or more tomorrow does not make that an expansion of a nonconforming use. The issue is whether or not -- if there's a change, whether or not it changes the character of the nonconforming use. In that particular case, you may recall that Browning Ferris said they were nonconforming when they were initially a farm, and then they changed it over to a trash collecting company, and the Supreme Court said no. That changed the character. Not the fact that they had more farming or that they had more trucks, that changed the character. And whether we had 20 or 50, whether we have 10, 20, 50 there or not, that's not your issue. The character of this use changed. And the Nolton case is the seminal case on that issue, and I'm sure you know about that anyway. I didn't need to go off on that.

**MR. HAMMACK:** Well, that's all the questions I have for now, but --

**MR. HANES:** Okay. If you can indulge us just a minute, Mr. --

**MR. HART:** I have some questions, too.

**CHAIRMAN RIBBLE:** Mr. Hart had a question or two.

**MR. HANES:** Sure.

**MR. HART:** Thank you. Mr. Hanes, am I correct that FCW isn't affiliated with the Byrds or Ms. Dennis or the previous owners?

**MR. HANES:** They're not.

**MR. HART:** There was a -- the letter that was handed up from, I guess, Ms. Dennis to Mr. Codding wasn't dated. Do we know when that was?

**MR. HANES:** I'll ask Jane. It was after -- Mr. Codding is also one of the owners, the three owners, Aster Campbell, Fred Codding, and Mr. Frank Williams. After they bought --

**MR. HART:** Oh, it's Fred. I was thinking it was Hayden Codding, the County -- oh, no, it's his father.

**MR. HANES:** It's his father.

**MR. HART:** Okay, all right. Okay, well, when was that letter written?

**MR. HANES:** I believe it was written within the last six to eight months. It went to Mr. Coddling when we got into the issue of nonconforming uses.

**MR. HART:** Okay.

**MR. HANES:** Is that right, Jane?

**MR. HART:** You said something about there was a FOIA request, but that it hadn't been completely --

**MR. HANES:** The County -- well, we went out to visit the property, and Jane has been dealing with the staff. She knows where the files are normally. We couldn't find files. We had a FOIA request. County honored that. We went up and looked at the files that they had. What you'll see in some of the letters that I gave you with respect to reports, there are references to a nonconforming use file. We've never found that.

**MR. HART:** Is that different from like the street file?

**MR. HANES:** It's different from the street file, as I understand it. It's a separate file, and it may be the County can't find it. It's not that important because we got a -- recognizing that was a dead-end, we went to Mr. Mackall, who you'll find represented these people in 1991, saying there was a nonconfor- -- legal nonconforming use. County didn't challenge it then, and he had all the affidavits and everything the County didn't have.

**MR. HART:** Let me come back to Mr. Hammack's issue, and this may preview or set up a little bit what, I guess, the expert is gonna talk about, but -- and I don't know if this is the very best example, but three or four pages from the end of the staff report, there are two side-by-side photographs. One is from 1954, and one is from 1986. And I think they're oriented the same way, and I don't know -- Ms. Stanfield, if you could put that up, if that's -- let me see. Yeah, that's it. What I guess I'm -- Mr. Hammack was asking a little bit about which lots and what activity and kind of this issue of the character also. It's pretty obvious -- or maybe I'm reading too much into this, but it's pretty obvious to me that in 1954 a lot of this area closer to where I-66 is now was -- looks like woods and that it seems to have been cleared. And I can see it better in the staff report, but there are vehicles and things and structures on this area that's cleared, sort of at the lower portion of the site, and some of that seems to be different lots than -- or separate lots from where the house was, even if something's happening in the '20s or the '30s. How does that not -- how is that not an expansion or changing the character at least as to that portion of the site?

**MR. HANES:** Well, as we get into it, you'll see that, yes, a lot of this property was wooded back in the earlier photographs. We got one, I think, in 1939, but you still have the trails going back into the woods where we say they stored equipment. And you also have sheds showing on these aerials where people stored equipment, and that's one of the things you're about to hear about from Mr. Burrough. But as far as -- I think it is important to the dates. Remember, I think it was 1962 when 66 was built. This property actually expanded, a little bit of it, across to the south side of 66 at that time, and that's when these lot specific parcels on the tax map were created. And so we say you go back to 1941, you have an ex- -- have the entire property being used, according to the affidavits, for the storage of these -- this equipment, and that hasn't changed. And, yes, there's -- I think I've answered the question on the staff's suggestion that Lot 39 didn't have a chance because it wasn't owned by these people. You'll see a reference, it was all in the Byrd and Alexander family, which they're interrelated. The Alexanders were the grandfathers and such of them all. They started this business. Now --

**MR. HART:** May I ask one other question?

**MR. HANES:** Sure.

**MR. HART:** Did FCW or Mr. Williams -- I guess it's FCW is his initials. Did he know when he bought it that we had just gone through an appeal that went on a couple years and dealt with what could or couldn't happen?

**MR. HANES:** He met with staff. Staff told them they disagreed with his suggestions that this was a nonconforming use. He then investigated further and thought the staff was wrong, which is why we're here today. We don't think that that case covered the nonconforming use issue. You look at that file and you show me where those affidavits are in that file. They're not there. That wasn't the issue, and that isn't what you decided.

**MR. HART:** And Ms. Kelsey has something typed up of what the -- what we did?

**MR. HANES:** Yes, let me see if I can give you that. She gave it to me. As I understand, she went and listened to the tape. It's not been transcribed yet.

**MR. HART:** I understand, but it's the best we've got at this point, I guess. Maybe I'll give it to Mr. Heath. He can make copies for everybody. I don't have any other questions. Thanks.

**CHAIRMAN RIBBLE:** Thank you. Any other questions?

**MR. BEARD:** Mr. Chairman, just one thing for Mr. Hanes.

**CHAIRMAN RIBBLE:** Mr. Beard.

**MR. HANES:** Yes, sir.

**MR. BEARD:** So what I'm hearing, one thing I'm hearing is intensity isn't ever an issue in these matters as long as the use is consistent; is that --

**MR. HANES:** Use, use and the charac- -- as long as it doesn't change the character of the use, that's what the *Browning Ferris versus Nolton* case decided in 1979, sir. I've got a copy of the case if you'd like it.

**MR. BEARD:** Thank you, no, I'll take your word for it.

**CHAIRMAN RIBBLE:** Thank you.

**MR. HANES:** This is Richard Graham. Can I just say one thing? There are two other violations. One relates to whether or not we disturbed the property without getting the permit for 2500 square feet. That was done back in the '60s. And it was done, and we're ready to apply for and get a grading permit for what happened back in 1965, but they wouldn't -- staff's not going to accept such a request if they say we're in violation of the Zoning Ordinance.

Second issue relates to a building that was constructed, again, back in 1965. Staff is now saying it didn't meet the dimensions of the building permit. Think about this, it's 1965 that they're now going back and say the building permit and the building itself didn't coordinate. You look at Exhibit L in the staff report and no dimensions on the building permit, but yet you have attached to it a stamped document saying it's approved by Fairfax County after it's built. But if they want us -- if we have to take those buildings down because we didn't comply with a building permit in 1965, I guess we'll go back and do that.

**CHAIRMAN RIBBLE:** Good morning, Mr. Graham. Good afternoon, Mr. Graham.

**RICHARD GRAHAM:** Yes, good morning, sir.

**CHAIRMAN RIBBLE:** If you'll state your name and address for the record.

**MR. GRAHAM:** My name is Richard Graham. I live at 1 Littleworth Court in Berlin, Maryland, 21811. I have been -- is it okay to proceed?

**CHAIRMAN RIBBLE:** Yes, please.

**MR. GRAHAM:** I was retained to analyze available aerial photos from 1937 to 1978. I have done so, and there should be a -- my report along with photographs and my resume in your hands. I have provided a list of the aerials that I used at Attachment 1, which will be immediately behind my report.

Referring to page 1 of Attachment 2, it is an enlarged copy of the lot numbers that are relevant to this discussion. It's actually a little bit larger than that, but it's the -- it's right after the list of photos, and on it you can see each of the lot numbers represented. My study was largely conducted against those properties that are in contention here, Lots 39 -- and I referred to them as lots because addresses are too cumbersome, Lot 39, Lot 41, 42A, and 42B, and 43. Because of the close association of the family ownership that was originally the homestead on Lot 42, I included that in my report so that you would have the opportunity to kind of see how things expanded. I can't by any means go into the detail necessary that's in my report. I hope you will have a chance to read it, but my report through the -- goes through the properties in chronological order as to when they were -- aerials were taken, starting in 1937 and running through 1978. I go clockwise for convenience to me as much as you, but it allows -- starting with Lot 39 and working my way around as best I can. Lot 39 and 42B and 41 are often working kind of together or there's things happening on one that kind of confer with another, so I did it that way, and so we end up, the last lot that I talk about in each case is Lot 42, which was the old homestead. That really isn't one of the lots in contention here, but there may be happening on that was relevant.

On the aerials, we see that new vehicles are visible only occasionally on the subject properties and particularly in the early years. During my analysis, I found no evidence that would preclude up to 50 construction and associated vehicles and equipment being on the subject properties, and I do not include 42, the original homestead, as one of the subject properties, but only the other several, I think it's five, properties. In the early years when most of the property was wooded, there were vehicle trails leading into or through the woods at various places, and I have identified those in my report. In my youth, I spent the summers with -- on my grandfather's farm, which was very much like the acreage that we see in this case. There were fields of hay, a large vegetable garden next to the house, and several acres of woods. My grandfather made vehicle paths through those woods wherever he deemed it necessary to go, and he had paths that basically was two vehicle tracks, and down the middle were still weeds and grass because that's just the way they look. And on the imagery, it looks like a white path that goes from where you can see an improved road as you can running down Marseilles Drive. And then Marseilles Drive gets extended in 1937, or before that actually, but it's on the '37 photo, and you see that the lot line -- or the road line is actually bowed beyond the point where it was improved originally. So you can follow these trails, and it says vehicles could go on an improved surface to this point, and then they become less visible, but still we can see them from place to place through the woods. My grandfather had that same kind of thing, and he had equipment stored under and vehicles running under the tree canopy so that you would not see it. And he can park it there, and there's no way of seeing under the trees, not with aerial photos, and certainly with the quality of the early photos, it was a real -- no, you couldn't do it. In the present case, the vehicles in construction -- used in construction activity might also have been offsite at the location where they were working. So even though he might have had 20 or 30 vehicles or whatever, they may not have been here, and we can't see them here. And there -- we're not looking for them somewhere else where they were working, and we don't have that evidence.

Beginning in 1968, we see structures large enough to house cars and trucks and other vehicles and equipment, and it was built particularly on the Lots 42B, 41, and 42A actually is not at this point one of consideration. It's mainly 42B and 41. And so we see structures that are very likely -- because they're in addition to the house, the house sits on the property, and they have to be used for something. And we see numerous vehicles throughout the various years being stor- -- being parked around these structures, so it's a real clue that there's vehicles associated with those structures.

In 1970, we begin to see vehicles in quantities in these several lots. Seventeen in 1970. I've added up the ones that I've reported there. Six in 1972 where the photo quality wasn't very good, so there may have been more that I couldn't see. Ten to fourteen in 1974. Sixteen from the 2nd of April 1978, and I emphasize the date because that is before the nonconforming use date, which was also in 1978. In each of these years, we must remember that there were structures where ten to fifteen vehicles could be parked inside; therefore, what we see is probably not all that are there, maybe only half of what is there.

That concludes my summary of the report. Would there be any questions?

**CHAIRMAN RIBBLE:** Any questions of Mr. Graham? Mr. Hammack.

**MR. HAMMACK:** One question, yeah. Could you pick out one of your aerial photographs and indicate one that shows these trails going through the woods.

**MR. GRAHAM:** Yeah, I think the best one is the first -- well, I say the first one. It's the 19 April 1937 one. And I apologize because you got a copy of what I got a copy of, so yours won't be as good as mine. I can come over and show you, if you'd like.

**MR. HAMMACK:** Could you do it on the overhead.

**MR. GRAHAM:** Oh, I guess I can.

**MR. BYERS:** I can see.

**CHAIRMAN RIBBLE:** This guy's good.

**MR. GRAHAM:** Do you have one you can see something -- oh, you have a screen.

**MR. HART:** We have --

**MR. HAMMACK:** There's screens.

**MR. HART:** If you could crank it up a little bit, it'll help.

**MR. GRAHAM:** Oh, thank you. What's that?

**MS. STANFIELD:** 1937.

**MR. GRAHAM:** 1937. This partic- --

**JANE KELSEY:** There's a mike right beside of her, if you'd turn the volume up.

**MR. GRAHAM:** Thank you.

**MS. KELSEY:** Thank you.

**MR. GRAHAM:** This particular aerial was provided to me by Kelsey & Associates. She did some research on it before she got me involved, asked me to join the team, if you will. And so I used it as my baseline because that's the earliest one they could find, and she had several others that -- in the early years. And then beginning in 1968 through '78, I got the aeriels right here from -- in this building from the GIS people. One of those trails that is the -- probably the best one to see is this one that runs from this farm land here on Lot 46, I believe it is, which was the uncle's property, as I understand it, and it runs from this cleared area. Are you seeing what I'm doing?

**MEMBERS OF THE BOARD:** Yes.

**MR. GRAHAM:** Okay. And that white line that you see running down there through the woods and to some degree disappearing at this point and then reappearing where it gets to -- what's that called, Outlook Road? Out- -- no, no, Outlet Road, I think it is. It was on the map. Yeah. Phoenix Drive was not built yet. It's down. It's down here. And another path is over here between Lot 42A and 43. 43A is largely cleared except in the southwest corner, and this line that you see running through here, under magnification and the -- whatever means I have to improve the quality, shows a vehicle trail running between that very wooded Lot 41A, which is a rectangle, and 43, which is deceiving. There's a probable drainage ditch or fence line running through the middle of 43, which makes it look like a lot line, but it's not.

There is another trail, two trails actually, at the end of -- what I've got here is I've got Marseilles Drive runs down to the end of the U-shaped driveway on Lot 42. Beyond that you notice that very straight road, Marseilles Drive in the northern part, suddenly becomes kind of a bowed road. I mean, it's -- the whiteness is in a curved fashion. That leads me to believe that it was probably bulldozed or scraped by the local occupants to im- -- you know, to take the road further south. But then interestingly, at the end of that whiteness, that bowed whiteness, you have two trails running off, one right along the property line between 39 and 42B and one running southeast, because north is up, and one running southeast in Lot 42B, and they disappear into the trees, which is logical. There's some growth you can see through, although there's enough, maybe when they cut the tra- -- trees down to clear a trail, they left some space where you can see

not under the canopy, but where there's an opening in the canopy. So that's why you see the trails in some places, but not everywhere. Other places the trees were far enough apart that the vehicles can be run through there without cutting any trees. Canopy overlaps, you don't see it.

**MR. BYERS:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Byers.

**MR. BYERS:** Mr. Graham, can you estimate from what altitude this photograph was taken?

**MR. GRAHAM:** No, I cannot. We normally get information of that sort, but my -- I don't really know. I would be remiss in trying to guess.

**MR. BYERS:** How do you determine then how wide the trails are?

**MR. GRAHAM:** How wide the trails are? Well, I use the --

**MR. BYERS:** Are they big enough to accommodate a vehicle, I mean?

**MR. GRAHAM:** I use the road that exists that was -- that the improved road that's there and the scrape road to say how wide it was scraped to be to accommodate probably a vehicle going each way. And all we need is enough space between the -- along the trail line to accommodate a vehicle. If it hangs over in the vegetation on the sides, it doesn't matter. It doesn't have to be as wide as a road.

**MR. BYERS:** And how did you tell -- or your supposition is -- I need to look at that again. You need to take me off, if you would do it, and put the map back on.

**MR. GRAHAM:** Oh.

**MR. BYERS:** South, at the southeast portion, I see the trees, and your supposition is that there are vehicles that could have been parked -- where are you saying the vehicles could have been parked?

**MR. GRAHAM:** Well, I'm saying that they could pull off the vehicle path here in amongst the trees. The trees aren't that --

**MR. BYERS:** Come back to the area that we were talking about before where you see the path. Are you saying vehicles could have been parked in here?

**MR. GRAHAM:** I'm saying they could be parked down in this wooded area here because the trail runs into this wooded area, looks like you got some evergreens here because it's a darker green, and then they disappear. I mean, the trail disappears. So trucks could -- vehicles could be stored in there if it gets it out from under the weather a little bit, gets it away from the limited area that they had, because they were us- -- they were clearing land. Maybe they were using it for farming. Maybe they were using it for storage of crops. That's some possibilities there.

**MR. HAMMACK:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Yeah, how many -- I mean, you're looking at a 1937 view. I mean, how many vehicles do you believe were stored on this property? I find -- frankly, I find the suggestion that they used these trails to store vehicles a little bit -- a little far fetched maybe because this is 1937. This was way out in the country. They didn't need the -- I mean, you didn't have a lot of vehicles out here then.

**MR. GRAHAM:** Well, I agree, but if you wanted to go from one place to another and you had a reason for getting there, you'd drive a trail. That's what my grandfather did.

**MR. HAMMACK:** Well --

**MR. GRAHAM:** He wanted to get to his crops.

**MR. HAMMACK:** Well, that's true.

**MR. GRAHAM:** His hayfields.

**MR. HAMMACK:** But you could -- you know, a typical farm might have a couple of trucks or something, but you're not talking about construction of these roads in order to store vehicles. You're constructing access to the other parcels or something to get a tractor in or to do something. You're not needing to store your vast -- it's not like down on 66 where it hits 81 and you have, you know, huge vehicle storage yards and warehouses where hundreds of vehicles were stored.

**MR. GRAHAM:** I understand your question, and your point is certainly well taken, but I can't tell you whether -- I'm only saying that vehicles could have been stored there. I don't know if they are. I can't see them.

**MR. HAMMACK:** Okay.

**MR. GRAHAM:** So I don't know.

**MR. HAMMACK:** I was going to ask, in your analysis of this particular aerial, can you observe any vehicles on it?

**MR. GRAHAM:** If my report says, then I don't remember. I -- when you look at this so many times on so many different dates, you can't keep straight which is which in terms of vehicles. I believe in 1937, if I recall correctly, I found two vehicles on Lot 42. Now, that's the homestead property, but other than that, I did not find any vehicles, as I recall, in the open.

**MR. HAMMACK:** In any of your photographs, can you identify vehicles being stored in any of your -- in any of the analysis?

**MR. GRAHAM:** No, I never saw any under the -- you know, in and around the heavy vegeta- -- the heavily treed areas, if you -- if that's your question.

**MR. HAMMACK:** Well, yeah, basically that's right. All right, thank you.

**MR. GRAHAM:** You're welcome.

**CHAIRMAN RIBBLE:** Thank you. Mr. Hanes.

**MR. HANES:** Just in summary, the purpose of that testimony was to show that the vehicles could have been parked there. The affidavits are what established the fact that they were there used either -- at the time they took these photographs, could have been offsite working, but it is established by these affidavits, eight of them, that there were 20, up to 50 vehicles in either 1927 or 1939. And so the purpose of this testimony was to show that they could have been stored on the site, could have been on the site, not seen. That's in counter to the testimony in your staff report. It's not testimony, and it's interesting your mapping guy did that map. You look at the date of it, it's in 1997. That's when they claim there was a violation and didn't pursue it then either because it was a nonconforming use because of these affidavits. So any other questions?

**CHAIRMAN RIBBLE:** Does staff have anything to add?

**MS. STANFIELD:** Yes, Mr. Chairman. Thank you. The affidavits that Mr. Hanes has referred to were actually part of the box that we had given them to review. It was actually in the boxes. He said that they -- we didn't acknowledge them or that we didn't have them, and, in fact, they were supplied as part of the material that we supplied them as part of the FOIA, which is probably what this whole nonconforming use box was. To the best of our knowledge, we have certainly not withheld any information from them, and I think it's unfortunate that that accusation was made.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Let me ask a question. Then so there is a separate box or file for nonconforming uses?

**MS. STANFIELD:** No, it's not a nonconforming use. There's a huge file on this property, and --

**CHAIRMAN RIBBLE:** Just this property?

**MS. STANFIELD:** -- and that's what we're talking about here. It's an enormous file, and we did give them the opportunity to review that. And I would just point out, on the previous appeal application, it was almost the exact, identical advertisement for the appeal. We did not include the contractor's office and shop, and perhaps Ms. Epstein can explain why. It would be my guess is that she didn't observe a contractor's office and shop with this particular iteration of the notice, but it is basically the identical appeal issue. Now, and perhaps the reason why we didn't go down the road of the nonconforming use specifically is because we did have that statement from the property owner saying that they disavowed any nonconforming rights at that time. And I would just -- if we're given another opportunity to rebut, I believe that Mr. Tadesse and ZED may have other comments to make as well. Thank you, sir.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** I was going to ask if there was anybody else in the room that had any information on this. I forgot to ask earlier. Okay. Go ahead, Ms. Stanfield, you're --

**MR. HART:** Mr. Chairman.

**MS. STANFIELD:** Sir, if you were calling for testimony, I believe there is someone here to provide testimony.

**CHAIRMAN RIBBLE:** Well --

**MR. HART:** I had a couple of questions for staff, too, but --

**CHAIRMAN RIBBLE:** Ms. Stanfield, while they're coming down, Mr. Hart has a couple of questions for staff.

**MR. HART:** Thank you, Mr. Chairman. In one of the handouts we got, it appears to be a report from Mr. Shoup dated -- well, the date at the upper right is November 6, 1981, if you have a copy of that. There's a couple of references in that. It seems to be in different people's handwriting, but one of the things in here, someone says we have a folder on this as a nonconforming use, check for expansion. And then later this part looks like it's Mr. Shoup's writing, observed considerable amount of equipment and structures on property, will check with LK and review file, reference his previous case pertaining to subject property, LK deemed use to be nonconforming in December 1978, see nonconforming file. Again, it sounds like there's another file or something. He's got another entry, November 9, 1982. Again, this looks like Mr. Shoup's writing, nonconforming to 50 pieces of equipment, unable to establish at this time that use has expanded based on information in nonconforming file, several contractors located on site, etc. And then there's another, November 15, 1982, somebody writes TOT LK, and I don't know what that means, but there's at least three references in this to some other file or folder and some determination that this is nonconforming in 1978 or possibly again in '82. I mean, is that -- I guess -- let me just -- let me stick to that. Is staff in agreement that there was a determination that this -- there was a nonconforming use on here either in December '78 or November of '82?

**MR. CONGLETON:** Mr. Hart, I'm Michael Congleton, Senior Deputy Zoning Administrator. I have that document before me. What that is is basically field notes taken when Mr. Konecsny was a supervisor in the Zoning Enforcement Branch and Mr. Shoup was a Zoning Inspector. These are observations they made. It's our contention that Lenn Konecsny, one, did not have the authority to deem something a nonconforming use. He was not the Zoning Administrator. I can't tell you who all the handwritings are, but I think they're Mr. Konecsny and Mr. Shoup's.

Related to this is Mr. Hanes indicated there was a letter from Jane Gwinn agreeing that this was a nonconforming use. I have a copy of what I think he referred to, which is some notes that Ms. Gwinn did in 1995 that I can quote. It says will probably have to accept to some extent Lenn K's nonconforming, and I can't read the word, determination, but then it goes further that what lots were in question, that it was very much up in the air if anything was nonconforming at all. Mr. Hanes seemed to imply that Jane Gwinn said this was nonconforming, but those of us that worked with Jane Gwinn, if she as Zoning Administrator had



decided this was a nonconforming use, there would be a formal letter in the file. So I can state there has never been a determination, a formal determination made by the County staff, as best as we can tell in these records, that a nonconforming status was approved to this property.

**MR. HART:** Can I come back also because I'm not understanding the difference between the box and the file and this other file.

**MR. CONGLETON:** There is no difference.

**MR. HART:** Well, it says we have a folder on this as a nonconforming use and then see nonconforming file and then in- -- based on information in nonconforming file. Is there a subdivision of the street file that's got nonconforming papers in it? I guess I'm not understanding, and, I mean, someone could call Mr. Shoup, I guess, and ask him. What is this talking about if it's something -- it sounds pretty clear it isn't the street file.

**MR. CONGLETON:** Mr. Hart, I can't speak specifically as to what it is. I can tell you what the policy has been, procedure has been for the last 20 years, just as long as I've been with the County. There has never been a separate nonconforming file. All information related to a specific piece of property is kept in the street file in the Zoning Permit Review Branch, which includes notices of violations, any determinations, any documentation. Best of my knowledge, there has never been a separate nonconforming use file that is kept separately from that. I've never heard of that. What Mr. Konecsny or Mr. Shoup meant with that file, I don't know, but I know what's been happening for the last 20 years, and in this time I have never seen a separate file dealing with nonconforming uses because there are probably just a handful of true nonconforming uses in Fairfax County.

**CHAIRMAN RIBBLE:** And that takes us back to 1989.

**MR. BEARD:** Just a quick question.

**CHAIRMAN RIBBLE:** Does anybody in the room know of anything further back?

**MR. BEARD:** Mr. Chairman. A real quick question, though, before you get off mike. So during that time that Mr. Shoup and Mr. Konecsny, or whatever, was -- made that determination that you say is not really the determination of the Zoning Administrator, but were they treating it as such, as a non-RUP?

**MR. CONGLETON:** No, sir, not as a non-RUP.

**MR. BEARD:** They interpreted it that way from what I --

**MR. CONGLETON:** What I gather from this is we had received -- the County had received a complaint about the activities. They decided not to proceed at that time.

**MR. BEARD:** Based upon the -- obviously based upon the memos that are in the file.

**MR. CONGLETON:** Prob- -- most likely the affidavits, however, no formal determination, which is required by state law, was made by the Zoning Administrator that this is a nonconforming use. I'm sure as the BZA is aware and Mr. Hanes is aware, Section 18-705 of the Ordinance provides that unwritten requests by the owner, you can receive a new non-RUP which qualifies you as a nonconforming use, and that was done twice by Ms. Kelsey, once in -- on March 10th, 2008, and I think it was in -- June 26th of 2008, which was a formal request submitted for a determination of a nonconforming use. That request is still pending.

**MR. BEARD:** Thank you.

**CHAIRMAN RIBBLE:** Ms. Kelsey, did you have something to add?

**MS. KELSEY:** Since I started to work for the County in 1969 and in the Zoning Ord- -- Office in '72 and I was a Zoning Inspector for a short time in 1978, I was familiar with that nonconforming file issue, and it was different. He's correct. That's how it is now. It's how it's been for quite some time, but at the time that I was Clerk to the Board of Zoning Appeals and then when I was a Zoning Inspector, there were nonconforming files that were kept in the file cabinet, and if there was an issue on nonconforming, somebody said that they had a nonconforming use, the first place you went to look was in that file to see if it was there. And then if

there was a determination that it was nonconforming, another use was nonconforming, that file was kept in that drawer.

And as far as who made the determination at that time, and I can't speak to the state code, I would defer to Mr. Hanes for that, but at that time the Senior Zoning Inspector was permitted to make that decision. Later on when -- that was 1978, I believe. Phil Yates was the Zoning Administrator. So then when Jane Gwinn became Zoning Administrator, at some point she definitely disagreed with something that one of the Senior Zoning Inspectors did, and she said from now on all decisions on nonconforming uses will be made by me, and I have that memo. I didn't think about it for this case, but I could find it for you so you would know the date that she made that determination. So I asked a person who has been in Zoning Enforcement for a long time -- I don't think he's any longer in that office -- where those nonconforming files went. And that's when he told me that when they were doing a renovation, they put them in boxes, and they were in the Branch Chief -- not Mr. Congleton, it was before him, in his office. He left, and the next time they looked, they couldn't find the boxes. So they thought that -- he thought it -- they might of just, you know, gotten thrown out in the trash or something. So I really can't answer after that, but I do know that there was a separate nonconforming file that was kept, at least up to 1978. Thank you.

**CHAIRMAN RIBBLE:** Thank you.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Has anybody talked to Mr. Shoup on either side about whether he remembers this file or --

**MS. KELSEY:** Yes, I did talk with Bill, and he did remember that he had worked on this, but he was fuzzy on the details. And I also talked with Marilyn Anderson, who now lives in Texas, and she remembered working on it as well, but she didn't remember the details either. Because I was going to ask Bill to either appear or do an affidavit, and I was going to do the same thing with Marilyn Anderson, but since their memory of it was fuzzy, I just didn't do that.

**MR. HART:** All right, thank you.

**MS. STANFIELD:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Go ahead.

**MAVIS STANFIELD:** I'm sorry. I did speak with Phil Yates, who was the Zoning Administrator at the time, and he also was fuzzy on the details. We went into a lot of history. I went into a lot of history of the property to try and refresh his memory. It was his opinion that if he was aware that there had been this research that had been done regarding the aerial photography, he would not have conveyed the property the nonconforming rights, and that is what he told me. Thank you.

**CHAIRMAN RIBBLE:** The lady who's down front, would you like to step up to the microphone.

**MALAK ABOU-HARGAH:** If you allow me, yes, thank you.

**CHAIRMAN RIBBLE:** Yeah, you've been very patient. If you'd just state your name and address for the record, please.

**MS. ABOU-HARGAH:** Yes, sir. Good morning. My name is Malak Abou-Hargah, and I'm speaking on behalf of my husband for the 3424 Jermantown Road, that property looking at 3424 Jermantown Road. I really cannot help much with the records.

**CHAIRMAN RIBBLE:** Excuse me. Were you sworn in earlier?

**MS. ABOU-HARGAH:** No, sir.

**CHAIRMAN RIBBLE:** Okay, would you raise your right hand and face the Clerk, please.

**MS. ABOU-HARGAH:** Yes. I'll tell and truth and nothing but the truth. My name is Malak --

**SUZIE FRAZIER:** Do you swear or affirm that your testimony will be the truth under penalty of the law?

**MS. ABOU-HARGAH:** Yes.

**MS. FRAZIER:** Thank you.

**MS. ABOU-HARGAH:** Thank you.

**CHAIRMAN RIBBLE:** Thank you. You may proceed.

**MS. ABOU-HARGAH:** Thank you. I can't help with all of those records because we bought the property in 2000, so I don't know anything about the prior, but as far as the tracks, I think I can say something because we have a farm in Mississippi -- we had a farm in Mississippi, 150 acres, thank God. You have so many tracks because people like to come and hunt, and you have so many ladders on different trees, so -- and we don't have any business. We don't drive there except sometimes our truck, but so many tracks of people hunting and so on, I don't anything about that.

I'm here to really ask you not to approve the change of this property from residential to commercial for basically three reasons, safety of the vehicles that go in and out because it is very hazardous with this almost 45-degree turn coming from Fairfax going towards Vienna over this bridge that goes over 66. To turn into Phoenix Drive, a person has to drive at least maybe 100 yards or something to be able to make that. Quite often they come on the driveway, on the 3424 Jermantown Road driveway to be able to accommodate for this wide turn. This is number one. And then in December alone, the police records will show that there were two major accidents with police and all kinds of things, so I didn't go too close to look to see who got injured, but there were injuries in that area.

The other thing, children of the Oakton Ridge and our grandchildren play on the front yard toward the slope, and the deer is still going back there to the backyard. I mean, so many precious things that are disappearing from this area are preserved with the quietness and the safety of this area. You increase the vehicles and the size of the vehicles, the whole area is being disturbed, and specifically the safety and the tranquility of the area. I know you may smile when you say it's over 66. Yes, it is over 66, but after 66 all of those trucks, then you can imagine how terrible the situation would be, but thank you very much.

**CHAIRMAN RIBBLE:** Thank you.

**MS. ABOU-HARGAH:** Thank you for listening.

**MR. HAMMACK:** Question.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Thank you, Mr. Chair. Mrs. Abou-Hargah, ma'am.

**CHAIRMAN RIBBLE:** If you could come back.

**MS. ABOU-HARGAH:** Yes, sir.

**MR. CONGLETON:** They'd like to ask you a question.

**MS. ABOU-HARGAH:** Oh, I'm sorry. Yes, sir.

**MR. HAMMACK:** How long have you lived at your property?

**MS. ABOU-HARGAH:** How long ago?

**MR. HAMMACK:** Have you lived at the property, your property here in Fairfax.

**MS. ABOU-HARGAH:** My husband lives there. I come and go.

**MR. HAMMACK:** Well, how long? You said something about 2000.

**MS. ABOU-HARGAH:** Uh, since the two -- May 15, 2000.

**MR. HAMMACK:** And have you been able to observe the truck traffic going into this?

**MS. ABOU-HARGAH:** Yes, sir. Yes, sir. We have received many of their mail, especially -- and then special deliveries, especially Craig Van Line. People would come and want to ring the bell, and they want to make a contract. They want to rent the truck, and then I -- quite often I got in my car and drove them to the back to show them where it is. UPS delivered to Craig Van Line, and it was really a nuisance.

**MR. HAMMACK:** Well, the question I have is, during the period you've lived there, can you describe any changes in the level of truck traffic or trucks stored on the property?

**MS. ABOU-HARGAH:** There's practically no trucks at this time, since those people moved practically no trucks, practically. I mean, if there's one every -- I would venture to give a time frame. If there's one truck relatively small, like a truck I drive or somebody else drives, it may be once every two or three weeks.

**MR. HAMMACK:** Now, are you referring to the Shenandoah Landscape?

**MS. ABOU-HARGAH:** That was a terrible place, too. I mean, they spilled dirt everywhere, and, I mean, it was very, very terrible nuisance. I liked the people, but the trucks were terrible nuisance and the soil on the ground and everything else.

**MR. HAMMACK:** How many trucks would be on the property on any given day? Can you give me a --

**MS. ABOU-HARGAH:** They all go in the morning, and they all go in the evening. I mean, it's their business. It's not just an ongoing process. They all leave in the morning. I would say maybe at least 20, 22, at least that many. Many of them did not have the cover on the trucks.

**MR. HAMMACK:** Is that what's happening now?

**MS. ABOU-HARGAH:** No, now there's nothing.

**MR. HAMMACK:** Okay. With Shenandoah Landscape, is it 20, 22 with Shenandoah Landscape?

**MS. ABOU-HARGAH:** Shenandoah and Craig.

**MR. HAMMACK:** And Craig.

**MS. ABOU-HARGAH:** Together, yeah

**MR. HAMMACK:** Together.

**MS. ABOU-HARGAH:** Yes, a day.

**MR. HAMMACK:** A day, and before Shenandoah?

**MS. ABOU-HARGAH:** Now I don't have any there. Now they don't. There is no Shenandoah, and there is no Craig.

**MR. HAMMACK:** Okay. Before Shenandoah and Craig, how many trucks per day?

**MS. ABOU-HARGAH:** I didn't see any. In fact, one time I walked back there to see if someone is there to help clear the -- what you call the snow. I was here one time, and the snow was very high, so practically I don't know. They were not visible to the point that I could identify them.

**MR. HAMMACK:** All right. Thank you very much.

**MS. ABOU-HARGAH:** Thank you, sir.

**MR. BYERS:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Byers.

**MR. BYERS:** This question is for staff. In your cover memorandum of the 22nd of December in the third paragraph, you were indicating -- in a sentence you indicated, further, the legitimacy of the affidavit letters on which the claim for nonconforming use was founded is questionable. What do you mean by that?

**MR. TADESSE:** Okay. The fact if we go through and check every or each affidavit, that will find out certain things. For example, what I have is -- the affidavits were submitted three times. First of all, I would like to go back in these affidavits as a foundation for the people to start the claim of nonconforming use. Because if we go back to 1963 when the issue was -- came to the Board of Supervisors to rezone the two properties, Lot Number 42A and 42, Lot Number 42B and 42A, at that time this issue or the claim of nonconforming was not in surface. In fact, some of the inspection report says that at that time the property owner understood that when the -- the Board's decision meant that he can start his business when, in fact, the Board decided and granted the applicant to withdraw. So what I would like to say about the affidavits is that, for example, the first set of three affidavits came in May of 1978, and that specifies that it was -- the business was started in 1939.

**MR. BYERS:** Right.

**MR. TADESSE:** And it says Lot 43 was created in -- practically Lot 43 was created in 1950. Single family detached at the location was not built until 1957. This is from other place. But in reality business were conducted on Lot 42 by developing the site with residential permitting changes they use to commercial. The property owner, the previous property owner informed the first inspector that he is doing the bus- -- he's doing that because at the rezoning hearing for this property, which was denied, he received the impression that any (inaudible) was to be drawn up and considered adopted for some type of use permit for this type of business operation in residential zone. So when I was checking these affidavits, the affiants, for example, for the first one, was James Bailey, Lois Bailey and Sanders Combs, and then Mr. Gardner, H. Byrd and G. H. Byrd Construction has been in business since 1939.

And when we go to the second group, you will find that the business was there since 1927. In fact, if you make a calculation and see that from a court document that I found, Mr. Byrd was born in 1922, so this is claiming that when Mr. Byrd was five years old, he owned the business which is called the G. H. Byrd Construction business, and I don't see how that kind of affidavit can be legitimate.

And location, the same problem, I mean, there are certain problems that were repeated, but, for example, it is at its present location it says. And when you see the aerial photograph from 1954 and the interpretation that we found from mapping division and which anyone can see that Lot 43 was open field, and one thing I would like to mention about Lot 43 is that in 1957 it was not the same size that we see it now. At that time it was only one acre, and it is to the southern part, so part of the Lot 43, what we see, especially which is not -- which is a building or the house is not constructed on -- that part was not Lot 43 in 1953 or when the record -- when Mr. Byrd owns for the first time, which is 1956. From 1956 through October 2007, Mr. Byrd owns that property.

And the other thing I would like to mention is that Lot 39 was not owned by Mr. Byrd until 1997. It was owned by Mr. Byrd for just one month between November 26 through December 31st of 1963. Otherwise, all the deeds when you check, it was owned by other people. So Lot 39 was combined with their property in 1927. And I heard earlier mention that Lot 42 and 41 and 39 was going together and for so many years, but, in fact, how the property on these five lots were owned, the sequence is like Lot 43 first, and then Lot 42A, and then Lot 42B, and then Lot 42 -- 41, and then finally in '97 Lot 4 -- 39. So I don't see in the aerial photograph in 1954, it is so clear and it doesn't need for, you know, the tracks going around and like hiding. And if they -- the construction business I would believe that it would be cleaned and everything would be so obvious. So what I would like to see is -- say is that there is extremely a big difference between what is -- what was happening, especially before 2004 before the Board decided, and what happened in 1927 or in 1930 or '40. I mean, completely things are changed. It's not functioning as it was functioning at the beginning, and to say that it's not extended, I don't understand. I think everything is that any time the extension happened, the conforming use is which is claimed, immediately you can see it's lost. Why, because, for example, if we take

-- if there is a nonconforming apartment and then someone came in, demolished it, and then built another one, and then later on if they changed their mind and want to build something exactly like the previous one, I don't know if we can accept that kind of justification or reasoning.

So another thing I would like to mention about the boxes, recently the box is with me, and what people trying to say the -- whenever they say the nonconforming file is like this kit has been transferred from inspector to inspector since 1963 because after the decision made by the Board in 1963, within a month's time Mr. Byrd constructed a shed. That shed was allowed with the residential permit for residential purpose. But immediately what you see is from that point onwards, the construction business started to grow, and then when you see the license, the construction license, it started in 1960, so I don't see how it -- how the nonconforming use can be valid with all these things in surface. Thank you.

**CHAIRMAN RIBBLE:** Questions?

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Yes, let me follow up on that. Mr. Tadesse, if I understood you're answer to Mr. Byers' question, you -- you're not contending that the affidavits were forged or something like that. You're saying the people were mistaken because Mr. Byrd would only have been five years old in 1927. Wasn't -- I guess my -- maybe I'm not understanding this, but I thought that the affidavits were saying that both Mr. Byrd, and/or his father-in-law was Mr. Alexander, were doing the business then. I thought if Mr. Alexander was his father-in-law, I mean, certainly he could have been doing the business in 1927, and Mr. Byrd would have been old enough by 1939 or shortly thereafter that if the business was the father-in-law's business, wouldn't that be okay?

**MR. TADESSE:** The affidavits say that it was operating under the name of G. H. Byrd since 1927.

**MR. HART:** Well, I think it -- as I read it, it was sort of one of the three, the father-in-law, the son, or G.H. Byrd Construction. Maybe I'm -- I don't have it in front of me, but there were several of them that said pretty much the same thing, and I thought it was saying that the business was continuous for however many years, some of them were 1939 and some were 1927, but I guess I was reading it as any one of the three rather than all three.

**MR. TADESSE:** My understanding is that the first set of affidavits were submitted, and for some reason it looks like another set of affidavits were submitted with the 20 increments. And then the third group came in, it was with 50 increments, and that was the one which Mr. Bill Shoup mentioned in his report.

**MR. HART:** Well, let me ask you about that, too, because this is partly what's troubling me about this. I agree, or I'm -- I think I agree, there's a dramatic difference between 1954 and 1986 as to the area involved or the -- what's going on, but if there's -- and I tend to agree that Mr. Shoup's notes, I'm -- I give that some weight, that in '78 or '82 or '81, whenever those notes were, I think there's some -- there's -- somebody is making some call that there is some kind of nonconforming something at least by '82. Has anything changed in the Ordinance between '82 and 2009 for the purposes of what we're doing this morning?

**MR. TADESSE:** What I can say is that, yes, the Zoning Ordinance, yes, it's changed, but when it comes to the use, the kind of use or industrial use at that time was also -- it was not permitted from that location.

**MR. HART:** But, I'm -- that isn't exactly my question. Let's say that if we skip over everything up to about 1982 and accepting for the sake of the question that somebody's made a determination that the use is grandfathered for 50 vehicles or something like -- or nonconforming use for 50 vehicles as of '82, and let's say, again, for the sake of the question, that we get past the owner's letter saying there's -- I don't -- I'm giving up everything, or she's taking that back, or whatever, forget the owner's letter and forget the two-year gap issue. Let's assume that whatever the gap is, it's less than two years. Has something changed between November of '81 or '82 up 'til now?

**MR. TADESSE:** Since the last Zoning Ordinance was out in 1978 --

**MR. HART:** Yes.

**MR. TADESSE:** -- so we have the same -- I believe we have the same regulation for the --

**MR. HART:** The same provisions are pertinent from 1978 up 'til now?

**MR. TADESSE:** Yes.

**MR. HART:** For the purposes of what we're doing this morning?

**MR. TADESSE:** I would say yes.

**MR. HART:** Okay. Thank you.

**CHAIRMAN RIBBLE:** All right. That question and answer developed into something a lot longer than I thought it was going to take, but if Mr. Hanes has any comment or clarifications, I'll give him a shot at it. Started with one thing and went on to several different items.

**MR. BYERS:** I just asked one question.

**CHAIRMAN RIBBLE:** I know you just asked one question. It was a good question, commenting on your question.

**MR. HANES:** Taking the last question first, the -- it's Article 15 of the Zoning Ordinance, nonconformity. That has not changed since August 14, 1978. The *Code of Virginia*, Section 15.2-2307 has changed somewhat, but only with respect to vested rights because you may recall we wrote in the statutory vested rights, which is in that section as well, so the law was the same at the time that the staff people and I think Jane -- I go with Jane Kelsey's recollection. These people made determinations, and landowners and County lived with them.

And you'll see the reference to 1978 that you picked up, Mr. Hart. That date is very significant because you look at the dates of the affidavits, they were also just before that determination, so you can assume that Mr. Konecsny -- and they would address those affidavits to Mr. Konecsny, so he was making a determination. And they got those affidavits, and he made that determination. And then you see Mr. Shoup, and then you see Ms. Kelsey, you have all those documents, and then you see Mr. Mackall in 1991 again contending that this was a nonconforming use, sending letters to the County. County's files, you know, let's forget that issue. I thought those affidavits, by the way, came from Mr. Mackall, and I think they did. I don't recall seeing in the file. If they're there, that's fine. I don't think that's the issue in this case. I think there may be another file out there that -- lost or gone, but there was a reference throughout the relevant time period to the fact that the County staff, and the property owner can depend on that, found this property to be nonconforming.

I think the evidence is, going forward, there's been no suggestion that that has changed, and the two-year interval has not expired. That's it. Understand the staff's attack, they mention the zoning case in 1963. They seem to -- there was a suggestion, if you have a nonconforming use, why do you ask for a rezoning as was done in 1963. Well, you know it's a lot better to have a by-right use than a nonconforming use, and I suggest that answers their own question, but that's an interesting -- you look at the material submitted by Don Bowman that's in material I gave you as well, he talks about continuing the use on this property when he was asking for the property to be rezoned to the I-L Zoning District, continuing, so it was happening in the '60s as well. Their own evidence supports that.

So that's our case. I don't mean to complicate your life so much, but I really believe that this case can be decided on the facts before you and on the evidence. And I think the evidence, that we have met our burden and that we have established the nonconforming use going all the way back before the first Zoning Ordinance in this County and certainly at the time of August 14, 1978. Thank you.

**CHAIRMAN RIBBLE:** The public hearing is closed.

**MR. HAMMACK:** Mr. Chairman, I'm gonna --

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** I'm gonna make a motion to defer the decision for a week and go back and read all these affidavits and look at the aerial photographs presented by Mr. Graham just to go over it carefully since there's a lot of new material. We meet next week. We meet next week, don't we?

**MAVIS STANFIELD:** Yes, sir, there's a meeting next week.

**MR. HAMMACK:** Okay. So I'll make a motion that FCW, LLC, A 2008-PR-027, to defer decision for one week until on January 13th.

**MR. HART:** Second.

**CHAIRMAN RIBBLE:** Motion seconded by Mr. Hart. Discussion? All those in favor?

**MR. BEARD, MR. SMITH, MR. HART, MR. BYERS, MR. HAMMACK, CHAIRMAN RIBBLE:** Aye.

**CHAIRMAN RIBBLE:** Unanimous of the members present and voting. This will be deferred until January 14th at 9:30 a.m. for --

**MAVIS STANFIELD:** Excuse me, sir. I think it's -- the date is actually the 13th.

**CHAIRMAN RIBBLE:** The 13th. I'm sorry.

**MR. HAMMACK:** That's on this calendar.

**CHAIRMAN RIBBLE:** Good catch. I didn't want to come here on the 14th anyway.

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~ ~ ~ January 6, 2009, After Agenda Item:

Request for Additional Time  
Trustees for Knollwood Community Church, SPA 82-S-028-5

Mr. Beard moved to approve 24 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 is November 16, 2010.

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~ ~ ~ January 6, 2009, After Agenda Item:

Request for Additional Time  
Mok Yang Presbyterian Church, SPA 92-S-071

Mr. Hammack moved to approve 12 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date is October 14, 2009.

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~ ~ ~ January 6, 2009, After Agenda Item:

Approval of June 29, 2004 Minutes

Mr. Beard moved to approve the minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Smith abstained; Ms. Gibb was absent from the meeting.

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~ ~ ~ January 6, 2009, After Agenda Item:

Status Update  
Cronan Family, LLC, A 2008-SU-008


Doug Hansen provided an update on the status of the appeal by Cronan Family, LLC. He said the appeal had been continued so that the Cronan Family could contract for a site plan to be obtained for the site. Mr. Hansen said staff had received a copy of a signed contract with Paciulli, Simmons for site plan work on the site.

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

Minutes by: Suzanne Frazier

Approved on: October 27, 2009

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 13, 2016. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:06 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ January 13, 2009, Scheduled case of:

9:00 A.M.       SNSA, INC., D/B/A FAST EDDIE'S BILLIARD CAFÉ, SPA 95-V-031-03  
(dance hall)

Chairman Ribble noted that SPA 95-V-031-03 had been administratively moved to February 24, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:00 A.M.       PETER & MICHELLE JOHNSON, SP 2008-SU-092 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum requirements for certain R-C lots to permit construction of addition 13.9 ft. from side lot line. Located at 15115 Stillfield Pl. on approx. 13,745 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 545.

Chairman Ribble called the applicant to the podium.

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

Peter Johnson, 15115 Stillfield Place, Centreville, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

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

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

Mr. Byers moved to approve SP 2008-SU-092 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

PETER & MICHELLE JOHNSON, SP 2008-SU-092 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum requirements for certain R-C lots to permit construction of addition 13.9 ft. from side lot line. Located at 15115 Stillfield Pl. on approx. 13,745 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 545. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 13, 2009; 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 RC and WS.
7. The area of the lot is 13,745 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 8-006, 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 Lawrence H. Spillman III, Land Surveying Services, dated August 28, 2008, 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 consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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~ ~ ~ January 13, 2009, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX  
MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-9 (Admin. moved from 12/16/08 at appl.  
req.)

Chairman Ribble noted that SPA 81-A-022-9 had been administratively moved to March 10, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:00 A.M. SUSAN D. SHANNON, SP 2008-BR-099 Appl. under Sect(s). 8-923 of the Zoning  
Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard of a  
corner lot. Located at 5400 Glenallen St. on approx. 16,229 sq. ft. of land zoned R-3.  
Braddock District. Tax Map 80-1 ((2)) (19) 18.

Chairman Ribble noted that SP 2008-BR-099 had been administratively moved to March 3, 2009, at 9:00 a.m., for notices.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL, A 2008-BR-040 (Admin. moved from 10/7/08 at appl. req.)

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to March 24, 2009, at 9:30 a.m., at the applicant's request.

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The meeting was recessed at 9:14 a.m. due to the fact that the next case was not scheduled until 9:30 a.m. The meeting reconvened at 9:30 a.m.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:30 A.M. ROBERT W. DONOHUE, A 2008-DR-056 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is parking a vehicle on unsurfaced areas of the front yard of property containing less than 36,000 square feet in the R-2 District in violation of Zoning Ordinance provisions. Located at 1327 Kurtz Rd. on approx. 20,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-2 ((14)) 15. (Decision deferred from 12/16/08.)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, explained that the appellant agreed with staff's recommendation that the BZA dismiss the case, as he now parks his car in the right-of-way.

Mr. Hart moved to dismiss A 2008-DR-056. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ January 13, 2009, Scheduled cases of:

9:30 A.M. ACCURATE TOWING & STORAGE, INC., A 2008-PR-034 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Storage Yard and a Junk Yard on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 at appl. req.)

9:30 A.M. FLEET PROPERTIES, INC., A 2008-PR-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Storage Yard, a Junk Yard, and a Contractor's Offices and Shops on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit and is allowing overflow parking from Columbia College, Inc. on the property without an approved shared parking agreement, all in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 at appl. req.)

9:30 A.M. K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Contractor's Office and Shop on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance

provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 at appl. req.)

Chairman Ribble noted that the next three appeal applications would be heard concurrently.

Mr. Hart recused himself from the three appeal hearings.

Mark Jenkins, Esquire, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, came to the podium and stated he represented Fleet Properties, Inc.

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

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that the attorney for Accurate Towing and Storage, Inc. indicated he would like the BZA to dismiss that particular appeal, as the appellant was no longer a tenant and no longer occupied the property.

Addressing the other two appeals, Ms. Stanfield said Mr. Jenkins indicated that his client was close to submission of a site plan, which would begin resolution of some of the violations on appeal. Ms. Stanfield said staff had agreed to three months to allow the process, adding that, after the three months, if the site plan was underway, staff would recommend another deferral.

Staff had no opposition to the dismissal of A 2008-PR-034.

Mr. Jenkins explained the progress regarding the site plan. He noted that Accurate Towing had vacated the property, which freed the site up to reconfigure the uses and comply with the I-4 and I-5 zoning sections. Mr. Jenkins asked for a 90-day deferral to allow time to file and process the required documents.

In response to Mr. Hammack's question concerning the status of parked vehicles still on the site, Ms. Stanfield said staff expected them to be removed as part of Accurate Towing's vacating of the property.

In further clarification, Mr. Jenkins said it was his understanding that the referenced vehicles were not Accurate Towing's.

Chairman Ribble called for a motion.

Mr. Smith moved to dismiss A 2008-PR-034, as requested by the appellant, Accurate Towing and Storage. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Ms. Gibb was absent from the meeting.

Mr. Smith moved to defer A 2008-PR-036 and A 2008-PR-035 to April 14, 2009, at 9:30 a.m., at the appellants' request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself. Ms. Gibb was absent from the meeting.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:30 A.M. MERRIFIELD GROUP, LLC, A 2008-PR-058 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses not permitted on property in the I-5 District and have established uses without an approved site plan, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41.

Chairman Ribble noted that A 2008-PR-058 had been administratively withdrawn.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:30 A.M. LARRY MULHALL AND GAGIK VARTANIAN, A 2008-PR-060 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are operating or allowing to operate a vehicle light service establishment and a storage yard, including outdoor storage, on property in the C-8 District without an approved site plan or Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 50-3 ((15)) A5.

Chairman Ribble noted that A 208-PR-060 had been administratively moved to March 24, 2009, at 9:30 a.m.

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~ ~ ~ January 13, 2009, Scheduled case of:

9:30 A.M. FCW, LLC, A 2008-PR-027 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, not a permitted use, has erected structures without an approved Building Permit, and has conducted land disturbing activity that exceeds area and depth limitations without an approved grading plan or site plan, all on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 3543, 3546, 3547 and 3550 Marseille Dr. and 11100-11115 Phoenix Dr. on approx. 16.46 ac. of land zoned R-1. Providence District. Tax Map 47-3 ((1)) 39, 41, 42A, 42B and 43. (Admin. moved from 9/23/08 for ads) (Deferred from 11/4/08 at appl. req.) (Decision deferred from 1/6/09)

Chairman Ribble called the case noting that it had been deferred for decision from January 6, 2009.

Grayson Hanes, attorney for the appellant, explained to Chairman Ribble that the affidavits in the case were not received from the County. He stated that the affidavits were executed under oath, though the people could not be found. Mr. Hanes responded to the new submission made by staff, which claimed he and the appellant had misrepresented information. He expressed that they had not misrepresented anything intentionally or unintentionally. Mr. Hanes explained that the issue at hand was not rezoning, but rather non-conforming use.

Mr. Hammack moved to uphold the determination of the Zoning Administrator, with the following justification. A similar appeal was made by a former tenant on the property, Shenandoah Landscape, in which the BZA upheld the Zoning Administrator's determination that the appellant was operating uses not permitted in an R-1 Zoning District, and in which the BZA overturned the Zoning Administrator's request for a grading plan. In that proceeding, the representative of the owner of the property, Linda Dennis, filed a document with the BZA waiving claims to any nonconforming rights in the property.

Before the current appellant purchased the property, the Zoning Administration staff met with the current owner and agent, informed them that nonconforming uses could not be established, and that the land disturbing issues would have to be addressed at the time of redevelopment. All illegal uses on the property had ceased following the determination of the Board in 2007. Subsequently, the appellant purchased the property in October 2007, and had been operating ever since. There was storage of construction equipment and vehicles, including equipment such as Boone cranes, which constitute a storage yard. It's noted that the former representative to the Byrd family, Linda Dennis, executed the deed to FCW on behalf of her mother.

The appellant did not deny the level of uses on the property identified in the Notice of Violation, but asserted that the storage yard was a nonconforming use, and had been since 1927. The appellant asserted that original building permits and other permits which indirectly supported the construction of some of these structures had been lost. The appellant also claimed the Virginia Department of Transportation deposited the disturbed soil on the property, and that it contained asbestos.

Mr. Hammack moved that the Board uphold the determination of the Zoning Administrator with respect to the establishment of the storage yard for the following reasons. First, it was a legal principle of estoppel that the Zoning Administrator could not be stopped to enforce the Zoning Ordinance in the County. It was followed in Virginia that estoppel did not run against the government. Second, the waiver of nonconforming rights by the previous landowner was decided in an earlier proceeding involving Shenandoah Landscapes. Finally, even if it turned out to be legally incorrect, Mr. Hammack did not believe that the appellant had satisfied the burden

of proof which was established in the *Nolton v. Browning Ferris Industries of Virginia* case. That case set forth the test that the Board should follow in determining whether there was a lawful nonconforming use. It was established that a nonconforming use was a lawful use existing on the effective date of the zoning restriction and continuing since the time in nonconformance of the Ordinance. A nonconforming use may not be established through a use of land, which was commenced or maintained in violation of the Zoning Ordinance.

The case of *Nolton v. Browning Ferris Industries of Virginia* set forth the tests which were applied in determining if a nonconforming use was lawful. It dealt with a change in character of the use, and said that the increase in size or scope of the use should be considered. Mr. Hammack believed the tests set forth in *Nolton* and other cases were narrow in determining what the change in character was and what the increase in size and scope might be. That was partly how he came to his decision. Also, in *Nolton* it said that in order to allow a nonconforming use, it had to be the same or less intensive than the lawful use.

In the *Shenandoah Landscape* case, Linda Dennis submitted a renunciation of a waiver of any nonconforming use rights, which the Byrd family may have in the presentation before the Board and in the enforcement of the Ordinance. She had, at that point, the burden of proving that the nonconforming uses existed, and were continued as lawful nonconforming uses at that time. She chose to waive her rights.

In the case of *Gwinn v. Alward*, a similar situation arose, and the Supreme Court was concerned about whether any nonconforming rights could be used as a defense. In civil cases the party claiming a nonconforming use had the burden of pleading and proving it. Not only did they not plead and prove it in *Shenandoah Landscape*, they renounced it. In Mr. Hammack's opinion, that carried forward. When the Byrd family conveyed the property to FCW, they conveyed whatever vested rights they had. It was at that point they waived those rights. It was all one property, and the *Gwinn v. Alward* case supported that.

In discussion of some of the evidence, it seemed clear that in September 1963, when the Board of Supervisors heard the rezoning application presented by the Byrd family, there was an issue of nonconforming rights at that juncture. This predated the 1978 Ordinance. There was discussion about some trucks on the property and some other uses. The rezoning itself was denied, but only 4.68 acres of what was a 16.68-acre tract was part of the rezoning. The rezoning only included Lots 42A and 42B. That supported the position that there was some nonconforming use at that time, but also that the County recognized that there were also violations on the property at that time.

There was a letter dated May 4, 1978, from the Zoning Administration to Mr. Byrd with respect to Lot 42B and 43 alleging violations. In response to that, the Board was supplied a number of affidavits which had been subject to some controversy. Mr. Hammack was skeptical of the accuracy of the recollections. It seemed the affidavits were signed in 1978, prior to the Ordinance, which supported there was some level of business use on Parcel 42B. Three affidavits were signed by the same man, Sanders Combs, and on May 9, 1978, his recollection was that there was a business location on the property. On October 16, 1978, after the Ordinance, his recollection was there were 20 vehicles and equipment on the property. Only six weeks later, on December 1<sup>st</sup>, his recollection was there were 50 pieces of vehicles and equipment on the property. Mr. Hammack did not believe, since they did not predate the Ordinance, the affidavits in October and December could be used to establish a level of business activity prior to the Ordinance, which was one of the tests set forth in the *Hardy* case.

There were two affidavits by Betty Mack. There were duplicate affidavits for different things, which made Mr. Hammack question the accuracy of their recollection. They did not really discuss the character of the business or the size and scope. Lot 42B was put on the affidavit, be it by referencing it, but some street addresses, 3546 would reference Lot 43, and 3547 would be 42B. They did not establish a verifiable level of activity of exactly what was on the property prior to the 1978 Ordinance. There was other documentation that was presented, the Articles of Incorporation for Byrd Construction. Mr. Hammack did not dispute that Byrd Construction was a corporation, but the issue for proof of nonconformity was what level of business was existing prior to the Ordinance and whether that had continued. Mr. Hammack felt the May 4, 1978 letter indicated the Zoning Administrator still felt that the Byrds were operating in violation of the Ordinance. The affidavits established that some level of business activity was taking place.

The next factual item was a complaint report in November 1981 signed by Bill Shoup. He opined there may have been nonconformity for the 50 pieces of equipment, but that applied to 42B only. Mr. Shoup also mentioned Newton Paving, Phoenix Development, Craig Van Lines, and trash services on the property. Just

because there were 20 pieces of equipment possibly in 1978, that did not necessarily make all these four operations lawful nonconforming uses in 1981. It did show the County felt that there might be some nonconforming uses, but it also showed the County continually felt that the property was being used in violation.

The next factual item was another complaint report in November 1984 by Marilyn Anderson. She also indicated there might be some nonconforming use on 42B. She questioned whether the nonconformity was for Byrd Construction and whether the addition of Phoenix or Shenandoah Landscape could be an expansion. Ms. Anderson opined that she did not see how Craig Van Lines and the trash companies could be considered nonconforming. That report prompted the letter from Doug Mackall, which alleged the uses on the property were nonconforming, but none of these memos dealt with the nature and scope of what was on the property prior to the Ordinance.

Jane Gwinn's notes in April 1995 showed the County might have to accept a nonconformity on 42B, but raised issues about the remainder of the expansion. That supported some level of activity back then with the notion that there could be some nonconformity, but also showed the County's position that there had been continuous violations.

The Notice of Violation for July 18, 2006, with Shenandoah Landscape, showed the County was trying to clean up its violations. Aerial photographs were presented, which Mr. Hammack felt were not conclusive as to establishing any particular level of business use.

In the 1970s, prior to the Ordinance, there were some licenses issued. One was for D&B Auto Services, and classified as a repair service occupation. The other was for G. H. Byrd Construction, Inc. These tend to support some nonconforming use, but if it was assumed that D&B was a valid nonconforming use, then the Board did not know what they did or how many vehicles they had. If it was assumed that G. H. Byrd Construction was also a valid nonconforming use, then the Board did not know what equipment they had on the property in 1978.

Mr. Hammack felt he could not assume FCW, with Boone cranes and the heavy construction equipment that it had on the property now, was the same or less intense than an auto service or the construction operation that G. H. Byrd ran. Those licenses were only for certain years. They did not show continuity. It was unknown whether they were permitted to fail or be inoperative during certain years. Mr. Hammack believed the burden on the appellant was to try to prove that it was the same or less intense, and without knowing what the baseline was, the appellant could not establish a nonconformity.

Mr. Hammack added that in 1963, if the nonconforming use claim was legitimate, there would be no need to rezone the 4.6 acres of the property, which was the subject of the rezoning.

Mr. Hammack moved the Board uphold the Zoning Administrator's determination with respect to the storage issue. With respect to structures being built on the properties without permits, Mr. Hammack found one structure which seemed to be built with a permit on 42B, Building Permit Number 25861. He moved the Board uphold the Zoning Administrator that the appellant had constructed buildings without permits, with that one exception. He did not believe there was issue with the grading plan, so he included in the motion to uphold the Zoning Administrator's determination that there had been land disturbing activities without a grading plan.

Mr. Beard seconded the motion.

Mr. Hart explained his position. He believed the principal issue was whether there was a lawful nonconforming use and, if so, on which parcels. Even if there was a legally nonconforming use on some of the parcels, he believed it was wiped out in 2007, principally because of the owner's failure to appeal or to acquiesce and, in fact, affirmatively renounce any rights to a nonconforming use on the property. Mr. Hart agreed that the nonconforming use issue became a thing decided under the *Gwinn versus Alward* rationale. The time to raise the nonconforming use issue would have been no later than 2007. He expressed the owner's action in 2007, in which Mrs. Dennis was knowing and intentional, and he did not believe the Board had been given any authority that the renunciation can be revoked so as to revive nonconforming rights in a grantee subsequent to the BZA appeal.



Mr. Hart believed there probably was a lawful nonconforming use on some of the parcels up to 50 vehicles. He agreed with Mr. Hammack about the burden on the owner. He believed it was met as to some of the parcels, and it was not met as to others. Mr. Hart referenced Mr. Shoup's complaint report and also Ms. Gwinn's notes some years later, which confirmed there was a determination made at some point that there was a nonconforming use of up to 50 vehicles.

Mr. Hart explained that there was nothing in the documents until Mr. Mackall's letter which really addressed what was going on with Lot 39. He agreed the aerial photos were consistent with some sort of operation going on in this area, but they were not enough for him to conclude there was substantial activity on Lot 39. With the *Nolton v. Browning-Ferris* principles you cannot expand or change the character, and Mr. Hart did not feel he could conclude Lot 39 would not have been an expansion or change in character, even as of 1978.

Mr. Hart also addressed the issue of the buildings and the grading plan. Mr. Hart believed the Zoning Administrator's decision was correct. Even if FCW was somewhat correct as to the existence of the nonconforming use, Mr. Hart felt it was too late for that.

Mr. Hammack made some additional comments regarding the letter from Linda Dennis. The Board was given a letter from her to a new attorney in which she seemed to withdraw her earlier renunciation or waiver. The problem with that was that it was not addressed to this Board or the Zoning Administration, and it was introduced as a document in order to revive the claim of nonconforming rights. Under the *Gwinn v. Alward* case, Ms. Dennis did not apparently appeal the issue of nonconforming rights to the Circuit Court, nor take any action with the Zoning Administration Division to renounce her earlier positions.

Mr. Hammack also commented on assigning nonconforming rights to various parcels. He said it was difficult to come to any conclusion about which parcels have lawful nonconformity on them. Mr. Hammack thought, with respect to Lot 43, the street address was the address used for D&B Auto Service and Byrd Construction. He believed maybe that was a residence that was used as an office, perhaps not so much for the storage of whatever equipment was on the property. With respect to Lot 41 and 39, there was not much in the record to show that the nonconforming uses extended to those parcels. Lot 41 was vacant part of the time. Overall there was not much in there to say what was on those parcels.

Mr. Smith explained he would support the motion with respect to the issue of the building permits and the grading plan, and he would be willing to, if they wanted to apply for those building permits, defer this as the Board had done with other cases to allow them to make those applications. Mr. Smith explained his stance with regard to the issue of the storage lot and the nonconforming use. He felt the 2007 decision was made with respect to a single tenant, and was made certainly without the benefit of all the documents and evidence presented at the current hearing. Mr. Smith did not find the decision to be binding.

Mr. Smith did agree the burden was on the appellant to prove that there was a nonconforming use, but looking back over 60 years, he believed there should be some sort of standard of reasonableness to the type of evidence that was going to be received. In this case, he felt the evidence was pretty compelling. There were eight notarized affidavits, which were very consistent, and Mr. Smith expressed he would apply this to Lots 42B, 43, and 41, which indicate this use had existed as early as 1927.

Mr. Smith discussed the County's records which evidenced complaints from the 1960s through the 1990s, and from the current century. To him, it appeared people had been complaining about this use the entire time, and no one ever stopped it, so it seemed it was a nonconforming use if it had been going on this whole period of time.

Mr. Smith discussed the aerial photographs. He believed the analysis on the aerial photographs, particularly with respect to Lots 42B and 43, was pretty compelling. Mr. Smith explained that going back to 1937, there was a certain portion that had a fair amount of trees and vegetation, but there were vehicle paths which could have been consistent with the type of a use which was indicated in the affidavits. Going to 1949, there were 18-wheel tractor-trailers or flatbeds and a number of different shapes which could not be identified, but could be vehicles. Mr. Smith did not believe there was evidence in this case that this use had stopped for two years subsequent to that. Ultimately, he felt the appellant had satisfied their burden of indicating that there was a nonconforming use.

Mr. Smith also noted he did not think there had been any misrepresentation of any kind, and even if there were lost records, he did not feel that changed the burden of proof on the appellant. He did feel the appellant had satisfied that burden of proof, so he could not support the motion.

There was no further discussion, so Chairman Ribble called for a vote.

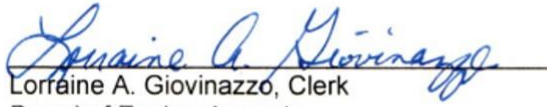
The motion carried by a vote of 4-2. Mr. Smith and Chairman Ribble voted against the motion. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:39 a.m.

Minutes by: Paula A. McFarland and Emily J. Armstrong

Approved on: September 21, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 27, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Tom Smith was absent from the meeting.

In the absence of Chairman Ribble, Ms. Gibb called the meeting to order at 9:11 a.m. She discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Ms. Gibb called for the first scheduled case.

~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. TRUSTEES, SPRINGFIELD MASONIC LODGE 217, A.G. & A.M., SPA 77-S-189 (In association with SE 2009-LE-027)

Ms. Gibb noted that SPA 77-S-189 had been indefinitely deferred at the applicant's request.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. JOHN SPANOS AND ERMIONE SPANOS, SP 2008-MA-093 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 10.0 ft. from side lot line, accessory storage structures to remain 0.25 ft. and 9.0 ft. from side and rear lot lines and to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3303 Clearwood Ct. on approx. 20,421 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((37)) 32.

Ms. Gibb noted that SP 2008-MA-093 had been administratively moved to February 24, 2009, at 9:00 a.m., at the applicants' request.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. LYNN HARVEY TJEERDSMA, SP 2008-MV-085 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 and eave to remain 3.9 ft. from side lot line. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15 (Concurrent with VC 2008-MV-006). (Decision deferred from 11/18/08.)

9:00 A.M. LYNN HARVEY TJEERDSMA, VC 2008-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15. (Concurrent with SP 2008-MV-085). (Decision deferred from 11/18/08.)

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant was amending his application and had requested the decisions be deferred.

Mr. Hart moved to defer decision on SP 2008-MV-085 and VC 2008-MV-006 to April 14, 2009, at 9:00 a.m., at the applicant's request. Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman Ribble was not present for the vote. Mr. Smith was absent from the meeting.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. LINDA C. SHOEMAKER, SP 2008-BR-091 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.4 ft. from rear lot line and 0.0 ft. from side lot line and to permit reduction of certain yard requirements to permit

construction of addition 18.0 ft. from rear lot line. Located at 9156 Bloom Ct. on approx. 9,301 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((14)) 58.

Ms. Gibb called the applicant to the podium.

Linda C. Shoemaker, 9156 Bloom Court, Burke, Virginia, reaffirmed the affidavit.

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-BR-091 for the addition, subject to the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Ms. Shoemaker presented the special permit request as outlined in the statement of justification submitted with the application. She said her lot was one of the smaller lots in the development, and the proposed location for the screened porch would not affect anyone because her yard backed up to a large undeveloped lot. She said the shed located in the backyard was screened by trees, and she had been unaware of the requirements at the time it was built. Ms. Shoemaker submitted a letter from the adjoining neighbor indicating they had no objection to the location of the shed.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicant had agreed to bring the shed into conformance with the Zoning Ordinance, and staff suggested a development condition to that effect. Mr. Hart and Ms. Langdon discussed how the shed would be brought into compliance by reducing its height.

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

Mr. Byers moved to approve SP 2008-BR-091 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LINDA C. SHOEMAKER, SP 2008-BR-091 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.4 ft. from rear lot line and 0.0 ft. from side lot line and to permit **(Applicant withdrew building in error request)** reduction of certain yard requirements to permit construction of addition 18.0 ft. from rear lot line. Located at 9156 Bloom Ct. on approx. 9,301 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((14)) 58. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 27, 2009; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all of the submission requirements set forth in Sect. 8-922.
3. The staff recommends approval.
4. The Board concurs with staff's rationale.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (360 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated July 8, 2008 as revised through December 4, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,703 square feet existing + 5,554.5 square feet (150%) = 9,257.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The screened porch addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. All structures shall be in accordance with Section 10-101 of the Zoning Ordinance, which states that accessory uses and structures shall be located on the same lot with a principal use or structure which is permitted within such district.
6. Prior to final building inspection for the addition, the applicant shall remove the play equipment, as depicted on the plat, so that it is outside the area of the sanitary sewer easement, and in conformance with applicable Zoning Ordinance provisions.
7. Prior to final inspection, notwithstanding what is reflected on the plat, the accessory storage structure shall be reduced in height or relocated to conform to Fairfax County Zoning Ordinance requirements.

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

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

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

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Chairman Ribble assumed the Chair.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. MARY K. LATIF, SP 2008-MV-096 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 12.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 9209 Volunteer Dr. on approx. 25,952 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((3)) 63.

Chairman Ribble called the applicant to the podium.

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

Schuyler Ahrens, 10865 Gambriel Drive, Suite 32, Manassas, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-096 for the garage addition, subject to the proposed development conditions.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant wanted to build a two-car garage similar to others in the neighborhood, had retained a contractor for the construction, and had received verbal approval of the proposal from the neighbors. Mr. Ahrens said the garage would be built by a licensed contractor, compatible with the house, and in harmony with the neighborhood. He said the applicant's 96-year-old mother would be able to access the garage and be safe from inclement weather. Mr. Ahrens said the shed was under the square footage that required a permit, but was over the height allowed without one. He said it had been built by the previous owners and was not the fault of the applicant.

Discussion ensued regarding the shed's installation being prior to the adoption of the Resource Protection Area regulations and the Department of Public Works and Environmental Services memorandum to staff indicating the proposed location of the garage would be outside the Resource Protection Area and flood plain.

Chairman Ribble called for speakers.

Mary Kay Latif, 9209 Volunteer Drive, Alexandria, Virginia, came forward to speak. She said approximately 65 percent of the neighborhood had garages, and protection of their vehicles, including a vintage car, was necessary. She said that when she and her husband were married, they had considered living in her husband's house because it had a garage, but decided on the Mount Vernon area for the shorter commute to their jobs in Washington, D.C. She said she had spoken with her neighbors who voiced their support, and a tree with exposed roots on her property had been removed because there was concern that it would damage her neighbor's house if it blew down in a storm. Ms. Latif said she had already spent \$30,000 on the project.

Responding to a question from Mr. Hart, Ms. Latif said the shed had electricity, but no plumbing.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-MV-096 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARY K. LATIF, SP 2008-MV-096 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 12.0 ft. from side lot line and to permit reduction of certain yard requirements to permit

construction of addition 7.5 ft. from side lot line. Located at 9209 Volunteer Dr. on approx. 25,952 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((3)) 63. 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 27, 2009; and

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

1. The applicant is the owner of the land.
2. With respect to the shed, the Board concluded that it was there prior to the applicant purchasing the property; that there is not a problem with good faith.
3. Based on the photographs, in the shed's current location, it is not going to have a significant negative impact on anybody; it seems to have been there for quite some time.
4. The Board has determined that the applicable standards in the motion have been met.
5. With respect to the addition, staff is recommending approval.
6. The rationale in the staff report is adopted.
7. The garage will be consistent with many other homes in the neighborhood.
8. The garage appears to be an attractive structure and is not believed to have any significant negative impact on anybody.
9. It would look unusual to leave it the way it is now with just the foundation; it would be better to finish the garage.
10. The Board has determined that the factors in the standard Sect. 8-922 motion have been satisfied.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (600 square feet) of a one story garage addition and frame shed, as shown on the plat prepared by Larry N. Scartz, Ltd., dated August 19, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,388 square feet existing + 2,082 square feet (150%) = 3,470 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant shall obtain all required inspections and permits for the electrical connection in the frame shed.

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

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

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

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. JOSH T. WILLIAMS III AND LYNN S. WILLIAMS, SP 2008-PR-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 15.6 ft., accessory storage structure to remain 0.5 ft., deck to remain 9.9 ft. and accessory storage structure to remain 16.8 ft. from one side lot line and accessory storage structure to remain 2.7 ft. from other side lot line and to permit reduction of certain yard requirements to permit construction of a second story addition 15.6 ft. from one side lot line and 15.4 ft. from other side lot line. Located at 2950 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 69. (Admin. moved from 2/10/09 at appl. req.)

Deborah Hedrick stated that the application needed to be re-advertised to correct a measurement, and the applicants had been advised.

Mr. Beard moved to defer SP 2008-PR-104 to February 24, 2009, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49. (Deferred from 10/30/07, 1/29/08, and 7/29/08 at appl. req.) (Admin. moved from 4/1/08 for notices) (Admin. moved from 5/20/08, 9/30/08, and 10/28/08 at appl. req.)

Chairman Ribble noted that SP 2007-DR-085 had been administratively moved to April 21, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:30 A.M. RICHARD LORD, A 2008-SP-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. (Admin. moved from 10/21/08 at appl. req.)

Chairman Ribble noted that A 2008-SP-043 had been administratively moved to February 10, 2009, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant had filed a special permit application for an accessory dwelling unit.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:30 A.M. MATTHEW D. FERGUSON, A 2008-PR-049 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has conducted land disturbing activities by installing a brick and slate walkway in the side yard and has altered the pre-existing drainage swell without an approved grading plan in violation of Zoning Ordinance provisions. Located at 1907 Gables La. on approx. 11,102 sq. ft. of land zoned R-3 and H-C. Providence District. Tax Map 39-1 ((32)) 40. (Admin. moved from 10/28/08 at appl. req.)

Chairman Ribble noted that A 2008-PR-049 had been administratively moved to April 21, 2009, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant had submitted a grading plan to resolve the violation.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:30 A.M. APOLONIA FUENTES, A 2008-PR-055 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating a child care center in compliance with the conditions of Special Permit SP 99-P-050, has established a second dwelling unit on property in the R-1 District, and has made construction modifications to the dwelling without Building Permit approval, all in violation of Zoning Ordinance provisions. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (Admin. moved from 12/9/08 at appl. req.)

Chairman Ribble noted that A 2008-PR-055 had been administratively moved to March 31, 2009, at 9:30 a.m., at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said some of the violations had already been cleared, and staff believed some of the violations had moved to a new location, and staff was addressing it.

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~ ~ ~ January 27, 2009, Scheduled case of:

9:30 A.M. KENNETH AND MARIA CLINE, A 2008-SP-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are exceeding the number of dogs that may be kept on property in the R-3 Cluster District in violation of Zoning Ordinance provisions. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 Cluster and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15.

Chairman Ribble noted that A 2008-SP-061 had been administratively moved to March 24, 2009, at 9:30 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellants had exceeded the number of dogs permitted and had filed for a special permit for a modification on the keeping of animals.

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~ ~ ~ January 27, 2009, After Agenda Item:

Request for Intent to Defer Decision  
Providence Presbyterian Church, Providence Nursery School, Inc., National Capital Presbytery, Inc.  
SPA 82-A-039-05

Chairman Ribble referenced a letter dated January 15, 2009, from Amber K. Scharn requesting a deferral of the decision currently scheduled for February 3, 2009.

Mr. Hart, Deborah Hedrick, Staff Coordinator, and Susan C. Langdon, Chief, Special Permit and Variance Branch, discussed the reasons for the request being to allow time to obtain the information requested by the Board concerning the transportation issues and for the applicants to revise their affidavit.

Mr. Hart moved to approve the intent to defer decision on SPA 82-A-039-05 to March 10, 2009, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ January 27, 2009, After Agenda Item:

Approval of July 20, 2004 Minutes

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

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~ ~ ~ January 27, 2009, After Agenda Item:

Request for Waiver of the 12-Month Waiting Period for Refilling an Application  
Islamic Foundation of North America Inc., SP 2008-LE-076

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the application had been for an increase in fence height, and the applicant wanted to look at the options and possibly file a new application.

Mr. Hammack moved to waive the 12-month waiting period for refilling an application for SP 2008-LE-076. Mr. Beard seconded the motion, which carried by a vote of 4-2. Mr. Byers and Ms. Gibb voted against the motion. Mr. Smith was absent from the meeting.

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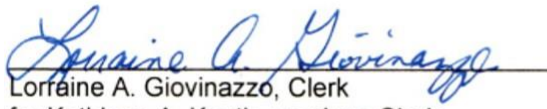
Chairman Ribble noted that Mr. Hart's term as a member of the Board of Zoning Appeals would expire in the near future. He requested the Clerk prepare a letter for the Board's signature recommending reappointment.

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

Minutes by: Paula A. McFarland

Approved on: October 1, 2014

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 3, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION, INC. & COMMUNITY WIRELESS STRUCTURES, SPA 77-P-091-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 77-P-091 previously approved for community swim club and parking of Fairfax County Public School buses to permit a telecommunications facility. Located at 3457 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (In association with SE 2008-PR-009.) (*Admin. moved from 8/4/08, 10/7/08, and 11/4/08 at appl. req.*) (*Decision deferred from 12/2/08 and 12/16/08*)

Chairman Ribble called the applicant to the podium.

Suzianne Zottl, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant had hired a landscape architect and certified arborist to provide expertise in the areas of tree preservation and landscape design. The applicant subsequently submitted a revised plan and a detailed outline for tree preservation activities. She said the Planning Commission recommended approval of the associated special exception application on January 29, 2009. Staff recommended approval of SPA 77-P-091-03, subject to the proposed development conditions.

Regarding pool party hours, Ed Donohue, counsel for the applicants, stated that the Association had assumed after hours activities would cease at 11:00 p.m. Discussion ensued regarding the development conditions, as far as loud speakers and time when activities would cease at the pool.

Graham Trulo, 7705 Poplar Tree Lane, a member of the Holmes Run Recreation Association, came forward. Mr. Trulo said the Association had been following the Fairfax County Noise Ordinance guidelines for parties, noting that they usually terminated by midnight.

Mr. Byers moved to approve SPA 77-P-091-03 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

HOLMES RUN ACRES RECREATION ASSOCIATION, INC. & COMMUNITY WIRELESS STRUCTURES, SPA 77-P-091-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 77-P-091 previously approved for community swim club and parking of Fairfax County Public School buses to permit a telecommunications facility. Located at 3457 Gallows Rd. on approx. 3.83 ac. of land zoned R-3. Providence District. Tax Map 59-2 ((9)) (1) 6 and 7. (In association with SE 2008-PR-009) (*Admin. moved from 8/4/08, 10/7/08, and 11/4/08 at appl. req.*) (*Decision deferred from 12/2/08 and 12/16/08*). 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 February 3, 2009; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-3.
3. The area of the lot is 3.83 acres.
4. Staff recommends approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in appropriate sections 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./ Community Wireless Structures, and is not transferable without further action of this Board, and is for the location indicated on the application, 3457 Gallows 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 titled Holmes Run Acres Recreation Association, prepared by Entrex Communication Services, Inc. and dated September 25, 2007 revised January 6, 2009, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of memberships for the Swim Club shall be 400.
5. The hours of operation for the Swim Club shall be from 7:00 a.m. to 11:00 p.m. daily. No swim team practice or water aerobics classes shall be held before 8:00 a.m. or after 9:00 pm. Swimming from 9:00 p.m. to 11:00 p.m. shall be for adults 18 and over only. The Swim Club shall file with the Holmes Run Acres Civic Association the names and telephone numbers of at least two individuals who can be contacted in case of an emergency or problem with the pool after normal business hours.
6. All noise shall be regulated in accordance with the provisions of Chapter 108 of the Fairfax County Code. Typical swim meet devices such as loudspeakers and start buzzers may be utilized to manage swim meet events, for water aerobics classes, and to inform pool members of an emergency or weather event. No loudspeakers, bullhorns, or any other such noise-making device except for a whistle which is required by the lifeguard shall be used at any other time.
7. Notwithstanding that which is marked on the plat, the alternate spaces along the eastern lot line shall be deleted. During the period between the Memorial Day weekend and the end of the school year, the alternate bus parking spaces will not be used for bus parking thus allowing for adequate circulation on site for pool patrons.
8. Transitional Screening 1 shall be maintained 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. The Swim Club shall maintain a record of parties for review by Fairfax County Zoning Enforcement. Parties shall adhere to the hours reflected in the Development Conditions under #5 above.
10. Fairfax County School buses shall park in Holmes Run Acres Association's parking lot ONLY between Labor Day weekend and the end of the academic school year.
11. The swim club shall be prohibited from obtaining any future Temporary Special Permits for the sale of firewood.

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 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. JOHN C. WOOD, TRUSTEE, AND ELYSE DIBIAGIO-WOOD, TRUSTEE, SP 2008-DR-098 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.5 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition such that sideyards total 18.9 ft. Located at 1404 Baritone Ct. on approx. 15,298 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-3 ((4)) 325.

Chairman Ribble called the applicant to the podium.

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

John C. Wood and Elyse DiBiagio-Wood, 1404 Baritone Ct., Vienna, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of the special permit with adoption of the revised proposed development conditions.

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

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

Mr. Hart moved to approve SP 2008-DR-098 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOHN C. WOOD, TRUSTEE, AND ELYSE DIBIAGIO-WOOD, TRUSTEE, SP 2008-DR-098 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.5 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition such that sideyards total 18.9 ft. Located at 1404 Baritone Ct. on approx. 15,298 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-3 ((4)) 325. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 3, 2009; and

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

1. The applicants are the owners of the property.
2. With respect to the addition, the Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. The addition seems consistent with other homes in the neighborhood.
4. The Board does not believe, based on the record, that it would have a significant negative impact on anyone.
5. The standards set forth in the Section 8-922 resolution have been met.
6. With respect to the shed, it has been there for ten years or more without complaint.
7. In the location it is in and with the vegetation around it, the Board does not believe that there will be a significant negative impact on anyone.
8. The standards set forth in Section 8-914 have been met.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition and shed as shown on the plat prepared by Peter R. Moran, Land Surveyor, dated August 20, 2007, revised through January 25, 2008, submitted with this application and is not transferable to other land.

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,247 square feet existing + 4,870.5 (150%) = 8,117.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. WILLIAM VANWINKLE, SP 2008-HM-101 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 10.8 ft. from side lot line. Located at 1911 Trumpet Ct. on approx. 15,193 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((8)) 31.

Chairman Ribble called the applicant to the podium.

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

Channing Blackwell, 8751 Buckland Mill Road, Gainesville, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of the special permit with adoption of the proposed development conditions.

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

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

Ms. Gibb moved to approve SP 2008-HM-101 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

WILLIAM VANWINKLE, SP 2008-HM-101 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 10.8 ft. from side lot line. Located at 1911 Trumpet Ct. on approx. 15,193 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((8)) 31. 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 3, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant is proposing to enclose a carport in the existing footprint.
3. The Board has a favorable staff report.
4. There are other two-car garages in the neighborhood.
5. Based on the picture of how it will be constructed, it will be compatible with the existing house.
6. The Board has determined that the application has met Standards 1 through 6.

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 provisions for reduction of certain yard requirements contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by Peter R. Moran, Land Surveyor, dated August 22, 2007, revised through May 28, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,079 square feet existing + 3,118.5 (150%) = 5,197.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. JEFFREY K. CAMPBELL, SP 2008-MV-094 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 3.6 ft. from one side lot line, deck to remain 6.0 ft. from other side lot line and to permit an accessory dwelling unit. Located at 4212 Old Mill Rd. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((11)) 102 (Concurrent with VC 2008-MV-007). (*Admin. moved from 2/3/09 at appl. req.*)

9:00 A.M. JEFFREY K. CAMPBELL, VC 2008-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 4212 Old Mill Rd. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((11)) 102 (Concurrent with SP 2008-MV-094). (*Admin. moved from 2/3/09 at appl. req.*)

Chairman Ribble noted that SP 2008-MV-094 and VC 2008-MV-007 had been administratively moved to March 3, 2009, at the applicant's request.

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~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-A-039 previously approved for place of worship the child care center and nursery school to permit private school of general education. Located at 9001, 9005 and 9019 Little River Tnpk. on approx. 6.19 ac. of land zoned R-1. Braddock District. Tax Map 58-4 ((1)) 1 and 58-4 ((8)) 1 and 2. (*Decision deferred from 9/23/08 and 12/16/08.*)

Mr. Beard moved to defer the decision on SPA 82-A-039-05 to March 10, 2009 as per the applicant's request.

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

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~ ~ ~ February 3, 2009, Scheduled case of:

9:00 A.M. DANIEL ALLEN, SP 2008-LE-095 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 20.5 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 20.5 ft. from rear lot line and addition 11.3 ft. from side lot line and 16.4 ft. from rear lot line. Located at 5905 Montell Dr. on approx. 15,005 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 17.

Chairman Ribble called the applicant to the podium.

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

Schuyler Ahrens, 10865 Gambriel Dr., Manassas, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant wished to withdraw a portion of the application, the part pertaining to an addition 11.3 ft. from side lot line and 16.4 ft. from rear lot line. With that withdrawal, Ms. Johnson said the staff now recommended approval of the application subject to the development conditions.

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

In response to a question from Mr. Smith, Mr. Ahrens said that the applicant did not intend to proceed with a garage addition at this time, but might at a later date since he might be able to build it by right.

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

Mr. Smith moved to approve SP SP 2008-LE-095 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

DANIEL ALLEN, SP 2008-LE-095 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 20.5 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 20.5 ft. from rear lot line and addition 11.3 ft. from side lot line and 16.4 ft. from rear lot line. **(APPLICANT WITHDREW REQUEST FOR GARAGE ADDITION.)** Located at 5905 Montell Dr. on approx. 15,005 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((28)) 17. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 3, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant has dropped the portion of the application requesting the side lot line and rear lot line modifications for a garage addition, which is no longer part of the application.
3. The Board adopts the rationale in the staff report, which recommends approval of this portion of the application for the rear addition.
4. In this case, it is consistent with surrounding properties.
5. It meets the other requirements of the Zoning Ordinance and has the support of the staff and citizens.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, 357 square feet for the existing porch and ground floor addition, as shown on the plat prepared by Larry N. Scartz, Ltd., dated June 16, 2008, revised through December 17, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,410 square feet existing + 3,615 square feet (150%) = 6,025 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition(s) shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions. Attachment 1 will specifically reference just the new rear elevation and not reference the new front elevation. It will specifically exclude the proposed garage addition and only include the porch addition.
5. Prior to the issuance of any building permits, the in-ground pool, connecting concrete patio, and 6-foot high frame shed shall be removed from the site as depicted on the SP Plat.

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

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

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

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

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~ ~ ~ February 3, 2009, Scheduled case of:

9:30 A.M. SHIRLEY REID, A 2008-SU-063

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal had been administratively withdrawn.

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~ ~ ~ February 3, 2009, Scheduled case of:

9:30 A.M. DIANE WITT-BARRERA, A 2008-MA-062 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established multiple dwellings in a single family dwelling unit on property in the R-3 District and is allowing the occupancy by boarders in excess of the allowable number in violation of Zoning Ordinance provisions. Located at 4104 Chestnut Pl. on approx. 18,958 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((8)) (14) 106.

Bill Baskin, Esquire, appeared before the Board stating that he had to withdraw his representation of the appellant, noting that appellant wanted to withdraw the appeal.

Following a brief discussion between Chairman Ribble, Mr. Beard, and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, the decision was made to proceed with the public hearing.

Charles Fitzhugh, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in staff report.

Mr. Hart and Ms. Stanfield discussed similar cases within the last two or three months, with Mr. Hart stating his disagreement with the removal of all cabinets and countertops. Ms. Stanfield pointed out that without their removal, it would take only one day's work to reestablish the violation.

Chairman Ribble called for speakers.

Terresa Pugh, 2313 North Tracey Street, Alexandria, Virginia; Kasha Helget, 4102 Lester Court, Alexandria, Virginia; and Robin Bectel, 5709 Rigsby Avenue, Alexandria, Virginia, spoke in support of the Zoning Administrator's position.

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

Mr. Beard moved to uphold the determination of the Zoning Administrator.

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

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~ ~ ~ February 3, 2009, Scheduled case of:

9:30 A.M. KIRK WILES, JANE KINCHELOE WILES, AND PARADISE SPRINGS WINERY, A 2008-SP-065. Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed farm winery is not a permitted use in the R-C and WS Districts and is a use most similar to an industrial use. Located at an unassigned address on approx. 35.60 ac. of land zoned R-C and WS. Springfield District. Tax Map 85-3 ((1)) 7Z.

Chairman Ribble called the appellants to the podium.

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

Philip Strother, 15 East Franklin Street, Richmond, Virginia, the appellants' agent, reaffirmed the affidavit.

Jack Reale, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. The Zoning Administrator had determined that the proposed farm/winery was not a permitted use in the R-C District and was more similar to the establishment for production and processing. Although the site would be able to produce its own grapes within three years, it would always rely on the use of off-site grapes. In addition to the production and processing activities already indicated, the appellants also wish to include a wide variety of activities and events, including festivals, tours, weddings and other special events to promote retail sales. It is essential to note that none of these activities constitute agriculture as that term is defined in the Zoning Ordinance.

The appellant asserted that the Zoning Administrator's determination must be reversed because, according to the appellant, farm wineries like the proposed use are defined as agriculture in Title 4.1 of the Virginia Code and the proposed use must therefore be permitted on the subject property because the Zoning Ordinance allows agricultural uses under the property zoning classification. Mr. Reale said this assertion is false. Title 4.1 of the Virginia Code governs the production and sale of alcoholic beverages in Virginia. There is no provision in that title and no provision anywhere else in the Virginia Code that provides that farm wineries like the proposed use must be permitted to operate on parcel property, even if such use violates the local zoning regulations applicable to that property.

In response to a question from Mr. Beard, Mr. Reale confirmed that staff considered the proposal more or less as a processing situation outside of an agricultural use. He continued that if 100 percent of the grapes were grown on-site, then it would be allowed as an agricultural use.

Eileen McLane, Zoning Administrator, said that in order for the appellant to process grapes on the property, he needs a state license from the ABC bureau. Once the license was obtained, he can process grapes in accordance with the state code which does not provide for the limitations that are set forth in the Ordinance. After that happens, the County would then lose control over the operation and the appellants could import grapes subject to the provisions of the state code.

In response to a question from Mr. Hart, Mr. Reale said that the production and processing portions of the application would be permitted in an industrial zone, however, the agricultural aspect would not.

Mr. Strother presented the arguments forming the basis for the appeal. He made a Power Point presentation with his main argument being that Virginia state law determined that a farm winery was an agricultural use, and so those locations in the county that the zoning department had designated as agricultural, like the subject property, a winery could be located there.

In response to a question from Mr. Smith, Mr. Strother said the proposed winery included a producing vineyard which distinguished it from large industrial wineries which contain sizeable production facilities.

Mr. Byer and Mr. Strother discussed the timeframe for grape production to begin on the property, with Mr. Strother noting that it usually took about three years.

In closing, Mr. Strother stated that two pieces of legislation had been introduced in the General Assembly which would provide a more detailed definition of a farm winery and farm winery activities in the state.

In response to a question from Mr. Hart, Kirk Wiles, 7801 Kincheloe Road, Clifton, Virginia, one of the appellants, said that he did not anticipate having tour buses on the property.

Scott Wynn, Assistant County Attorney, clarified the initial legislation in the General Assembly, noting that the original proposal, to place reasonable restrictions on farm wineries, had been killed by the wine industry.

Chairman Ribble called for speakers.

The following people came forward to speak in opposition to the Zoning Administrator's determination: David Kane, 6640 Roselyn Farm, Crozet, Virginia, representing the Virginia Wine Board; Thomas C. Peterson, mayor of Clifton, 7150 Main Street, Clifton, Virginia; Jane Kincheloe Wiles, 13219 Yates Ford Road, Clifton, Virginia; and Kirk Wiles, 7801 Yates Ford Road, Clifton, Virginia. They felt that with adequate regulations, a winery could be a good neighbor and create revenue for Clifton and Fairfax County.

The following people spoke in support of the Zoning Administrator's determination: Chris Spina, 7715 Tiffany Court, Clifton, Virginia; Tom Lovelace, representing the Noble Estate Association, 14112 Yates Ford Road, Clifton, Virginia; and Kathy Wisiackas, 7601 Tiffany Court, Clifton, Virginia. Their main concern dealt with the large amount of traffic which would be generated by the proposed winery.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the decision of the Zoning Administrator. He said a farm winery was not a permitted use in the R-C and WS Districts, and was most similar to an industrial use. He heard compelling arguments on both sides but felt the Zoning Administrator was correct in the interpretation at the time it was made. He adopted the rationale in the staff report.

Mr. Hart seconded the motion.

Mr. Beard stated that he would not support the motion. He felt the appellant had made some compelling arguments, notwithstanding the County Attorney's questioning of his interpretation.

Mr. Hart stated he would support the motion to uphold. He had no doubt that there were going to be other discussions and decisions about whether wineries were going to be allowed in the R-C District or elsewhere following whatever the Board does today. He did not think the Board role was whether or not a winery is was a desirable addition to the County or whether this particular proposal was something the Board should approve. He said the issue before them was or not the Zoning Administrator's letter of October 3<sup>rd</sup> was correct. The Zoning Administrator's conclusion was that use was most similar to a manufacturing use. He said nothing had been shown on the record that the Zoning Administrator was plainly wrong.

Mr. Smith said he was going to vote against the motion. The Zoning Ordinance says you put the use where it most appropriately works and where it was most similar. So it really becomes agricultural versus this processing/manufacturing, which was an industrial use. He felt that it was a close call, but that it most closely fit as an agriculture use.

The motion carried by a vote of 4-2, with Mr. Beard and Mr. Smith voting against the motion. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 3, 2009, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. (T/A FAIRFAX MEMORIAL PARK) & FAIRFAX  
MEMORIAL FUNERAL HOME, LLC, A 2008-BR-064

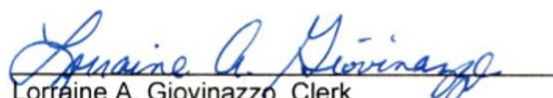
Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal had been administratively moved to May 19, 2009, at the applicant's request.

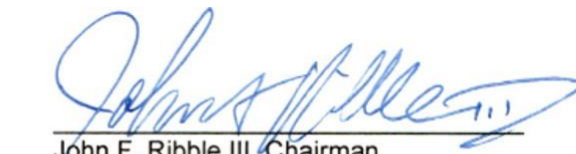
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As there was no other business to come before the Board, the meeting was adjourned at 12:34 p.m.

Minutes by: Suzanne L. Frazier

Approved on: January 6, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 10, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. PETER A. SNYDER AND BURSON T. SNYDER, SP 2008-MV-103 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit stoop to remain 20.3 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 23.6 ft. from front lot line of a corner lot. Located at 2105 Wakefield Ct. on approx. 8,054 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 8.

Chairman Ribble called the applicant to the podium.

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

Donald Lococo, the applicant's agent, 3413½ M Street, NW, Washington, D.C., reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reduction of certain yard requirements based on an error in building location to permit an uncovered stoop to remain 20.3 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 30 feet, therefore, a modification of 4.7 feet or 18% was requested. She said the applicants were also requesting approval of a second special permit to allow reduction of certain yard requirements for construction of a roofed deck 23.6 feet to the other front lot line of the corner lot. Since the Zoning Ordinance required a minimum front yard of 30 feet, a modification of 6.4 feet or 21% was requested. Ms. Caffee stated that staff was recommending approval of the special permit for the addition.

Mr. Lococo presented the special permit request as outlined in the statement of justification submitted with the application. He said that about 3/5<sup>th</sup> of the home currently sat on the side yard beyond the building restriction line. Mr. Lococo noted that the entry was placed on the back that conformed with the current property line. He noted that he wished to put a stoop over the entryway so that there would not be rain on the back door, noting that it would look like a pergola. Mr. Lococo spoke to the location of the pergola, noting that the proposed site would cut down on wasted space.

In response to a question from Mr. Hart, Mr. Lococo said that the shed shown on the plat would be removed.

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

Mr. Byers moved to approve SP 2008-MV-103 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

PETER A. SNYDER AND BURSON T. SNYDER, SP 2008-MV-103 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit stoop to remain 20.3 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 23.6 ft. from front lot line of a corner lot. Located at 2105 Wakefield Ct. on approx. 8,054 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 8.  
Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:



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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 2009; and

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

1. The applicants are the owners of the property.
2. Staff recommends approval for the subject addition, and the Board adopts staff's rationale.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. This special permit is approved for the location and size of the proposed addition (roofed deck) and stoop as shown on the plat prepared by Donald Lococo, Donald Lococo Architects, LLC, dated October 21, 2008, submitted with this application and is not transferable to other land.
2. The roofed deck shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless 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 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. CAROLE S. JACKSON, TRUSTEE, SP 2008-DR-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6817 Tennyson Dr. on approx. 12,500 sq. ft. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((3)) 14.

Chairman Ribble noted that SP 2008-DR-102 had been administratively moved to the March 24, 2009 meeting at the applicant's request.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. ROBERT & SHERYL YOURSHAW, SP 2008-PR-100 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of second story addition 8.6 ft. from one side lot line and 8.9 ft. from other side lot line, addition 27.4 ft. from front lot line and roofed deck 23.9 ft. from the front lot line. Located at 2800 Winchester Way on approx. 5,500 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 396.

Chairman Ribble called the applicants to the podium.

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

Robert and Sheryl Yourshaw, 2800 Winchester Way, Falls Church, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the reduction of certain yard requirements to permit construction of a second story addition 8.6 feet from one side lot line and 8.9 feet from the other side lot line. She said the addition would be located 27.4 feet from the front lot line, with a roofed deck to be located 23.9 feet from the front lot line. Ms. Hedrick stated that the Zoning Ordinance requires a minimum side yard of 10 feet, therefore, modifications of 1.4 feet and 1.1 feet were requested. She continued that the Zoning Ordinance also requires a minimum front yard of 30 feet so that modifications of 2.6 feet and 6.1 feet were requested. Ms. Hedrick noted that the staff was recommending approval of the application.

Mr. Yourshaw presented the special permit request as outlined in the statement of justification submitted with the application. He said they wanted to put a second story addition straight up from the existing house with a minimum roof overhang. Mr. Yourshaw noted that the existing covered front porch was substandard and they wished to rebuild it, adding a little bit to the entry area of the house to allow for more room.

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

Mr. Hart moved to approve SP 2008-PR-100 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT & SHERYL YOURSHAW, SP 2008-PR-100 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of a second story addition 8.6 ft. from one side lot line and 8.9 ft. from other side lot line, addition 27.4 ft. from front lot line and roofed deck 23.9 ft. from the front lot line. Located at 2800 Winchester Way on approx. 5,500 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((6)) 396. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 2009; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. This is a very narrow lot, only 50 feet wide.
4. The encroachments into the minimum side yards are minimal.
5. Since the addition is going straight up, the second floor addition will be no closer to the side than the existing house already is.
6. The addition in the front of the entryway and the porch is minimal.
7. The Board believes, based on the record, the addition will not have any significant negative impact on anyone.
8. The addition is consistent with other homes in this neighborhood.
9. The Board has determined that the application meets all the criteria in the Section 8-922 motion.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the additions (767 square feet), as shown on the plat prepared by Dominion Surveyors Inc. dated July 16, 2008, as revised through October 23, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,855 square feet existing + 2,782.5 square feet (150%) = 4,637.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. JOSH T. WILLIAMS III AND LYNN S. WILLIAMS, SP 2008-PR-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 15.2 ft. from one side lot line and 13.6 ft. from other side lot line, accessory storage structure to remain 0.5 ft. from one side lot line and accessory storage structure to remain 2.7 ft. from other side lot line, accessory structure to remain 16.8 ft. and deck to remain 9.9 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of a second story addition 15.2 ft. from one side lot line and 13.6 ft. from other side lot line. Located at 2950 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 69.

Chairman Ribble noted that SP 2008-PR-104 had been administratively moved to the January 27, 2009 meeting at the applicant's request.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. ANTHONY NGUYEN, SP 2008-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 3811 Whispering La. on approx. 14,543 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((13)) 241.

Chairman Ribble noted that SP 2008-MA-097 had been administratively moved to the April 14, 2009 meeting at the applicant's request.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:00 A.M. JOYCE C. PURDUE, TRUSTEE, SP 2008-MA-105 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.0 ft. from side lot line. Located at 3172 Holmes Run Rd. on approx. 20,000 of land zoned R-1. Mason District. Tax Map 50-4 ((22)) 5B.

Chairman Ribble called the applicants to the podium.

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

Joyce Purdue, 3172 Holmes Run Road, Falls Church, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow enclosure of a screened porch. She noted that a significant

portion of the existing dwelling, including the area of the proposed enclosure, was covered by a resource protection area and a floodplain covers the rear portion of the property. Ms. Johnson said the enclosure would not require any land disturbance or additional construction in the RPA or floodplain and that staff recommended approval of the application.

In response to a question from Mr. Hart, Ms. Johnson stated the spruce tree removal referenced in the staff report by the Urban Forester related to a front porch improvement that was not part of this application.

Stephen Crawford, the applicant's architect, presented the special permit request as outlined in the statement of justification submitted with the application. He noted that the applicant had lived in the house since 1956 and that the area to be improved was an existing screened porch which was original to the house. Mr. Crawford said the proposal was simply to replace the screens with windows, noting that the footprint of the existing house would not be enlarged.

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

Ms. Gibb moved to approve SP 2008-MV-103 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOYCE C. PURDUE, TRUSTEE, SP 2008-MA-105 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 14.0 ft. from side lot line. Located at 3172 Holmes Run Rd. on approx. 20,000 of land zoned R-1. Mason District. Tax Map 50-4 ((22)) 5B. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 10, 2009; and

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

1. The applicant is the owner of the property.
2. Staff has recommended approval of the application.
3. This is a narrow lot.
4. The applicant is simply enclosing an existing screened porch.
5. The footprint of the existing house will not be enlarged.
6. From the photographs submitted, it is consistent and compatible with homes in the neighborhood.
7. It will have little impact on the neighbors.
8. The Board determined that the applicant has met standards 1 through 6 of Sect. 8-922.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. This special permit is approved for the location and size (approximately 460 square feet) of the proposed addition, as shown on the plat prepared by Johnson and Williams Certified Planners, and certified by David William Ricks, Architect, dated April 30, 1956, as revised through January 12, 2009, submitted with this application and is not transferable to other land.

2. All applicable permits shall be obtained prior to construction of the addition.
3. The addition shall be architecturally compatible with the existing dwelling on site, as depicted on Attachment 1.
4. The addition shall comply with the current Chesapeake Bay Ordinance requirements. A waiver for the addition shall be obtained, if necessary, from the Department of Public Works and Environmental Services (DPWES) prior to construction.

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

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

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

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~ ~ ~ February 10, 2009, Scheduled case of:

9:30 A.M.        RICHARD LORD, A 2008-SP-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. (Admin. moved from 10/21/08 and 1/27/09 at appl. req.)

Chairman Ribble noted that A 2008-SP-043 had been administratively moved to the May 12, 2009 meeting at the appellant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had applied for a special permit for an accessory dwelling unit. She further noted that approval of such a special permit would resolve the violation.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:30 A.M.        MICHAEL AMATO, A 2008-BR-066

Chairman Ribble noted that A 2008-BR-066 had been withdrawn.

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~ ~ ~ February 10, 2009, Scheduled case of:

9:30 A.M.        MICHAEL B. OBENDORF, A 2008-DR-067

Chairman Ribble noted that A 2008-DR-067 had been withdrawn.

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~ ~ ~ February 10, 2009, After Agenda Item:

Approval of September 21, 2004 Minutes

Mr. Beard directed the Board's attention to A 2004-DR-002, an appeal under Sect. 18-301. He said he had participated in the hearing, but the minutes indicate he abstained from the vote. Mr. Beard said that, to the best of his knowledge, he had never participated in a hearing and abstained in a vote. He asked that the tape of the hearing be checked to verify the vote.

Chairman Ribble deferred the vote on approval of the minutes to the February 24, 2008 hearing so that staff could review the tape.

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~ ~ ~ February 10, 2009, After Agenda Item:

Consideration of Acceptance  
Application for Appeal filed by Oakwood Associates Joint Venture

Chairman Ribble noted that the Consideration of Acceptance had been withdrawn, which was verified by Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division.

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As there was no other business to come before the Board, the meeting was adjourned at 9:24 a.m.

Minutes by: Suzanne L. Frazier

Approved on: October 27, 2009



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



John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 24, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

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

9:00 A.M. SNSA, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031-03 Appl. under Sect(s). 4-803 of the Zoning Ordinance amend SP 95-V-031 previously approved for billiard hall to permit the addition of a dance hall. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (*Admin. moved from 1/13/09 at appl. req.*)

Chairman Ribble noted that SPA 95-V-031-03 had been administratively moved to April 14, 2009, at 9:00 a.m., at the applicant's request.

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

9:00 A.M. CHRISTOPHER AND LISA SMITH, SP 2008-MV-107 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 6.0 ft. from side lot line. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with VC 2008-MV-008).

9:00 A.M. CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107).

Chairman Ribble called the applicants to the podium.

Mr. Hart disclosed his law firm had hired Christine Leonard, who was listed on the applicant's affidavit, as a consultant in a case with parties unrelated to the current case. He indicated he did not believe his ability to participate in the case would be affected.

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

Lisa Smith, 8319 Cedardale Drive, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2008-MV-107.

Discussion ensued regarding the deck around the pool. The topics covered, included the amount of existing impervious surface, the amount of impervious surface to be removed to come into compliance, the requirements for building permits, and the presence of retaining walls, their height, and necessity for a permit.

Ms. Smith presented the special permit request as outlined in the statement of justification. She clarified that the existing patio was permeable and not permanent. She said that it would require filling in the swimming pool in order to come into compliance with the Zoning Ordinance. Ms. Smith said her family wanted to remain in their house and neighborhood, but realized the garage was unstable. She pointed out that their garage was well-screened with bamboo, which also afforded noise abatement.



Ms. Caffee responded to Mr. Hart's question concerning the patio, concurring that it was included in the 30 percent total backyard measurement of the impervious surface.

Chairman Ribble called for speakers in support of the application.

Christine Leonard, AIA, agent and architect, 2109 Popkins Lane, Alexandria, Virginia, came forward to speak. She explained the proposed design and its stages. She noted that the second story above the garage would be for a master bathroom. Ms. Leonard said the applicants hoped to retain their back yard as it had been for 20 years. She said her clients' back yard was private, quiet, and attractive, that the location of the addition was designated in the most suitable area of the yard, and the addition would be secondary in scale to the main house. Ms. Leonard said the Smith's pool was a wonderful amenity for the family, and that it was very impractical to fill it in.

Staff responded to Mr. Hammack's questions concerning impervious surfaces and what qualified as impervious in the Zoning Ordinance definition.

There being no further speakers or questions and comments from the Board, Chairman Ribble closed the public hearing.

Addressing the special permit request, Mr. Hammack moved to approve SP 2008-MV-107 for the reasons stated in the resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CHRISTOPHER AND LISA SMITH, SP 2008-MV-107 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 6.0 ft. from side lot line. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with VC 2008-MV-008). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2009; and

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

1. The applicants are the owners of the land.
2. The applicant meets the six required criteria set forth in Sect. 8-922.
3. Staff's recommendation and the reasons set forth in the staff report are adopted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of the proposed additions as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc. dated November 28, 2001, revised by Christine Leonard through September 20, 2008 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the dwelling that existed at the time of the first expansion (3,352 square feet existing + 5,028 (150%) = 8,380 permitted) regardless of whether such addition complies with the minimum yard requirement is the subject of subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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Mr. Hammack then addressed the concurrent variance application, commenting that the uncertainty of the lot coverage and whether or not the pool may have to be filled warranted further consideration. Mr. Hammack then moved to defer decision on VC 2008-MV-008 to March 3, 2009, at 9:00 a.m.

Discussion ensued regarding applicability of the Cochran Supreme Court decision, with the subsequent effect on variance approvals, and a brief explanation of the procedural problem which the Board now faced when making its decision. There was also discussion of the potential options for the applicant to reduce current rear yard coverage, which included filling in at least a portion of the pool or removing pavement.

Chairman Ribble called for a vote. The motion carried by a vote of 5-1. Mr. Beard voted against the motion. Ms. Gibb abstained from the vote.

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

9:00 A.M. JOHN SPANOS AND ERMIONE SPANOS, SP 2008-MA-093 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements to permit dwelling to remain 10 ft. from side lot line, accessory storage structure to remain .25 ft. from side lot line and 6.3 ft. from rear lot line and accessory structure to remain .9 ft. from side and rear lot lines and to permit fence greater than 4 ft. in height to remain in front yard. Located at 3303 Clearwood Ct. on approx. 20,421 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((37)) 32. (*Admin. moved from 1/27/09 at appl. req.*)

Chairman Ribble called the applicants to the podium.

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

Charles Dunlap, Walter L. Philips, Inc., 207 Park Avenue, Falls Church, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Staff and Mr. Dunlap responded to Mr. Byer's questions concerning the shed in regards to its height and the reduction required in order to make it come into compliance.

Mr. Dunlap presented the four special permit requests as outlined in the statement of justification. He said both the fence and wall were there when his client purchased the property, and the greenhouse was constructed without a building permit, because they had not known one was required. It was assured one would be obtained. Mr. Dunlap said they had no issues with staff's development conditions, and he pointed out that there were letters from four of the adjacent neighbors evidencing their support of the applications.

In response to Mr. Hart's question, Mr. Dunlap clarified that there was neither plumbing nor electricity in the greenhouse, and it was built by Mr. Spanos's son.

The applicant's son, no name or address given, came forward to respond to Mr. Hammack's questions concerning reduction of the shed. He explained they hoped to keep the 12-foot height, which would require the Special Permit. Concerning the greenhouse, the son clarified there was a small block-type heater which was well insulated and connected by an extension cord.

Chairman Ribble asked if there were speakers in support of the applications.

John Spanos, the applicant, 3303 Clearwood Court, Falls Church, Virginia, came forward to speak. He explained his wife would grow flowers all year in the greenhouse, so it was used regularly.

Discussion ensued regarding the height of the fence and the light fixtures. Mr. Beard clarified his understanding that the light fixtures were not an issue to be dealt with by the Board at that time.

Nicolas Antonopoulos, 8117 Langbrook Road, Springfield, Virginia, came forward to speak in support of the application.

Chairman Ribble next called for anyone in opposition to come forward.

James McKeoun, 3312 Sleepy Hollow Road, Falls Church, Virginia, came forward to speak. He noted he submitted a written statement, which was contained in the record. He submitted the greenhouse was a permanent construction and the size of garage. He said it spoiled the looks of the Sleepy Hollow area by basically paving over everything. Mr. McKeoun pointed out that the structure virtually was inches from his property, and that there once had been a fire in the original greenhouse, where the fence prevented the fire department access to the property. Mr. McKeoun said he thought it basically unbelievable that the Spanos had not realized permits were necessary.

Gordon Weynand, 3305 Clearwood Court, Falls Church, Virginia, came forward to speak. As the Spanos' next door neighbor, he said they were quiet folks who were always courteous and polite. He said he was surprised when he learned that several notices of violation were cited on the property about apparent problems with several of the structures. Although he had no worries about the shed, he did have some concern about the greenhouse. He submitted that to adequately screen it, a good deal of plantings and large growing trees would be necessary. He preferred that the greenhouse be either removed or greatly reduced in size. Mr. Weynand submitted a photograph which showed the view of the greenhouse from his yard.

Mr. Dunlap clarified that the original greenhouse was built about 10 years ago, and had since been replaced with the existing one.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, referenced Ordinance language which clarified the matter of fence heights, from where to measure, and the matter of finials.

In rebuttal, Mr. Dunlap said they would rectify the greenhouse issue by obtaining a permit, but the other structures were pre-existing, and he hoped the applicants would be allowed to keep them.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve-in-part SP 2008-MA-093 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOHN SPANOS AND ERMIONE SPANOS, SP 2008-MA-093 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements to permit dwelling to remain 10 ft. from side lot, accessory storage structure to remain .25 ft. from side lot line and 6.3 ft. from rear lot line and accessory structure to remain 9 ft. from side and rear lot lines and to permit fence greater than 4 ft. in height to remain in front yard. **(THE BZA DID NOT APPROVE THE SHED OR THE GREENHOUSE.)** Located at 3303 Clearwood Ct. on approx. 20,421 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((37)) 32. (Admin. moved from 1/27/09 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2009; 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 partial compliance with Sect. 8-006, General Standards for Special Permit uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location.
3. The error exceeds 10 percent of the measurement involved.
4. The dwelling 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.
5. This particular non-compliance or reduction will not impair the purpose and intent of the Ordinance.
6. The shed and greenhouse are detrimental to the use and enjoyment of other property in the immediate vicinity, and they could create an unsafe condition with other property and public streets.
7. Enforcing compliance with minimum yard requirements would not cause unreasonable hardship upon the owners pertaining to the shed and the greenhouse.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-923 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit in part 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 partial granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force total 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 the existing home and fence as shown on the plat prepared by Walter L. Phillips, Walter L. Phillips, Inc., dated July 18, 2008, revised through January 22, 2009 submitted with this application and is not transferable to other land. **(THE BZA DID NOT APPROVE THE SHED OR THE GREENHOUSE.)**

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

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

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

9:00 A.M. JOSH T. WILLIAMS III AND LYNN S. WILLIAMS, SP 2008-PR-104 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 15.2 ft. from one side lot line and 13.6 ft. from other side lot line, accessory storage structure to remain 0.5 ft. from one side lot line and accessory storage structure to remain 2.7 ft. from other side lot line, accessory structure to remain 16.8 ft. and deck to remain 9.9 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of a second story addition 15.2 ft. from one side lot line and 13.6 ft. from other side lot line. Located at 2950 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 69. (*Admin. moved from 2/10/09 at appl. req.*) (*Deferred from 1/27/09 for ads*)

Chairman Ribble called the applicants to the podium.

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

Lynn Williams, 2950 Fairhill Road, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval with the adoption of the proposed development conditions.

Ms. Williams presented the special permit request as outlined in the statement of justification. She explained that due to severe damage from a fallen tree, their roof and house needed renovation. She said the addition was on the rear of the house already when they moved in, but the permit had not been located. Therefore, they were applying for a special permit based on an error in building location to rebuild the structure and allow it to remain. Ms. Williams explained that the narrowness of the lots resulted in few locations for an addition. Addressing the matter of the shed, she noted that it had been there for 14 years, was well maintained, and was used to store play equipment and recycle bins. She said the other shed stored yard equipment. Ms. Williams said they were unaware of the Ordinance requirements for setbacks for playground

equipment. In response to Mr. Hammack, Ms. Williams noted that by definition her patio was attached, but there was approximately a quarter of an inch of space between the patio and the house.

Staff clarified there were no submitted complaints.

As there were no speakers, Chairman Ribble asked for closing staff comments.

Ms. Hedrick explained the rules for attached and detached structures as stipulated in the Ordinance. If the structure in question were 12 inches from the property, then it would be permitted, as it would be considered an accessory structure rather than an addition.

In response to Mr. Beard's question concerning a definition of when something was considered attached or detached, Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, noted that the Ordinance had no definitive interpretation, but staff ascertained that a separation less than 12 inches was considered attached.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-PR-104 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOSH T. WILLIAMS III AND LYNN S. WILLIAMS, SP 2008-PR-104 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit dwelling to remain 15.2 ft. from one side lot line and 13.6 ft. from other side lot line, accessory storage structure to remain 0.5 ft. from one side lot line and accessory storage structure to remain 2.7 ft. from other side lot line, accessory structure to remain 16.8 ft. and deck to remain 9.9 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of a second story addition 15.2 ft. from one side lot line and 13.6 ft. from other side lot line. Located at 2950 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 69. (Admin. moved from 2/10/09 at appl. req.) (Deferred from 1/27/09 for ads) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2009; and

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

1. The applicants are the owners of the land.
2. This is a very unusual situation. The lot is only 12,000 square feet, but zoned R-1, and 36,000 square feet is needed in the R-1 District. The lot is one third of the minimum size for a house in this district.
3. The lot is only 60 feet wide with 20 foot side yards so that the buildable area in this lot is a 20-foot strip down the middle.
4. The house, built in 1940, predates the Zoning Ordinance, and was non-conforming once the Ordinance was adopted in 1941.
5. The things that are being requested are generally reasonable.
6. The play structure in the back will not bother anyone.
7. The little shed on one side is trifling.
8. The one shed closer to the end of the driveway has been there for 15 years, and no one has complained about it apparently.
9. Staff recommends approval of the second-story addition.
10. The rationale in the staff report is adopted.

11. The addition is no closer to the sides than the existing house already was on this very narrow lot.
12. The way the addition is configured, it would be no more visible than what is there now.
13. The addition is attractive and seems to be in keeping with the existing house and the other homes in the neighborhood.
14. What was done in the patio situation was done in good faith.
15. This tiny lot has 20-foot setbacks, and the patio is not visible at ground level, but it still intrudes into the minimum required side yard.
16. All the requests as clarified in the most recent addendum meet the standards.
17. The application meets all the submission requirements set forth in Sect. 8-922 and all the standards in the Sect. 8-922 motion.
18. All the standards in the mistake section resolution have been met.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the existing dwelling, the location and size (660 square feet) of a second story addition, accessory storage structures (Sheds 1 and 2), an accessory structure (play equipment) and a deck (brick patio), as shown on the plat prepared by Dominion Surveyors, Inc., dated June 18, 2007 as revised through January 26, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the

dwelling that existed at the time of the first expansion (2,183 square feet existing + 3,274.5 square feet (150%) = 5,457.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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

9:00 A.M. PAT ALGER, SP 2008-MV-106 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.3 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in the front yard. Located at 8918 Jameson St. on approx. 21,889 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((5)) 50.

Chairman Ribble called the applicant to the podium.

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

John Wilson, 9022 Ridgely Drive, Lorton, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval with the adoption of the proposed development conditions.

Mr. Wilson presented the special permit request as outlined in the statement of justification. He said that the garage needed replacing because of fire damage. He assured that the design was compatible with the applicants' home, in harmony with the neighborhood, and that the next-door neighbors supported the proposal. Mr. Wilson pointed out that the location of the garage was within the same footprint as the original one. He noted that rebuilding the damaged garage was covered under the applicant's insurance, but building a new foundation would be an out-of-pocket fee for the applicant. Mr. Wilson clarified that the fence referred to in the staff report was actually the neighbor's.

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

Ms. Gibb moved to approve SP 2008-MV-106 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAT ALGER, SP 2008-MV-106 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.3 ft. from side lot line. Located at 8918 Jameson St. on approx. 21,889 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((5)) 50. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2009; and

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

1. The applicant is the owner of the land.
2. This seems like a pretty straightforward case.
3. The existing garage burned down, and the applicant is simply asking to rebuild it in the old footprint.
4. There will not be any vegetation disturbed.
5. It is going to be built in a compatible manner; it fit in the neighborhood before, and it is going to fit in now.
6. The Board has a favorable staff report.
7. The Board has determined the applicant has met Standards 1 through 6.

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. 8-922 of the Zoning Ordinance.

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

1. This special permit is approved for the location and size (482 square feet) of an accessory structure (garage with attached workshop/shed), as shown on the plat prepared by Larry N. Scartz, dated August 21, 2008, as revised through November 17, 2008, as submitted with this application and is not transferable to other land.
2. The garage with attached workshop/shed structure shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

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

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

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

9:00 A.M. GOVIND JAGANNATHAN, SP 2008-SU-108 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition and decks 10.0 ft. from side lot line. Located at 2797 Madison Meadows La. on approx. 36,009 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((29)) 4.

Chairman Ribble called the applicant to the podium.

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

Govind Jagannathan, 2797 Madison Meadows Lane, Oakton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval with the adoption of the proposed development conditions.

Discussion ensued regarding the classification of side lot line versus a rear lot line for the building permit. Mr. Hart requested clarification on the proposed patio and deck with regard to it being considered attached or detached. Staff clarified the patio was to be below the deck, but not attached to the dwelling. Further discussion and explanations ensued concerning the difference between not at-grade and at-grade patios.

Staff responded to Mr. Smith's questions concerning the development conditions which stated the patio needed to be 18 inches from the home. Staff said they could bring it back down to 12. It was put in as 18 to ensure the structure would in fact be detached.

There was discussion regarding how citizens would be able to access Staff interpretation of the Zoning Ordinance. Mr. Hammack expressed the issue with lack of specificity in the Ordinance as to what constituted attached versus detached.

Mr. Jagannathan presented the special permit request as outlined in the statement of justification. He said the strip of land behind his home was common ground, as he had an easement with his neighbors. He expressed the fact that the proposed deck would be for his family to enjoy the woods and wildlife. Mr. Jagannathan said the proposal was not in the line of sight of the neighbors.

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

Mr. Smith moved to approve SP 2008-SU-108 for the reasons stated in the Resolution.

There was additional discussion regarding the issue of unclear language in the Zoning Ordinance and the problematic nature of staff interpretation not being common knowledge.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

GOVIND JAGANNATHAN, SP 2008-SU-108 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition and decks 10.0 ft. from side lot line. Located at 2797 Madison Meadows La. on approx. 36,009 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((29)) 4. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 24, 2009; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets the six requirements under Sect. 8-922 as referenced in the staff report.
3. The staff report recommends approval of the application.
4. The deck, addition and patio will be attractive and will be consistent with the architecture of the house and the community.
5. It will not have an adverse impact on the neighbors.
6. There is a significant distance between any property behind the house, including what appears to be an outlot on a floodplain behind the house and the easement, as the applicant referenced, so there is effectively 45 feet of backyard area.
7. It will not have any adverse impact on the community.
8. It is an attractive addition and consistent with the spirit of the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (196 square feet) and decks, as shown on the plat prepared by Alexandria Surveys International, LLC, dated August 12, 2008, as revised through January 28, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (6,746 square feet existing + 10,119 square feet (150%) = 16,865 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The screened porch addition and decks shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The proposed deck (at-grade patio) located 1.0 foot from the side lot line shall be detached from the existing dwelling by not less than 12 inches.

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

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

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

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

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville and Hunter Mill Districts. Tax Map 18-3 ((1)) 6. *(Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, 9/16/08, 11/4/08, and 12/16/08 at appl. req.)*

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to March 24, 2009, at 9:00 a.m., at the applicant's request.

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

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

Chairman Ribble noted that A 2007-MA-022 had been administratively moved to July 14, 2009, at 9:30 a.m., at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She explained the appellants were in the process of making modifications to their special exception application, which would resolve the violations.

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

Additional Time Request  
Chesapeake Healthcare Corporation, VC 00-H-027

Mr. Byers moved to approve additional time to June 14, 2010. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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

Approval of September 21, 2004 Minutes

Mr. Beard noted that staff's investigation of the September 21, 2004 meeting determined it was not he who abstained. Mr. Beard then moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0-2. Mr. Smith and Mr. Byers abstained from the vote.

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

Approval of December 14, 2004 Minutes

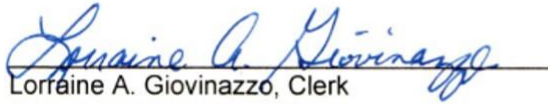
Mr. Beard moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0-2. Mr. Smith and Mr. Byers abstained from the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Paula A. McFarland and Emily J. Armstrong

Approved on: September 21, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 10, 2009. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Mr. Beard and Mr. Byers were absent from the meeting.

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

~ ~ ~ March 10, 2009, Scheduled case of:

9:00 A.M. FAIRFAX COMMUNITY CHURCH OF GOD, SPA 01-S-038 (In association with SE 2008-SP-039)

Chairman Ribble noted that SPA 01-S-038 had been administratively moved to the May 5, 2009 meeting at the applicant's request.

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~ ~ ~ March 10, 2009, Scheduled case of:

9:00 A.M. ROSS & ANDI MANLEY, SP 2008-MV-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from one side lot line and 5.5 ft. from the other site lot line such that side yards total 12.1 ft.. Located at 8445 Great Lake La. on approx. 7,840 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((3)) 726.

Chairman Ribble called the applicants to the podium.

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

Ross Manley, 8445 Great Lake Lane, Springfield, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting reduction of certain yard requirements to allow construction of an addition 6.6 feet from one side lot line and 5.5 feet from the other side lot line, such that the side yards total 12.1 feet. She said the Zoning Ordinance required a minimum side yard setback of 8 feet with a total minimum side yards of 20 feet; therefore, a modification of 1.4 feet on the northern side lot line or 17.5 percent was requested. Ms. Caffee noted that a modification of 2.5 feet on the southern side lot line or 31 percent was requested. She said staff recommended approval of the application subject to the proposed development conditions.

Mr. Manley presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to add size to his house, which had gotten too small for them. Mr. Manley stated that instead of purchasing another home, he wanted to add on to the back of the house.

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

Mr. Hammack moved to approve SP 2008-MV-111 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ROSS & ANDI MANLEY, SP 2008-MV-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from one side lot line and 5.5 ft. from the other site lot line such that side yards total 12.1 ft.. Located at 8445 Great Lake La. on approx.

7,840 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((3)) 726. 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 10, 2009; and

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

4. The applicants are the owners of the property.
5. The Board has a favorable staff report.
6. The house is on a long, very deep lot.
7. The house is positioned where the lot lines pinch a little bit, but then continue to the rear, converging inward, which gives very little useable space for the addition as proposed.
8. The rear of the yard is narrower than that part of the yard where the addition is proposed.
9. The applicants have satisfied the Ordinance.
10. The Board has determined that the applicants have satisfied the six standards set forth in Sect. 8-922 of the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This Special Permit is approved for the location and size of a proposed addition as shown on the plat prepared by Joseph W. Bronder, DiGiulian Associates, P.C., dated October 9, 2008, revised through November 12, 2008 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,285 square feet existing + 1927.5 (150%) = 3,212.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ March 10, 2009, Scheduled case of:

9:00 A.M. ANTHONY JR. & KATHLEEN ESPOSITO, SP 2008-SU-112 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.0 ft. from side lot line. Located at 6610 Smiths Trace on approx. 25,030 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((5)) (6) 6.

Chairman Ribble called the applicant to the podium.

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

Anthony Esposito, Jr., 6610 Smiths Trace, Centreville, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting reduction of certain yard requirements to allow construction of a detached garage ten (10) feet from the side lot line. She noted that the Zoning Ordinance requires a minimum side yard of twenty (20) feet, therefore, a modification of ten (10) feet or 50% was requested. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Hart and Ms. Caffee discussed Standard 9 in Section 8-922, the minimum amount of reduction necessary, with Ms. Caffee noting that to shift the garage south would destroy trees and increase the amount of impervious surface on the property.

Mr. Esposito presented the special permit request as outlined in the statement of justification submitted with the application. He said he needed more storage area, but that the community's rules and regulations would not allow sheds.

Mr. Hart and Mr. Esposito discussed a letter from the HOA addressing the required material of brick for a garage. Mr. Esposito noted that although he had lived in the community for 22 years, he lived 18 of those years in a different house 6 to 8 blocks away, and the HOA letter was addressing his previous residence.

In response to a question from Mr. Hart, Mr. Esposito said that the HOA had not reviewed the garage proposal, stating that he wanted to get the County's approval first.

Mr. Hart, Mr. Hammack, and Mr. Esposito discussed the location of the proposed garage, with Mr. Esposito noting that to move the garage a few feet to the south would take away from the children's play area and would require the removal of several trees.

Ms. Gibb and Mr. Esposito discussed a letter submitted by an adjacent property owner, Mr. Koladazy. Mr. Esposito stated his disagreement with the issues raised in the letter, noting that there was a line of cypress trees between the two lot lines, currently measuring approximately 17.5 feet in height, but that they would grow to 60 feet tall. He said the trees extended the full length of the garage.

In response to a question from Ms. Gibb, Mr. Esposito stated he had tried to meet with his neighbor, even inviting him to a meeting between himself and the County to have his questions answered, but he never showed up.

Chairman Ribble called for speakers.

Paul Koladazy, 6608 Smiths Trace, Centreville, Virginia, spoke in opposition to the proposed garage. He said there were other options for the garage that would have less of an impact on his property.



Ms. Gibb, Mr. Hart, and Mr. Koladazy discussed the location of his deck and the cypress tree buffer. Mr. Koladazy stated that the deck was not currently screened by the trees, but might eventually be in the future.

In response to a question from Mr. Hart, Ms. Caffee stated that staff felt the screening was adequate.

In rebuttal, Mr. Esposito reiterated about the number of trees he had incorporated into the buffer, noting that he did not believe he could make it any denser.

Mr. Hammack, Mr. Hart, and Mr. Esposito discussed the dormer window elevations and the material to be used on the proposed garage.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2008-SU-112 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ANTHONY JR. & KATHLEEN ESPOSITO, SP 2008-SU-112 Appl. under Sect. 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 10.0 ft. from side lot line. **THE BOARD APPROVED THE ACCESSORY STRUCTURE 15.0 FEET FROM THE SIDE LOT LINE.** Located at 6610 Smiths Trace on approx. 25,030 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((5)) (6) 6. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 2009; and

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

1. The applicants are the owners of the property.
2. The Board has a staff report with a favorable recommendation.
3. Although the Board did not necessarily agree with everything in the staff report, the applicants are entitled to some relief.
4. A 15' setback would be consistent with the spacing to the house to the north.
5. A 15' setback would allow sufficient space behind the existing garage or behind the deck.
6. The proposed garage conflicts with the location of a locust tree.
7. It is questionable that once the foundation goes under the branches if the locust tree would survive anyway.
8. A 15 foot setback would balance the locust tree off the impact on the neighbor.
9. The proposed garage is a fairly massive structure, higher than a usual garage because of the upstairs area.
10. The side of the garage is an unmitigated flat panel with no fenestration.
11. Based on the photographs, even if the Leyland cypresses cover part of it, the view is going to be relatively unobstructed to the front and the upper portion of the structure.
12. The view is pretty significant of the proposed garage from the neighboring deck, or appears that way from the photographs.
13. The Board could not conclude from the record before them that there have been any approvals for something like this previously.
14. There are many homes in the neighborhood that have added a two-car detached garage, but as far as the Board could tell, those garages did not require relief from the Ordinance; they were generally by right.
15. A 15 foot setback would have a lesser impact on the adjacent property.
16. Considering Subsection 9 of Section 8-922 of the Ordinance, the Board has to make a determination

that the proposed reduction represents the minimum reduction necessary to accommodate the proposed structure on the lot.

17. Looking at the layout of the existing structure and availability of alternate locations for the garage, the Board cannot conclude that the application (for a 10 foot setback) is for the minimum necessary.
18. A reduction to 15 feet would be more consistent with the pattern of development in the area.
19. The Board has determined that the application, in part, satisfies the standards in 8-922.
20. Modifying the side yard setback to 15 feet would represent the minimum amount of reduction necessary to accommodate the proposed structure on the lot.
21. Realignment of the driveway is going to happen anyway. At 15 feet, it is still straight back from the existing driveway for the most part.
22. The driveway would not be as far over as the side of the existing yard, based on the drawings.

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. 8-922 of the Zoning Ordinance.

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

1. This special permit is approved for the location and size of a proposed detached garage as shown on the plat prepared by Jeffrey S. Smith, Christopher Consultants, dated October 9, 2008, revised through November 5, 2008 submitted with this application and is not transferable to other land. Notwithstanding the dimensions on the plat, the garage shall be no closer to the side line than 15 feet.
2. The structure shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. Building permits and final inspections for the detached accessory structure (garage) shall be diligently pursued and obtained within 180 days of final approval of this application.

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

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

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

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~ ~ ~ March 10, 2009, Scheduled case of:

9:00 A.M. MARY SALEEB, SP 2008-SU-110 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3780 Vernacchia Dr. on approx. 7,007 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 34-4 ((21)) (2) 57.

Chairman Ribble called the applicant to the podium.

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

By her daughter Sara Saleeb, Mary Saleeb, the applicant, 3780 Vernacchia Drive, Chantilly, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant was requesting approval to permit an accessory dwelling unit within the existing home. She said the 1,044 foot accessory unit would be on the basement level and would include two bedrooms, a bathroom, and a kitchen, to be occupied by the applicant's parents. Staff recommended approval of the application subject to the proposed development conditions.

Sara Saleeb presented the special permit request as outlined in the statement of justification submitted with the application. She said that the accessory unit had been in their home for four to five years, during which time it was occupied by her grandparents. Ms. Saleeb said her mother had been unaware of the zoning requirements for an accessory dwelling unit.

Responding to a question from Ms. Gibb, Ms. Saleeb stated that she read and understood the development conditions.

In response to a question from Mr. Hart, Ms. Saleeb said that her mother had not obtained a building permit for the kitchen in the basement; she didn't know it was necessary.

Mr. Hart and Ms. Langdon discussed requiring the applicant to obtain a permit for the kitchen.

In response to a question from Mr. Hammack, Ms. Langdon stated that finishing roughed in plumbing should be covered under the original building permit for a home.

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

Ms. Gibb moved to approve SP 2008-SU-110 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

MARY SALEEB, SP 2008-SU-110 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3780 Vernacchia Dr. on approx. 7,007 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 34-4 ((21)) (2) 57. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant presented testimony that the application meets the requirements for an accessory dwelling unit.
3. The applicant's parents, who are over 55, will be living in the unit.
4. The application meets all the other requirements of 8-903 and 8-918 of the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the appropriate sections 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, Mary Saleeb, and is not transferable without further action of this Board, and is for the location indicated on the application, 3780 Vernacchia Drive (7,007 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 house location survey plat prepared by Christopher Consultants, dated September 17, 2008, as revised through December 4, 2008, signed December 5, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The 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 a maximum of 1,045 square feet, including a maximum of two bedrooms.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.
10. A building permit and all associated permits and inspections shall be obtained, if necessary, for the accessory dwelling.

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

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~ ~ ~ March 10, 2009, Scheduled case of:

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

mausoleum, crematory and columbarium to permit site modifications and modification of development conditions. Located at 4401 Burke Station Rd. and 9900 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 12/16/08 and 1/13/09 at appl. req.)

Chairman Ribble noted that SPA 81-A-022-09 had been administratively moved to the April 21, 2009 meeting at the applicant's request.

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~ ~ ~ March 10, 2009, Scheduled case of:

9:00 A.M. PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-A-039 previously approved for place of worship the child care center and nursery school to permit private school of general education. Located at 9001, 9005 and 9019 Little River Tnpk. on approx. 6.19 ac. of land zoned R-1. Braddock District. Tax Map 58-4 ((1)) 1 and 58-4 ((8)) 1 and 2. (Decision deferred from 9/23/08, 12/16/08, and 2/3/09)

Chairman Ribble noted that the case was for decision only.

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

Mr. Smith moved to approve SPA 82-A-039-05 for the reasons stated in the Resolution.

Mr. Hart seconded the motion and offered an amendment to Condition 13 to include the proposed sidewalk along the service drive frontage of lots 1 and 2.

Mr. Smith accepted the amendment.

Mr. Hart asked if the staff would recommend denial of the application without a connection between the playground and Doveville Lane. Ms. Hedrick responded that since it was a Department of Transportation (DOT) recommendation / requirement, per the Public Facilities Manual (PFM), staff felt a connection would be necessary since there will be a school use on the site.

Mr. Hart, Mr. Smith, and Ms. Hedrick discussed whether the application would go to site plan review without the requirement of a left turn lane. Ms. Hedrick explained that without the left turn lane, the sidewalk issue could be deemed a minor modification and bypass site plan review.

John McBride, agent, stated that a site plan had been approved, construction completed, and the applicant was pretty much off bond, although he said there might be a remaining Virginia Department of Transportation (VDOT) bond left for some of the construction. He felt it would be a minor site plan revision because the applicant was already committed to some sidewalk improvements along Elizabeth Lane and the turn lane extension, either modified or full extension. Mr. McBride said he did not believe the PFM required the Doveville Lane connection.

Mr. Hammack stated his concerns about the area traffic, specifically in relation to the ingress and egress to and from the site.

In response to a question from Ms. Gibb, Susan Langdon, Chief, Special Permit and Variance Branch, stated that the original language regarding the left turn lane said that it had to be done and could not be waived. She said the new condition language stated that it could be waived by VDOT.

Ms. Gibb and Ms. Langdon discussed the sidewalk language, with Ms. Langdon noting that although VDOT may want the sidewalks in place, the Department of Public Works and Environmental Services or DOT could waive them.

Mr. Hart, Ms. Gibb, and Mr. Smith discussed Condition 16, with Mr. Smith suggesting that the deleted language be added back so that it would read, "Prior to the issuance of a new non-Residential Use Permit for the school, a 5-foot wide sidewalk shall be provided along both the Elizabeth Lane and service drive frontage on Lots 1 and 2 and along the western portion of the proposed outdoor recreation area from Doveville Lane to the site's interior in accordance with the Fairfax County Public Facilities Manual (PFM). The requirement for a sidewalk along the western portion of the proposed outdoor recreation area from Doveville Lane to the site's interior may be waived or otherwise deemed not required by DPWES, in their discretion".

Chairman Ribble, Mr. Hammack, and Mr. Hart discussed the turning lane issue addressed in Condition 19. Mr. Hart said he was more comfortable letting VDOT make that decision instead of the Board.

Mr. Smith reread revised Condition 16; Mr. Hart, as seconder of the motion, accepted the revision.

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## COUNTY OF FAIRFAX, VIRGINIA

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

PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-A-039 previously approved for place of worship with child care center and nursery school to permit private school of general education. Located at 9001, 9005 and 9019 Little River Tnpk. on approx. 6.19 ac. of land zoned R-1. Braddock District. Tax Map 58-4 ((1)) 1 and 58-4 ((8)) 1 and 2. (Decision deferred from 9/23/08, 12/16/08, and 2/3/09). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 10, 2009; and

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

1. The applicants are the owners of the property.
2. The present zoning is R-1.
3. The area of the lot is 6.19 acres.
4. There has been a great deal of scrutiny in this application.
5. The application has been deferred from September 23, 2008, December 16, 2008, and February 3, 2009.
6. The Board has had the opportunity to ask a great many questions.
7. There have been a great many meetings with citizens.
8. There has been a lot of discussion with County staff in the Department of Transportation.
9. There are inherent infrastructure issues throughout the County and the country.
10. There are some concerns with Little River Turnpike, which is planned for six lanes, which is what led to a lot of the Board's discussions about the turn lane and concerns about the public health, safety, and welfare.
11. There has been a great effort to accommodate those concerns.
12. There are issues with education in the County and the need for schools.
13. This is a type of use that is consistent with the existing use and the approved land use on the property.
14. The property was approved in 1989 for a private school for general education. It was amended a few years ago to convert to a child care center and nursery school.
15. There have been accommodations to address issues like hours of operation so as not to conflict with the bus stop, pick-up and drop-off.
16. There have been accommodations on landscaping to ensure that there is continued maintenance and preservation of landscaping.
17. The turn lane is a significant cost of approximately \$189,000, which is a significant accommodation and one that is necessary, but the Board strongly defers to the County's Department of

Transportation on that. There is a development condition that will address that concern and would allow modifications in the future if that were accommodated, but it is something to be worked out with the experts.

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. 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, Providence Presbyterian Church; Providence Nursery School, Inc. and National Capital Presbytery, Inc., but is transferable without further action of this Board to a tenant or licensee upon issuance of a Non-Residential Use Permit (Non-RUP), and is for the location indicated on the application, 9001, 9005, & 9019 Little River Turnpike, 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 Christopher Consultants dated May 19, 2008 as revised through August 18, 2008.
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 seating capacity in the main area of worship shall not exceed 450.
6. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
7. The total maximum daily enrollment of children in the child care center/nursery school shall not exceed 70. The total maximum daily enrollment of students in the private school of general education shall not exceed 70, which shall include Grades K through 8 only.
8. The hours of operation for the child care center/nursery school shall be limited to 9:00 am to 3:30 pm, Monday through Friday. The hours of operation for the private school of general education shall be limited to 8:10 a.m. to 5:00 p.m. Monday through Friday.
9. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be maintained as shown on the plat, with the following modifications:
  - Landscaping shall be maintained on the proposed berm northwest of the existing church building. Landscaping shall include ornamental trees, shrubs, and understory plantings to soften the appearance of the graded areas and the parking and building areas.

The size, species and location of plantings shall be provided in consultation with Urban Forest Management Division (UFMD).
10. Foundation plantings and ornamental trees shall be maintained to soften the visual impact of the structures. The species, size and location shall be determined in consultation with UFMD and DPWES.
11. Parking lot landscaping shall be maintained in accordance with Article 13 of the Zoning Ordinance.

12. The barrier requirement shall be waived along the northern lot line. The barrier requirement shall be modified along the southern, eastern, and western lot lines to permit the existing six-foot high wood and chain-linked fences to satisfy the requirements.
13. Existing healthy vegetation shall be preserved and maintained along the eastern lot line as depicted on the SP Plat. Additionally, notwithstanding that which is shown on the Plat, the Applicant shall maintain the evergreen shrubbery (Inkberry and Hybrid Holly or a type recommended by UFM between the abutting Lots (99, 100, and a portion of 98 as shown on the SP Plat) and that portion of the "existing chain link fence" shown on the Plat along the eastern parking lot. Said plantings shall be maintained for the purpose of screening views of the parking lot from the houses located on Lots 98, 99, and 100.
14. Any proposed 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. All lighting shall be full cut-off luminaries and shall be controlled by timers (except for security lighting). No new uplighting of landscaping, signage or architecture shall be provided.
15. The treatment of the abandoned well and septic field shall comply with requirements of the Fairfax County Health Department.
16. Prior to the issuance of a new Non-Residential Use Permit (Non-RUP) for the school, a 5-foot wide sidewalk shall be provided along both the Elizabeth Lane and service drive frontage of Lots 1 and 2 and along the western portion of the proposed outdoor recreation area from Doveville Lane to the site's interior in accordance with the Fairfax County Public Facilities Manual (PFM). Existing escrow funds shall be made available to meet this requirement. The requirement of a sidewalk along the western portion of the proposed outdoor recreation area from Doveville Lane to the site's interior may be waived or otherwise deemed not required by DPWES, in their discretion.
17. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
18. All garbage or trash shall be picked up at the entrance to the church on the access road parallel to Little River Turnpike or at an appropriate location on the church property near the building.
19. Prior to the issuance of a new Non-RUP for the school, the applicant shall provide an extension to the existing right-turn lane along Little River Turnpike (Route 236) at the site's right-in entrance to meet the requirements as determined by the Virginia Department of Transportation (VDOT). Notwithstanding the forgoing, this condition shall be deemed satisfied if the applicant receives approval of a design waiver or modification from VDOT.
19. The operator of the private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods. The operator of the private school of general education shall ensure that contractual arrangements with students and their guardians (i) prohibit parking along Elizabeth Lane, Doveville Lane and other residential neighborhood streets in the Lee Forest neighborhood; and (ii) prohibits vehicular drop-of/pickup of student for the child care center/nursery school and the private school of general education uses from Doveville Lane; and (iii) discourage use of the neighborhood streets for travel to and from the private school of general education unless the student/guardian resides in the Lee Forest neighborhood.
20. As per Note 18 on the special permit plat, all trees greater than 2" in diameter shall be preserved in the forested play area, only brush and understory vegetation shall be removed as determined by UFMD. All hollies in the forested area shall be preserved unless UFMD determines otherwise because of poor condition. Prior to clearing of this area, staff from UFMD shall be contacted to flag shrubs and understory trees that shall be preserved.
21. Doveville Lane shall not be used for vehicular access for either the child care center/nursery school or the private school of general education use.



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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, forty-eight (48) months after the date of approval unless use has commenced and been diligently prosecuted. These conditions shall be required only at such time as the private school of general education use is commenced. Until such use is commenced, the development conditions associated with SPA 82-A-039-4 shall remain in effect. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

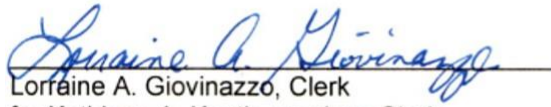
Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Byers were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:16 a.m.

Minutes by: Suzanne Frazier

Approved on: October 27, 2009

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 24, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

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

9:00 A.M. CAROLE S. JACKSON, TRUSTEE, SP 2008-DR-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6817 Tennyson Dr. on approx. 12,500 sq. ft. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((3)) 14. (Admin. moved from 2/10/09 at appl. req.)

Chairman Ribble noted that SP 2008-DR-102 had been administratively moved to May 5, 2009, at 9:00 a.m., at the applicant's request.

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

9:00 A.M. THOMAS R. AND SHARON G. MORRIS, SP 2009-PR-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.1 ft. from side lot line. Located at 3023 Oakton Meadows Ct. on approx. 3,870 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((27)) 12.

Chairman Ribble called the applicants to the podium.

Steven K. Fox, 10511 Judicial Drive, Suite 112, Fairfax, Virginia, the applicants' agent, came forward.

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

Mr. Fox explained that his co-counsel's firm had recently completed a merger resulting in a change of several partners and the firm's name. He requested that the hearing be deferred to May 5, 2009, so the affidavit could be revised. Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff agreed with a deferral.

Mr. Smith moved to defer SP 2009-PR-002 to May 5, 2009, at 9:00 a.m., at the applicants' request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

In response to Mr. Beard's question, Ms. Langdon said the application would be re-advertised.

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

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, 9/16/08, 11/4/08, 12/16/08, and 2/24/09 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to April 21, 2009, at 9:00 a.m., at the applicant's request.

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

Approval of February 8, 2005 Minutes

Mr. Beard moved to approve the Minutes. Mr. Hammack seconded the motion, which carried by a vote of 5-0-2. Mr. Byers and Mr. Smith abstained from the vote.

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

Request for Additional Time  
Salameh Brothers Construction Company, VC 01-V-187

Mr. Hart moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was January 31, 2010.

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

Request for Additional Time  
Trustees of Mount Calvary Baptist Church, SPA 82-V-013

Mr. Byers moved to approve 18 months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 7-0. The new expiration date was March 21, 2010.

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The meeting recessed at 9:12 a.m. and reconvened at 9:30 a.m.

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

9:30 A.M. CALVARY MEMORIAL PARK, INC., T/A FAIRFAX MEMORIAL PARK AND FAIRFAX  
MEMORIAL, A 2008-BR-040 (Admin. moved from 10/7/08 and 1/13/09 at appl. req.)

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to May 19, 2009, at 9:30 a.m., at the appellant's request.

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

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, 6/3/08, 9/9/08, and 12/9/08 at appl. req.)

Chairman Ribble noted that a deferral request for A 2007-MV-030 had been received from the appellant, and he opened the public hearing.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, explained that the appellant had applied for a special permit to attach the detached structure to the principle structure in order to apply for an accessory dwelling unit. A revised plat had been submitted, and the application was in the acceptance process awaiting architectural renderings.

Chairman Ribble clarified that the appeal would not require re-advertisement.

Chairman Ribble called for speakers; there was no response.

Mr. Hammack moved to continue A 2007-MV-030 to June 30, 2009, at 9:30 a.m. The motion was seconded by Mr. Smith, which carried by a vote of 7-0.

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

9:30 A.M. LARRY MULHALL AND GAGIK VARTANIAN, A 2008-PR-060 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing the operation of a repair service establishment without an approved site plan and/or parking tabulation, including the repair of lawnmowers and other equipment exceeding 5 horsepower which is not permitted under the definition of repair service establishment; and are allowing the use of property as a storage yard, including outdoor storage, 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 H-C. Providence District. Tax Map 50-3 ((15)) A5. (Admin. moved from 1/13/09 at appl. req.)

The appellants were not present when Chairman Ribble called them to the podium.

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

Charles Fitzhugh, Staff Coordinator, Ordinance Administration Branch, presented staff's position as set forth in the staff report. Staff's position was that the storage yard use and excessive outdoor storage had been an ongoing violation since at least 2005, and the property owner had never fully complied with applicable Zoning Ordinance provisions and the agreed final order issued by Judge Thacker in October of 2007. Staff recommended the Board uphold the Zoning Administrator's determination of September 9, 2008.

Hayden Coddling, Assistant County Attorney, responded to the Board's questions concerning the judicial decree by the Circuit Court, the County's continued involvement with the case, a rule to show cause, a monetary penalty to be assessed, the particular violations cited by the Court and the County, the parking of mower equipment and vehicles, the relevance of the different horsepower of the mowers, and clarification of the different Zoning Ordinance violations. Mr. Coddling said the storage yard issue before the Board would be taken to Circuit Court, and he requested the Board defer its decision on that portion of the appeal for 60 days to allow the Court to make its ruling on the issue.

Discussion ensued regarding the need for an approved site plan reflecting the area of outdoor storage, the limitations on providing repair service based on the size and horsepower of the units, outdoor storage, and parking of various units and vehicles, with Chuck Cohenour, Senior Zoning Enforcement Inspector, describing various items and areas in photographs.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, agreed with Mr. Hammack's understanding that if the appellants reduced the outside storage to 250 square feet in compliance with the court order, the issue of the site plan violation would be eliminated, and the only issue before the Board would be whether the lawnmowers were over five horsepower as the business could be maintained inside the premises on units up to five horsepower.

Gagik Vartanian, 7801 Thor Drive, Annandale, Virginia, the property owner; and Larry Mulhall, 3145 Barbara Lane, Fairfax, Virginia, the owner of Caliber Lawn Mower; came forward to speak, and the oath was administered to them.

Mr. Vartanian explained his understanding of storage. He said the business held the units only until they were repaired and picked up, and nothing was being stored. Mr. Vartanian said the customer who owned a leaf vacuum that had been there for a while had been contacted, but they had not come to pick it up. He said automobile repairs were being sent to another location. Mr. Vartanian said he was willing to make modifications to come into compliance if the changes were logical.

Mr. Mulhall said some of the mowers were junk. Scrap dealers came twice a week, and they were disposed of quickly. He discussed the matter of horsepower of various units. He said the leaf vacuum customer would be given two more weeks to pick it up, but they did not, it would be removed.

Discussion ensued regarding the definitions and interpretations of a storage yard and outdoor storage, whether the business could operate with outdoor storage not exceeding 250 square feet, removal of the leaf vacuum, and repair of machinery larger than five horsepower being prohibited in the C-8 District.

Mr. Vartanian stated that the law was outdated with the restriction on horsepower because current model mowers had increased power. He said the service the business provided was needed because there were few such shops in the County. He said it did not make sense because his property was approved to work on 500 horsepower cars.

Mr. Hammack clarified that Mr. Vartanian's establishment was approved to work with no horsepower limitation, but Mr. Mulhall's establishment was not.

Chairman Ribble called for speakers.

Tine Wilcal, 2844 Stuart Drive, Falls Church, Virginia, came forward to speak in opposition. She said the cars stored on the property contained junk and had no tags, and she had been told by a realtor that the proximity to the business would deter people from purchasing her property. Ms. Wilcal said 100 mowers and power equipment, a commercial leaf blower, 11 cars, a toilet, a broken window, and a decrepit fence had been present on the property the day before the hearing. Ms. Wilcal said trucks used the residential streets to drop off and pick up mowers.

Jenny Guy, 2917 Lawrence Drive, Falls Church, Virginia, representing Fenwick Park Homeowners Association, came forward to speak in opposition. She said trucks idled on the street while mowers were driven onto them which caused noise pollution and blocked the street. Ms. Guy said there were many other vacant sites that were more suitable for the business.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to uphold the Zoning Administrator's determination on all issues. Ms. Gibb seconded the motion.

Mr. Hart said he would support the motion. He said mowers greater than five horsepower were being repaired based on the testimony, and it was clear from the photographs that the area with mowers and equipment was greater than 250 square feet. Mr. Hart said the question of whether the Ordinance was outdated and the distinction should be based other factors was one for the County's work program.

The motion carried by a vote of 6-1. Mr. Beard voted against the motion.

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

9:30 A.M. KAREN E. PHELPS (NEE MASON) & FRANK PHELPS, A 2008-MA-070 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining a rooming house and multiple dwelling units on property in the R-2 District in ion of Zoning Ordinance provisions. Located at 6578 Edsall Rd. on approx. 26,712 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((6)) 36.

Chairman Ribble noted that A 2008-MA-070 had been administratively moved to May 19, 2009, at 9:30 a.m., at the appellants' request.

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

9:30 A.M. KENNETH AND MARIA CLINE, A 2008-SP-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are exceeding the number of dogs that may be kept on property in the R-3 Cluster District in violation of Zoning Ordinance provisions. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 Cluster and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15. (Admin. moved from 1/27/09 at appl. req.)

Chairman Ribble noted that A 2008-SP-061 had been administratively moved to July 28, 2009 at 9:30 a.m., at the appellants' request.

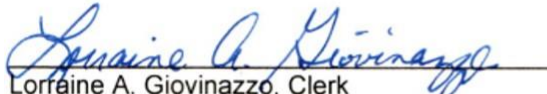
Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said a special permit had been filed that would address the violations.

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As there was no other business to come before the Board, the meeting was adjourned at 10:28 a.m.

Minutes by: Paula A. McFarland

Approved on: October 1, 2014

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 31, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M. JOEL MARTIN MALINA, TRUSTEE & NANCY CORWIN MALINA, TRUSTEE, SP 2009-BR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.5 ft. from the rear lot line. Located at 5004 Margaret Ct. on approx. 13,247 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((17)) 17.

Chairman Ribble called the applicants to the podium.

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

Nancy Malina, 5004 Margaret Court, Annandale, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the construction of a screen porch addition 13.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25.0 feet, therefore, a modification of 11.5 feet was requested. Ms. Caffee noted that staff was recommending approval with adoption of the proposed development conditions.

Ms. Malina presented the special permit request as outlined in the statement of justification submitted with the application. She said in order to locate a screen porch that would be practical and accessible from the kitchen, the porch would need to be built at the site of their existing deck.

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

Mr. Hammack moved to approve SP 2009-BR-003 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOEL MARTIN MALINA, TRUSTEE & NANCY CORWIN MALINA, TRUSTEE, SP 2009-BR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.5 ft. from the rear lot line. Located at 5004 Margaret Ct. on approx. 13,247 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((17)) 17. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2009; and

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

1. The applicants are the owners of the property.
2. The applicant has met the six required standards set forth in the Ordinance.

3. The proposed addition does not encroach any further than the existing deck.
4. The lot is an unusual configuration.
5. The Board has a favorable staff report supporting this application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for Provisions for Certain Reduction of Yard Requirements as contained in Sect(s). 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by Alex E. Fernandez, Advance Engineering Group, LLC, dated August 25, 2008, revised through December 19, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,593 square feet existing + 3,889.5 (150%) = 6,485.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance.

Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M.        TERRY C AND ELLEN P SMITH, SP 2009-HM-005 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 16.0 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 16.3 ft. from the side lot line. Located at 2587 Babcock Rd. on approx. 1.0 ac. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((3)) 2.

Chairman Ribble called the applicant to the podium.



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

Terry Smith, 2587 Babcock Road, Vienna, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the existing dwelling to remain 16.0 feet from the eastern side lot line. The Zoning Ordinance requires a minimum side lot line of 20.0 feet, therefore, a modification of 4.0 feet, or 20% was requested. Ms. Caffee noted that a second special permit was requested to permit the reduction of certain yard requirements for construction of an addition 16.3 feet to the eastern side lot line, requiring a modification of 3.7 feet, or 18.5%. She said staff was recommending approval with the adoption of the proposed development conditions.

Mr. Terry Smith presented the special permit request as outlined in the statement of justification submitted with the application. He noted that he had applied for and been granted a variance in 1979 for an addition to be built 16.2 feet from the side lot line. Mr. Smith stated that when he applied for this special permit, staff had noticed that 1979 addition had not been built as required, specifically 16.3 feet from the side lot line. He said that the portion of the house that was not in compliance with the variance was two stories high, contained heating and air conditioning ducts, and had finished rooms on both floors. Mr. Smith felt it would be unfair to ask them to move the addition now and that they had built the 1979 addition in good faith. He asked that the Board to approve his application.

Mr. Hart and Susan Langdon, Chief, Special Permits and Variance Branch, discussed the advertisement for the application, with Ms. Langdon noting that staff had advertised what was on the plat, which was correct.

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

Mr. Byers moved to approve SP 2009-HM-005 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

TERRY C. AND ELLEN P. SMITH, SP 2009-HM-005 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 16.0 ft. from side lot line and reduction of certain yard requirements to permit construction of an addition 16.3 ft. from the side lot line. Located at 2587 Babcock Rd. on approx. 1.0 ac. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((3)) 2. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2009; and

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

1. The applicants are the owners of the property.
2. The staff recommends approval of the addition, and the Board adopts their rationale.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-922, Provisions for Reduction of Certain Yard Requirements. Based on the standards for building in error, the Board has determined:

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

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

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

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

- 1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This special permit is approved for the location and size of a proposed addition and existing dwelling as shown on the plat prepared by Peter R. Moran, Land Surveyor, dated September 18, 2008, revised through December 11, 2008, submitted with this application and is not transferable to other land.
- 3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,091 square feet existing + 4,636.5 (150%) = 7,727.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
- 4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M. WILLIAM PAXTON, SP 2009-DR-004 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit dwelling to remain such that side yards total 36.5 ft. Located at 9706 Locust Hill Dr. on approx. 21,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 19-1 ((9)) 15.

Chairman Ribble called the applicant to the podium.

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

William Paxton, 9706 Locust Hill Drive, Great Falls, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the house to remain so that the side yards totaled 36.5 feet. She stated that the prior owners of the property had obtained a variance to build an addition 13.75 feet from the side lot line in 2001. However, the addition was constructed closer to the side lot line than approved, specifically 12.9 feet. Ms. Hedrick said the staff recommended approval of the application subject to the proposed development conditions.

Mr. Paxton presented the special permit request as outlined in the statement of justification submitted with the application. He said he submitted the permit request to allow an addition that existed when he purchased the home to remain in place.

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

Mr. Hart moved to approve SP 2009-DR-004 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

WILLIAM PAXTON, SP 2009-DR-004 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit dwelling to remain such that side yards total 36.5 ft. Located at 9706 Locust Hill Dr. on approx. 21,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 19-1 ((9)) 15. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2009; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable recommendation in the staff report and adopts that rationale.
3. It is not entirely clear how the addition ended up closer to the side line than the approval, but this owner did not do it.
4. The addition does not seem to be bothering anyone.

5. The discrepancy is relatively slight.
6. There would be no significant negative impact on anyone.
7. It would be a hardship to require modification at this point.
8. The applicant has presented testimony indicating compliance with the additional standards set out in the Sect. 8-922 resolution.

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 the Provisions for Reduction of Certain Yard Requirements as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot and a certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning within three (3) months of approval of the special permit
2. This special permit is approved for the location and size (301 total square feet) of an existing addition to the eastern side of the existing dwelling, as shown on the plat prepared by Alexandria Surveys International, LLC, Ltd., dated August 8, 2003, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,672 square feet existing + 5,508 square feet (150%) = 9,180 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

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

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

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M.            DAVID W. AND JESSICA M. DIVELY, VC 2009-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 41.83 ft. Located at 8215 Riverside Rd. on approx. 38,623 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 17C.

Chairman Ribble called the applicant to the podium.

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

David Dively, 8903 Stratford Lane, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting a variance to permit a minimum lot width of 41.83 feet; the required lot width for an interior lot in the R-3 district is 80 feet, a difference of 38.17 feet. She noted that the applicants were proposing to construct an approximately 4300 square foot single family detached dwelling toward the rear of the vacant lot.

Ms. Gibb, Mr. Hart, Ms. Hedrick, and Susan Langdon, Chief, Special Permits and Variance Branch, discussed how lots were measured in 1966, with Ms. Langdon providing the definition of lot width. She noted that prior to 1978, lots were measured from the centerline of the road.

Donna Pesto, staff coordinator, Zoning Administration Division, confirmed that lots used to be measured from the centerline of the road, but are now measured from the street line, where the lot actually meets the street.

In response to a question from Ms. Gibb, Ms. Pesto stated that measuring from the centerline was included in the old Zoning Ordinance by definition.

Mr. Hart and Ms. Hedrick discussed whether there was a structure on the lot on the 1965 plat. Ms. Hedrick stated that no building permits had been issued to build on this site.

Mr. Byers and Ms. Hedrick talked about the term "buildable lot" and the county agencies which determine if a lot is buildable, namely the Department of Public Works and Environmental Services with input from the Department of Planning and Zoning. Ms. Hedrick pointed out that the buildable lot letter from DPWES had been included in the staff report.

Mr. Byers noted that people had been paying taxes on this property since 1968 and now the county said the lot was not buildable. He felt there needed to be some coordination between the Office of Tax Administration and DPWES.

Mr. Dively presented the variance request as outlined in the statement of justification submitted with the application. He said he had purchased this property in September of 2007 with the intention of building a single family home. Prior to purchasing the lot, he called Fairfax County to make sure the lot was buildable and was reassured by an employee in the Tax Administration office that the lot was listed as a buildable lot. Mr. Dively said that at the time of the permit process, he was asked to produce a buildable lot validation letter. It was then determined that the lot did not meet minimum lot width and was unbuildable. He said there was no indication that he could appeal the decision. By the time he found out he could appeal the decision, thirty (30) days had expired. Mr. Dively said he purchased the lot in good faith and asked that the Board strongly consider his variance application.

In response to a question from Ms. Gibb, Mr. Dively said he paid \$380,000 for the lot, but the cost was up to \$500,000 with engineering and architecture expenses.

At Mr. Ribble's request, Roger Bohr with RC Fields, Jr., and Associates, 730 S. Washington Street, Alexandria, Virginia, addressed the Board regarding the history of the property. He said he had gone through all the records he could find, including old photos, to find out what the structure was on the property in 1965. Mr. Bohr said there was no record of it actually being a dwelling, a large shed, or a barn or outbuilding.

In response to a question from Mr. Hammack, Mr. Bohr said that he did try to find the lawyer who handed the subdivision of the lots, but could not find him. He said he found the actual partition deed and plat, but nothing which addressed the background or reasoning for the partition.

Mr. Hart, Mr. Hammack, and Mr. Dively discussed the proposed development conditions and the strict restrictions for granting a variance.

In response to a question from Mr. Smith, Ms. Hedrick said that Development Condition 3 had been recommended by Urban Forestry due to the length of the driveway and tree area.

Ms. Gibb, Mr. Hart, and Ms. Hedrick talked about buildable lot determination letters needing to include language regarding appeal rights.

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

Ms. Gibb moved to approve VC 2009-MV-001 for the reasons stated in the Resolution.

Mr. Beard and Mr. Hart indicated their support for the motion, with Mr. Hart noting that the Ordinance interfered with all reasonable use of the property.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

DAVID W. AND JESSICA M. DIVELY, VC 2009-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 41.83 ft. Located at 8215 Riverside Rd. on approx. 38,623 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 17C. 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 31, 2009; and

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

1. The applicants are the owners of the property.
2. The Board concludes that the applicants have met the standards required by the *Cochran* case, which is that they are being denied all reasonable beneficial use of the property taken as a whole, as confirmed by the staff.
3. It is staff's opinion that unless this variance is granted, the applicants will not be able to use the lot at all.
4. It is an appropriate and right case to grant this variance.
5. This is an old lot that was created back in 1966, and it could be that this lot was created legally based on the old ordinances.
6. It meets the standards under *Cochran* and under the standards for variances, which are that the property was acquired in good faith, that the subject property has an unusual shape, and that the applicant has met Standards 3 through 9 required for a variance.
7. The applicants paid over \$300,000 for the property, evidencing good faith.
8. The subject property has a lot width that under today's Ordinance is too narrow, evidencing that the property has an unusual shape.
9. The applicants have also met Standards 3 through 9 required for a variance.

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

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

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

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

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

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

1. This variance is approved for the minimum lot width of 41.83 feet, as shown on the plat prepared by RC Fields, Jr. & Associates, dated August 22, 2008, as revised through February 24, 2009, 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 by the applicants among the land records of Fairfax County. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) prior to the approval of any permits and grading plans for this lot.
2. All prospective purchasers of the property shall be notified in writing prior to sale of the property that these conditions have been recorded in the land records of Fairfax County and must be implemented prior to the approval of the grading plan for this lot.
3. The applicant shall install a stone/gravel base the entire length of the proposed driveway to be utilized during construction activities. Once construction is complete, the gravel surface is to be covered by Chesapeake Washed Gravel and shall be maintained in good condition.
4. Replacement of the existing structure, and/or construction of additions or accessory structures that conform with the applicable Zoning Ordinance provisions and these development conditions, as determined by the Zoning Administrator, may be permitted without an amendment to this variance.
5. Placement of fences should avoid forested areas; however, they may be constructed within the tree save areas as long as good horticultural practices are observed and there is minimal disturbance to the vegetation.

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

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

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M. ANTHONY NGUYEN, SP 2008-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 3811 Whispering La. on approx. 14,543 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((13)) 241. (Admin. moved from 2/10/09 at appl. req.)

Chairman Ribble noted that SP 2008-MA-097 had been administratively moved to the April 14, 2009 meeting at the applicant's request.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M. ERICA STATMAN, SP 2009-PR-001 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 3908 Prince William Drive on approx. 27,697 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4- ((10)) 35A.

Chairman Ribble noted that SP 2009-PR-001 had been withdrawn.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:00 A.M. HERMILIO MACHICAO, SP 2009-LE-007 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 12.1 ft. from a front lot line and permit construction of fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 5901 Amherst Ave. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1.

Chairman Ribble called the applicant to the podium.

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

Jose Machicao, the applicant's agent, 7219 Highland Street, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting three special permits, two of which were for a reduction to the minimum yard requirement based on errors in building location to permit (1) a roofed deck to remain 25.4 feet from the eastern front lot line and (2) the dwelling to remain 13.2 feet with eave 12.1 feet from the eastern front lot line. The Zoning Ordinance requires a minimum front yard of 30 feet, resulting in modifications of 4.6 feet, 16.8 feet, and 14.9 feet, respectively. Ms. Johnson said the third request was to permit construction of a six (6) foot high fence in the Backlick Road front yard. She noted that the applicant proposed to make several modifications to the existing dwelling and that Development Condition 3 reflected these changes.

In response to a question from Mr. Hart, Ms. Johnson stated that a building permit had been issued in error. She said the applicant had begun construction and then the error was discovered. Ms. Johnson further noted that modifications to the plan had been approved by an inspector on site.

Mr. Smith and Ms. Johnson discussed the building dimensions by right and the allowable height and setback limitations, with Mr. Smith stating that the dwelling could have been six (6) feet higher by right. Ms. Johnson noted that the dwelling met the density and building height standards.

Mr. Machicao presented the special permit request as outlined in the statement of justification submitted with the application. He provided an update for the Board since his last appearance before them in July of 2007, noting that the County had issued a stop work order three months after they had begun construction. Mr. Machicao said he had provided the County with all the information they required and relied on the building permit that was issued. He said had the error been caught earlier in the process, he would have no problem making the requested changes. Mr. Machicao said the house was 80% complete when the County issued the stop work order. He noted that the house had been inspected many times during its construction and when the inspector recommended changes, he made them. Mr. Machicao said that, to date, his family had paid almost \$500,000 for construction of the house without being able to use the property. He stated it has been a financial hardship for his family.

Mr. Beard noted that concern had been expressed by the area citizens that this dwelling would be used as a boarding house. Mr. Machicao stated that he was building the house for his family, and that it had never been his intent for it to be a boarding house.



In response to a question from Mr. Beard, Mr. Machicao stated that he had tried to meet with the area citizens but was never really given the chance to meet with anyone. He also said he was prepared to adhere to the proposed Development Conditions recommended by staff.

In response to a question from Mr. Hart, Mr. Machicao stated that he was financially able to make the changes requested by staff.

Mr. Hart, Eileen McLane, Zoning Administrator, Ms. Johnson, and Ms. Langdon discussed a future homeowner deciding to build a deck on the Backlick Road side of the property. Ms. McLane suggested that a development condition be added to prohibit a deck of any kind in this location. Ms. Langdon pointed out that when a development condition prohibits something, there was still an opportunity for the applicant to amend the application and have the condition changed at a later date.

Chairman Ribble called for speakers.

Bruce Wagoner, representing the Springfield Civic Association, read a letter from an adjacent property owner into the record. He stated his opposition to the special permit request.

Responding to a question from Ms. Gibb as to what he would like the BZA to do in this case, Mr. Wagoner said he would like the house razed.

Mr. Byers pointed out that the applicant, by right, could build a house on this property.

Beth Teare, Assistant County Attorney, said there was a zoning enforcement case pending in circuit court which had been put on hold pending the outcome of the hearing. In that proceeding, she said the County was only asking for the elimination of the encroachment area into the setback on Backlick Road.

In response to a question from Mr. Byers, Ms. Teare stated that the applicant had not agreed to eliminate that portion of the property, but to leave the house in its present location subject to the proposed development conditions. She said that there was no condition that required the applicant to diminish the amount of the encroachment.

Chairman Ribble stepped away, and Vice Chairman Hammack assumed the Chair.

In response to a question from Vice Chairman Hammack, Mr. Wagoner stated that the only thing that would make the area citizens happy would be to raze the house. Mr. Hammack pointed out that the applicant could remove some of the house and be within his rights to have the house there.

Mr. Hart and Mr. Wagoner then discussed whether the citizenry would prefer to slice off the encroaching portion of the house or, for example, dress it up with more trees. Mr. Wagoner stated that the Association had not addressed that question, but would probably go for slicing off part of the house.

Mr. Smith stated that if the applicant agreed to slice off 18 feet of the house on the Backlick Road side, then they would not have the development conditions in place. The applicant could move five feet closer to Highland Avenue and take the dwelling up another six feet in height. He said approving the application allowed the Board to impose some development conditions which would mitigate some of the citizens concerns.

The following people spoke in opposition to the application: Pam York, 7504 Nancemond Street, Springfield, Virginia; Sandra Frieswyk, Monticello Forest subdivision of Springfield, Virginia, Ashok Varma, 6915 Cabin John Road, Springfield, Virginia; Robert Davis, representing the Citizens for Monticello Forest; and Betty McGowan, 7402 Grace Street, Springfield, Virginia. Mr. Wagoner also read into the record a letter from Frederick Renninger, which noted his opposition to the application.

In rebuttal, Mr. Machicao asked that the citizens try to put themselves in his shoes and the predicament he has been placed in. He said if the county was willing to pay his expenses for reducing the Backlick Road side of the house by 18 feet or for taking down the house completely, he would be agreeable.

Mr. Hammack asked why the Board was hearing this case if it was currently in litigation. He said if the Board approved the application, it would be inconsistent with the positions the County and the court have taken. Mr. Hammack asked if the court didn't have jurisdiction of the matter.

Ms. Teare confirmed that there had already been litigation on this matter. She reminded the Board that they originally heard the case as an appeal and then it went to the Circuit Court, where the Zoning Administrator was upheld. Ms. Teare said the County filed a zoning enforcement action and a motion for summary judgment was filed with the Court. She stated that Judge Alden denied the motion for summary judgment in the zoning enforcement case, and referred it back to the Board of Zoning Appeals for the special permit to be decided.

In response to a question from Mr. Hart, Ms. Teare confirmed that if the special permit was approved, there would no longer be a violation of the minimum yard requirement on Backlick Road.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2009-LE-007 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

HERMILIO MACHICAO, SP 2009-LE-007 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.2 ft. with eave 12.1 ft. and roofed deck to remain 25.4 ft. from a front lot line and permit construction of fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 5901 Amherst Ave. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, Sect. 8-914, and Sect. 8-923.
3. These are obviously very unfortunate circumstances.
4. There are a lot of strong feelings on this issue.
5. The Board commends the many citizens who have taken their time out to be at the hearing doing what is in the best interest of their community to preserve and promote their community, which takes a lot of unity and initiative.
6. A number of the concerns relate to things that can be done by right on this property.
7. Regarding the height of the structure, the height can be done by right on this property. It can go six feet higher actually.
8. The floor area ratio is not something that is really an issue.
9. We are in an unfortunate circumstance. People are human beings. There was a mistake made in approving the building permit.
10. Construction was begun and was 80% complete when the error was discovered.
11. This case has been through an appeal and through litigation; there has been a lot of time and money spent.
12. There are still significant concerns about the size of the structure.
13. When looking at options, the Board could deny the application, but the house would still be at the same height, and there would still be issues where by right they can go closer to Highland Avenue by five feet, closer to the side yard/rear yard by five feet, and taller by six feet.

14. It almost offsets the 16- to 18-foot difference on Backlick Road.
15. Denial of the application is not a solution that is in the best interest of everyone.
16. Whereas by approving the application, the Board can impose conditions that will try to mitigate the unfortunate circumstances in which we find ourselves.
17. As in Sect. 8-914, the Board believes the non-compliance was done in good faith.
18. The applicant did go out and get a building permit.
19. In terms of detrimental to the use and enjoyment of other property in the neighborhood, the bulk issues could be done by right, and there are development conditions to mitigate some of the impacts.
20. To force compliance with the minimum yard requirements in this case would cause an unreasonable hardship upon the owner; it would be a significant expense.
21. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
22. With respect to the fence, the provisions in Sect. 8-923, the Fairfax County Department of Transportation made a determination that it will meet the sight distance requirements.
23. The presence of multiple yards comes into play, which is referenced in 8-923 (3).

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Sect. 8-923, Provisions for Increase in Fence and/or Wall Height in Any Front Yard. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. This special permit is approved for the location of the existing dwelling, covered deck, and proposed fence as shown on the plat prepared by Alexandria Surveys, dated May 15 2008, revised through March 3, 2009, and signed March 13, 2009 as submitted with this application and is not transferable to other land. All development onsite shall be in conformance with such plat. There shall be no decks, porches, or other additions added to the house.

2. Within three months of approval of this application, the applicant shall amend building permits for the dwelling to reflect the changes noted in Condition #3.
3. Prior to approval of final inspections and RUP issuance, the applicant shall make the following modifications to the dwelling as shown on the SP Plat: remove the front steps to the Highland Avenue porch entrance and replace the existing entrance door with French doors; replace the existing door along Backlick Road with a window; replace the garage door with sliding glass doors; and remove the concrete drive in the rear yard.
4. Prior to approval of final inspections and RUP issuance, foundation planting and shade trees shall be provided along the dwelling's entire Highland Avenue building frontage to soften the visual impact of the structure. The species, size and location shall be determined in consultation with and approval by Urban Forest Management Division (UFMD), DPWES.
5. The proposed six-foot high board-on-board fence shall be consistent with the inset picture on the SP Plat. The fence shall be maintained in good repair.

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 4-2-1. Mr. Byers and Chairman Ribble voted against the motion. Mr. Hammack abstained from the vote.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. moved from 6/3/08 and 8/5/08 at appl. req.) (Decision deferred from 9/9/08 and 10/28/08 at appl. req.)

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Decision deferred from 9/9/08 and 10/28/08 at appl. req.)

Chairman Ribble noted that A 2008-DR-009 and A 2008-DR-026 had been administratively moved to the June 30, 2009, meeting at the applicant's request.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:30 A.M. APOLONIA FUENTES, A 2008-PR-055 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating a child care center in compliance with the conditions of Special Permit SP 99-P-050, has established a second dwelling unit on property in the R-1 District, and has made construction modifications to the dwelling without Building Permit approval, all in violation of Zoning Ordinance provisions. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (Admin. moved from 12/9/08 and 1/27/09 at appl. req.)

Chairman Ribble noted that A 2008-PR-055 had been administratively moved to the June 30, 2009, meeting at the applicant's request.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:30 A.M. THIEN VU, A 2008-BR-071 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit located in an accessory structure which exceeds seven feet in height, was erected without a valid Building Permit and does not meet minimum side yard requirements, all on property in the R-C District in violation of Zoning Ordinance provisions. Located at 4409 Shirley Gate Rd. on approx. 1.0 ac. of land zoned R-C. Braddock District. Tax Map 56-4 ((6)) 5.

Charles Fitzhugh, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated March 24, 2009. He stated that the appeal was of a determination by the Zoning Administrator that the appellant was maintaining two dwelling units on the property, noting that the second dwelling was approximately 1,000 square feet in area and located in the rear and side yard areas, approximately 10 feet in height and 9 feet from the side property line. Mr. Fitzhugh said use of an accessory structure as a residence was never legally established. He said property records for the property show permits for a single family dwelling, a 300 foot storage shed, a screened porch, and a sunroom. Mr. Fitzhugh said that no matter how long the second dwelling unit had been in use on the property, it had never been legally established under any Zoning Ordinance. He said staff recommends that the BZA uphold the Zoning Administrator's determination.

Mr. Beard stated that on its face, this was a blatant violation. However, he asked what someone was supposed to do when they bought property in good faith and then were given a violation. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that she felt it was incumbent upon the purchaser to investigate the legality of the second dwelling unit to insure that it is correctly permitted.

Mr. Hart and Mr. Fitzhugh discussed some of the documentation contained in the staff report, including a 1957 building permit application.

Thomas Campbell, agent for the appellant, presented the arguments forming the basis for the appeal. He noted that Mr. Vu had purchased the property in 1988, approximately 40 years after the main dwelling was built, but there was no record of when the accessory dwelling had been erected. Mr. Campbell said that an accessory dwelling was in existence on the property in 1986 when the property was owned by Frank and Marjorie Jenkins, noting that a notice of violation had been issued in 1986 for having two dwelling structures on their property. He said there is no record as to any resolution of the notice of violation for the second dwelling. Mr. Campbell stated that when the appellant applied for a building permit for a sunroom addition in 2002, the plat he submitted with the application showed a second dwelling unit on the property. He said nothing was done in 1986, 2002, or 2004 (when the appellant reapplied for the sunroom addition) about the second dwelling unit and felt that it was a little late to ask for compliance.

In response to a question from Mr. Hammack, Mr. Campbell stated that he had reviewed the court decision on *Board of Supervisors of Fairfax County vs. Board of Zoning Appeals*, dated March 3, 2006, where the BZA was overturned by the Virginia Supreme Court on an accessory dwelling unit case. He said that Mr. Vu's case was different in that he was not sure the same zoning ordinances were in effect. Mr. Campbell also felt the passage of time should be considered.

Mr. Hart stated that the Supreme Court had ruled that if there was no evidence that the accessory dwelling unit had been lawfully approved, then it was in violation of the Zoning Ordinance. Mr. Campbell said he could not say why there was no paperwork on the second dwelling.

Mr. Hart and Mr. Campbell discussed the 60 day rule, with Mr. Campbell noting that the applicant had spent money to improve the second unit.

In response to a question from Mr. Hammack, Mr. Campbell said that he had no evidence that there was authorization for construction of the second dwelling or that a building permit was ever obtained.

In rebuttal, Mr. Fitzhugh stated that the 2002 plat showed only a one story outbuilding and did not show a use for it. He said the only recourse for the appellant was to apply for a special permit for an error in building location.

Mr. Campbell submitted an affidavit in support from one of the neighbors.

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

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said this, as were most of the cases that come before the Board, a tough call. Mr. Beard said he was extremely sensitive and sympathetic to someone who buys a property in reliance upon actual physical factors that they are seeing and are not told by those who were selling or representing them that there are issues having to do with that property. He said that, oftentimes, it was because those people were not themselves aware of it. Mr. Beard said the only legitimate legal way to establish a second dwelling unit on property such as this, which was currently less than one acre in size, was through the approval of a special permit for an accessory dwelling unit. He said the Ordinance provides that on lots containing less than two acres, that dwelling must be located within the structure of a single family detached dwelling unit. Mr. Beard said there were other criteria having to do with how many bathrooms and floor area and so forth. He noted that only on lots greater than two acres may an accessory dwelling unit be located, if you will, within or without, with various other caveats. As well, Mr. Beard stated that the 1941 and 1954 Ordinances indicated that this would not have been approved back then, specifically that if the dwelling had been constructed in 1949, it would not have been legally established and would not have been deemed a legal nonconforming use. He said that in 1954, the only residential zoning district that allowed more than one dwelling unit on a lot was the urban residence district which allowed semidetached dwellings which are defined as one of two one-family dwellings having a vertical common party wall, subject to special approval of the Board of Supervisors. Again, Mr. Beard said it was a tough call, but on the face of it, it was pretty blatant.

Ms. Gibb seconded the motion.

Mr. Hart stated his support for the motion. He said he did not believe the Board had been given evidence to show that the Zoning Administrator was plainly wrong, nor any information showing that the structure or that the use of the second dwelling unit was ever lawfully approved. Mr. Hart said that, like in other situations where there is an absence of records, the Zoning Administrator wins. He said that was what the case law tells the Board and unless the Board has been shown some sort of approval for this, it is not approved. Mr. Hart said he did not believe that the 2002 approval necessarily got the Board there because it talked about an outbuilding and did not say anything about the use. He stated that it was possible that a portion of this structure was approved in 1957, but the record on both sides was very sketchy on that and he did not feel the appellant has shown that the Zoning Administrator was plainly wrong. There was nothing to tell the Board what portion of the structure corresponded to the 1957 approval and, absent that, it had not been demonstrated to the Board that anything that was there now was properly approved.

Mr. Hammack brought up the issue of what was approved in 1957 and said it appeared that a shed that measured 15 x 20 was approved to be 10 feet from the side lot line. He stated that the more difficult part was that the existing structure appeared to be 9.2 feet and, as Mr. Hart mentioned, the Board did not have anything to indicate what part of the existing structure may have been part of the shed originally. Mr. Hammack felt that a 15 x 20 foot shed was approved in 1957. He said he would support the motion, but offered a friendly amendment that would allow a 15 x 20 foot shed to be placed in the area indicated on the map.

Mr. Beard said he did not think it was germane, and noted he would defer to the Zoning Administrator. He said the appeal had to do with a dwelling unit which he felt was a separate issue. Mr. Beard then deferred to Mr. Hart. He said if it is on the map and was approved then it would obviously stand on its own and would be allowable, and the Board would not have to reiterate its approval.

Mr. Hart did not think the Board could put in a decision on an appeal that the Board was allowing something or not. He said the Board had to uphold, uphold in part, or overturn. Mr. Hart said that possibly upholding in part would be appropriate if part of the accessory structure was the shed that was approved in 1957. He noted, however, that neither the staff nor the appellant could sort out if a portion of what was there now was approved in 1957. Mr. Hart said that if the 1957 shed went away, it was not approvable now in the R-C

because it was too close to the lot line. He said he understood what Mr. Hammack was trying to do, but did not think procedurally that the Board could approve a shed in a vote on an appeal.

Ms. Stanfield did not think it would take a specific action from the Board if the appellant wanted to come in and look at the original foundation or maybe the staff could locate an approval.

The motion carried by a vote of 6-0. Mr. Smith was not present for the vote.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:30 A.M. RAJ MEHRA, A 2008-DR-072

Chairman Ribble noted that A 2008-DR-072 had been administratively withdrawn.

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~ ~ ~ March 31, 2009, Scheduled case of:

9:30 A.M. BENTLEY PROPERTIES, LLC AND PAPERMOON-SPRINGFIELD, INC., A 2008-LE-073 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are permitting occupancy of property by an excessive number of persons allowable under Non-Residential Use Permit #A-0599-08 and have expanded the parking area in violation of Zoning Ordinance provisions. Located at 6315 Amherst Av. on approx. 1.2 ac. of land zoned C-6, H-C, CRD and SC. Lee District. Tax Map 80-4 ((1)) 9.

The following is a verbatim transcript of the proceedings had in this matter:

**CHAIRMAN RIBBLE:** The next case is Bentley Properties, LLC, and Papermoon-Springfield, Inc., Appeal 2008-LE-073. Anyone wishing to speak to this case, please raise their right hand and face the clerk.

**SUZIE FRAZIER:** Do you swear or affirm that your testimony will be the truth under penalty of the law?

(Those persons standing responded affirmatively.)

**MS. FRAZIER:** Thank you.

**CHAIRMAN RIBBLE:** We'll begin with staff, please.

**CATHY BELGIN:** Good morning. Cathy Belgin with the Ordinance Administration Branch. This is an appeal of a determination that the appellants are permitting occupancy of the property in excess of the persons allowed under their Non-Residential Use Permit and are parking vehicles on the site in excess of the capacity of the existing parking lot, thereby expanding the nonconforming use in violation of Zoning Ordinance provisions.

The subject property is located at 6315 Amherst Avenue, west of Backlick Road, north of Bland Street, and east of the Springfield Plaza Shopping Center. The property is zoned C-6, Community Retail Commercial District, Highway Corridor Overlay District, Sign Control Overlay District, and is located within the Springfield Commercial Revitalization District.

The Paper Moon Club is a commercial nudity establishment operating as a legal nonconforming use that consists of 3685 square feet of space within a one-story 15,810-square-foot shopping center building. The shopping center was constructed in 1954 and has included numerous businesses since that time. Currently the majority of the building is vacant except for the subject use.

The previous occupant of this portion of the building, the Dauphine Steak House, opened in 1960 as a restaurant, and although it is not clear when it began including commercial nudity, it had been established for some time prior to 1980. Commercial nudity establishments were not previously recognized as a distinct use in the Zoning Ordinance until the Board of Supervisors adopted Zoning Ordinance Amendment 80-41 on

December 15th, 1980. This limited commercial nudity establishments to the C-7 District within a regional shopping center with approval of a Group 9 special permit. Because the Dauphine Steak House was already in operation at that time, it was permitted to remain as a legal nonconforming use. This legal nonconforming status allows continuation of the use, but prohibits enlargement or expansion, pursuant to paragraph 1 of Section 15-103 of the Zoning Ordinance, and is only valid as long as the use does not cease for a period of two years or more, pursuant to paragraph 8 of Section 15-103.

The Dauphine Steak House closed on July 16th of 2006. On January 22nd, 2008, staff issued two letters responding to two inquiries from Mr. Michael Lafayette and Mr. Sam Khorshide regarding the recommencement of the nonconforming commercial nudity establishment use. Staff responses outline the requirements for maintaining the nonconforming status, including establishing the use within two years of the previous business having closed, limitations on the square footage, and maximum occupancy. These limitations were derived from those that had been in place for the previous tenant, notably the Fire Marshal's maximum occupancy limit of 104 persons, including patrons and employees. The information contained in those letters could have been appealed to the Board of Zoning Appeals within 30 days of the date of the decision in accordance with paragraph 1 of Section 18-303. Neither of those two letters was appealed. The appellant proceeded with recommencement of the use, obtaining the building permit which was issued with reference to the limitations on square feet and maximum occupancy, and a non-RUP which clearly states the limit on occupancy of 104 persons, including patrons and staff, which is hanging in the establishment as required. Neither the building permit nor the non-RUP issuance with limitations on the occupancy was appealed.

The Paper Moon Club opened in June, 2008. On October 25th, 2008, an inspection of the property was conducted by Chip Moncure, Senior Zoning Inspector. During this inspection, Mr. Moncure noted that there were approximately 123 patrons present on the property, not including the employees. This number was confirmed by the property owner's staff. In addition, vehicles were being parked on the property in excess of the striped parking spaces, and a valet parking operation was stacking the cars in drive aisles and blocking one of the property entrances with vehicles.

On December 2nd, 2008, a notice of violation was issued by Mr. Moncure, stating that the establishment was operating in violation of the non-RUP by exceeding the permitted occupancy and was parking vehicles on the site in excess of the capacity of the property, which was an expansion of the nonconforming use. It is the Zoning Administrator's position that it was explicitly stated in writing on several occasions during the process of the appeal -- of the appellant pursuing recommencement of the nonconforming commercial nudity establishment that a limit of 104 persons, including patrons and staff, would be placed on the occupancy. This limitation was specifically noted in the two letters dated January 22nd, 2008, from staff to both Mr. Michael Lafayette and to Mr. Sam Khorshide, which were not appealed. This requirement was also noted on the building permit and the non-RUP, which were also not appealed, and at no time during the process of reestablishing the use did the appellant indicate to staff a concern with his occupancy limitation.

It is also the Zoning Administrator's position that parking vehicles on the site in excess of the number of marked spaces available for the entire building through the use of the driveway and entrance area for stacking vehicles constitutes an expansion of the nonconforming use and is, therefore, in violation of paragraph 1 of Section 15-103 of the Zoning Ordinance, and is further in violation of the parking regulations of Section 11-102, which requires that on-site parking must be limited to the spaces current delineated on the subject property.

Staff recommends that the BZA uphold the Zoning Administrator's determination set forth in the notice of violation dated December 2nd, 2008. Thank you, and I'll be happy to answer any questions.

**CHAIRMAN RIBBLE:** Thank you. Questions of staff?

**MR. BEARD:** Mr. --

**MS. GIBB:** Mr. Chair --

**MR. BEARD:** Oh, I'm sorry.

**CHAIRMAN RIBBLE:** Mr. Beard.



**MR. BEARD:** Go ahead, Ms. Gibb.

**MS. GIBB:** Uh, let's see. On Exhibit G to the staff report --

**MS. BELGIN:** I think we have them labeled.

**MS. GIBB:** Oh, I'm sorry.

**MR. HART:** It's the applicant --

**MS. GIBB:** Oh, I'm sorry, that -- well, what -- I guess it's not the staff report.

**MR. HAMMACK:** This is the --

**MS. GIBB:** It's the appellant's little memo.

**MR. HART:** Here it is, right there.

**MS. GIBB:** Maybe it's in the -- I guess I --

**MS. BELGIN:** Go ahead. What's the ques- --

**MS. GIBB:** Well, what is that?

**MS. BELGIN:** I think we'll figure out what you're referring to.

**MS. GIBB:** What is that? Do you know? Maybe I should have to wait to ask.

**MS. BELGIN:** I'm still not sure where you're referring to Exhibit G as we don't have --

**MS. GIBB:** Oh, I'm sorry.

**MS. BELGIN:** -- something labeled that way.

**MS. GIBB:** Well, this says County of Fairfax, Virginia, Department of Public Works, maximums approved, occupancy load, 171 main dining room, 29 VIP dining room, 11 waiting, 8 staff.

**MS. BELGIN:** Is that something that was distributed today?

**MS. GIBB:** I guess it came from the --

**MR. HART:** We got it today.

**MS. GIBB:** Do you have a copy?

**MS. BELGIN:** Okay, I don't have a copy of that.

**MS. GIBB:** Okay. All right. Well, then I'll ask you about the non-RUP. Now, that says on here that you're limited to 104?

**MS. BELGIN:** That's correct.

**MS. GIBB:** Okay, I see, right here. And now does it say anywhere in the letter from Fairfax County that it can -- that your letter can be appealed?

**MS. BELGIN:** No, it does not.

**MS. GIBB:** How many parking spaces are there allotted to this?

**MS. BELGIN:** Well, there's no -- there are no studies in the -- there were no parking tabulations or anything. The records, the building was constructed in 1954, and there haven't been any modifications such that any parking tabulations were submitted, but we were able to -- in looking at the aerial photo of the property and in looking at it, there appear to be 69 marked parking spaces that serve the entire building.

**MS. GIBB:** Okay, 69, and so how many spots does that normally -- would that accommodate normally for a facility like this? How many people would you say in today's -- using today's --

**MS. BELGIN:** I mean, typically it depends on the use, and --

**MS. GIBB:** Well, this use.

**MS. BELGIN:** -- currently under the parking requirements in the Zoning Ordinance, there's not a specific tabulation that is related to this type of use.

**MS. GIBB:** Okay. So they're not violating any specific ordinance with respect to parking because --

**MS. BELGIN:** What they were violating -- there's not a specific maximum number of spaces that's allotted just for their use, but what they were violating is an excess of the number of marked spaces on the entire property. So they were parking beyond the number of marked spaces that serve the full shopping center.

**MS. GIBB:** Okay. And were there ever more than 104 people at the Dauphine's restaurant?

**MS. BELGIN:** We have the Fire Marshal's Maximum Occupancy Certificate, which was dated in 2004, for the Dauphine Steak House that had that exact specification, that had 104 persons, to include patrons and staff, and that was where staff had based their determination that that was the limitation when notifying the appellant. In -- at the time they were not the appellant, when notifying the property owners as far as reestablishing the use. That's where the number was derived.

**MS. GIBB:** Yeah, I just can't remember using that, the Fire Department maximum load, before as that -- for, you know, in previous hearings that we've had.

**MS. BELGIN:** Well, I don't -- I --

**MS. GIBB:** Is that something we use?

**MS. BELGIN:** I don't know how common it is for a nonconforming use to close and then still be reestablished within the two-year time frame, so I don't know how many times that's perhaps occurred.

**MS. GIBB:** Well, even if it weren't closed, I mean, to me, that -- does that matter? I mean, if it -- even it -- if it continued with a new use the next day, a new user, you'd still have to not increase the use, right?

**MS. BELGIN:** That's correct.

**MS. GIBB:** And so I'm just wondering -- I don't remember using the Fire Department figures before. Have we used that before?

**MS. BELGIN:** Really that was the only information we had other than the physical size of the space itself in terms of --

**MS. GIBB:** Because you couldn't count because the people are gone and you -- so you wouldn't know.

**MS. BELGIN:** Correct.

**MS. GIBB:** You don't have any other statistics, is that it?

**MS. BELGIN:** Correct.

**MS. GIBB:** We only have what they said. You couldn't do any more then.

**CHAIRMAN RIBBLE:** Was there ever any variance to that 104 figure previous?

**MS. BELGIN:** That was the most recent prior to the use having closed so that was what we based the numbers on. I can't speak to the occupancy load in the earlier uses before they opened in 1960 or between 1960 and that Fire Marshal's certificate. We based it on the most current portion of the use that was in -- you know, that was being used before it was closed.

**CHAIRMAN RIBBLE:** Thank you.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Thank you. I had a couple questions about the non-RUP also. In Mr. Via's handout, there's Exhibits F and H, which are different versions of the non-RUP. They spell Amherst Avenue differently, although they're both on the same day and they seem to deal with the same property. They both look like they're approved. There's some different handwriting in the fill-in-the-blanks on the bottom, but the significant difference between these is that one of them has the 104 limitation and the other one doesn't. Is it staff's position that the first one is a forgery or something? How did -- why are there two RUPS and one only says the 104?

**MS. BELGIN:** That's just -- just this moment is the first I've seen the one without the occupancy limitation, and to my recollection, there's no such copy in the street file as far as things that were approved, so I can't speak as to the origins of that non-RUP.

**MR. HART:** Let me ask about how these certificates are prepared. Ord- -- in the past I think they used to be done on a typewriter or there was fill in the blanks on the typewriter. Are these -- is this a computer generated?

**MS. BELGIN:** They're currently computer generated, yes.

**MR. HART:** Would there be a record in the computer showing how many times a non-RUP had been issued on a certain property or how many were issued on a certain day?

**MS. BELGIN:** It is my assumption that the one that is approved that day would be the one on record in the file. I don't know if there's a process if one was issued and then altered on the same day. I've not run into that before.

**MR. HART:** Both of these have a signature from Ms. McLane, but it looks to me like it might be a rubberstamp, and then there's initials JLD below that. Who is JLD?

**MS. BELGIN:** JLD would be the staff person at the counter who issued the non-RUP.

**MR. HART:** Is that person available today?

**MS. BELGIN:** I'm not even certain who that person is without taking a look at the staff list.

**MR. HART:** It seems to me this is a very important document. If there's -- if the limit of 104, as I understood, one of the things staff is saying that wasn't appealed, and I guess we'll get to the other ones, but one of the things that wasn't appealed was the issuance of the non-RUP on June 2nd that contains the limitation of 104, but we seem to have two different copies of the same thing.

**MS. BELGIN:** Okay. Ms. Caffee is advising me that during this period of time that this non-RUP was issued, there was a period of time where there was manual entry of some of the non-RUPs, and in the case of an error, they would physically tear it up and make a correction to it, and there would not be a record of that if that had occurred.

**MR. HART:** Well, I don't know if they tore it up because it seems like the applicant or somebody got a copy of it, and I guess I'd like to hear -- I mean, maybe not this very second, but I'd like to hear if someone remembers what happened that day, what exactly happened with this sequence of permits.

The other thing that's confusing is in -- this Exhibit G, which is the next month, July 29th, it looks like DPWES is approving, instead of 104 people, 219 people with these different totals, and it's got a County seal on it, this certificate shall be posted, et cetera. Is DPWES in error approving 219 people if there's a non-RUP that says 104?

**MS. BELGIN:** What that document reflects is when any commercial business is opened, after the -- when they do the final inspection, after they actually open is when the Fire Marshal comes and makes the final determination on what is the maximum occupancy that the building could support from a fire code perspective in terms of safety and exits, and, you know, I don't know all the specifics of what they evaluate it on. It's unfortunate that they did not have access to, and I don't think it's part of their process, to note what zoning requirements may be for persons in the building, but that evaluation is done on the layout and the structural, you know, the ability for that many people to safely occupy the building, and so it's not tied into the zoning limitations.

**MR. HART:** Well, the certificate itself says it's under the Virginia Uniform Statewide Building Code and the Code of the County of Fairfax. One of the chapters of the Code of the County of Fairfax is the Zoning Ordinance, so, I mean, I would presume that looking at the certificate Mr. Williams or Mr. Pylant, or both, it isn't saying it's a part of the code or the code but not zoning. I mean, I think it's a bad idea for DPWES to be issuing certificates that say more than twice as many as now the Zoning Administrator is saying. This to me looks like someone is approving this for 219 people.

**MAVIS STANFIELD:** Mr. Hart, the Non-Residential Use Permit which has the limitations is what is actually hanging in the establishment, as I understand it from the inspections.

**MR. HART:** Well, that isn't exactly my question, but I think this, too, is to be posted. At the bottom, it says this certificate shall be posted in a conspicuous location at all times. It doesn't make sense that we would be approving them for 219 people and saying you have to post this if they're only allowed to have 104 people.

Let me move on. The -- we don't -- I guess we don't have any information today about whether the non-RUP was altered or under what circumstances other than --

**MS. BELGIN:** I'm sorry. Could you restate the question.

**MR. HART:** I'm just -- I'm assuming that we don't have any other information today from JLD or someone else with firsthand knowledge as to under what circumstances the documents were prepared or modified.

**MS. STANFIELD:** Mr. Hart, that was issued by a member of the Zoning Permit Review Branch who has subsequently left the County, and her name is Jamie Dulac. She's no longer with the County.

**MR. HART:** Is there anything else in the file that would indicate why two different RUPs might have been issued or what caused the change or something like that? There isn't notes --

**MS. BELGIN:** There isn't anything in the file, and there's not a copy of that version of the non-RUP in the file. And I can state from having visited the site myself to -- you know, to take a look at the documents that were in the establishment that the one that has the copy -- the copy that we have that has the limitation of the 104 persons, that is the one hanging in the establishment, so the appellant is aware that that non-RUP is the correct one, as best as I could tell.

**MR. HART:** No one appealed the July 29 certificate about the 219 people; is that right? I'm assuming not.

**MS. BELGIN:** No, not to my knowledge.

**MR. HART:** Let me ask about the -- well, no, I'll do the parking last. The two letters that were not appealed, is there any connection between the addressees on those letters and the applicant?

**MS. BELGIN:** Mr. Michael Lafayette was the representative of the prospective purchaser of the property at the time, and I believe Mr. Khorshide may have been on the -- in the -- part of the construction team. I'm not completely certain. Perhaps the applicant, the appellant can clarify that, but they were both related to the folks planning to purchase the property.

**MR. HART:** Related to Bentley or Papermoon or someone purchasing from them?

**MS. BELGIN:** No. Bentley/Papermoon purchased the property after receipt of those two letters that were outlining the procedures for recommencing the use.

**MR. HART:** Okay. I think on an earlier case or maybe two today something came up about the section in 15.2-2311 that says the 30 days doesn't commence to run until you put in the letter the notice saying you have 30 days to appeal this. And I don't -- I mean, certainly that's not on the non-RUP, and I didn't see it in Mr. Reale's letter, and I don't remember the other letter. I don't think it's in any of those three.

**MS. BELGIN:** I don't believe so.

**MR. HART:** Does staff have a position about whether the 30 days ran out anyway?

**MS. BELGIN:** Yes, we believe that it did.

**MR. HART:** Okay. Let me -- if we could go to Attachment 9, which is, I think, an aerial photo, Google, pretty good picture. Let me cut to the chase on this. We've had occasional situations where someone has been brought in for something related to parking. I remember there was a Wal-Mart in Burke, I think, that was putting tractor-trailer -- trailers to store mattresses or something and the cargo container type things to fill up in it in what was shown as the parking area when they got their original approval. The McLean Bible Church had a parking area, again, where they were putting cargo containers of used clothing or something covering up parking spaces or aisles or something where the plan showed parking. Mr. Craven, I think, was expanding his parking down below toward the stream from the parking lot. And maybe there's others, and other people may remember, but in all of those situations it seemed to me somebody was making a physical change or obstructing something that was shown on an approved drawing. And in this case, it just -- it sounded to me like the problem was at the time of the inspection there were vehicles in the travel lanes or near them, not that there'd been an expansion of pavement or restriping or signs or some physical change to the property. Is there something on Attachment 9, this picture, that would show a change to the parking lot or is it just that there were cars in the travel aisle?

**MS. BELGIN:** There was no physical change to the parking lot. You're correct that the expansion of the parking capacity was achieved through filling the travel aisles and in the case of that particular inspection, blocking one of the entrances to the property.

**MR. HART:** Have -- maybe I've missed this. Have we violated anybody for something like that before for a zo- -- make it a zoning violation instead of like the Fire Marshal or have it towed or something?

**MS. BELGIN:** I'm gonna defer that to the Zoning Enforcement staff.

**MICHAEL CONGLETON:** Mr. Hart, my name's Michael Congleton with the Department of Planning and Zoning. I can't recall off the top of my head if we've sent a notice of violation for parking cars in a travel way or filling up a travel lane. There have been occasions where we have contacted the Fire Marshal's Office when cars are parked impeding a fire lane. In this particular case, the issue really comes down to the nonconformity of the site. It had 69 spaces. They filled all 69 spaces and then basically created additional spaces in the travel ways.

**MR. HART:** I ask it partly because of curiosity and partly because I think on special permit cases staff has been pretty scrupulous, and this Board, too, and consistent about not trying to put the details of parking necessarily in development conditions because we specifically didn't want parking -- and I'm thinking churches and churches in neighborhoods, we didn't want that to have to be a Zoning Enforcement staff responsibility either for their workload or the time it takes to deal with it. It seems to me the Fire Marshal can execute on something much more quickly or somebody can call the towing company if that's what needs to be done, that if we sent them a zoning vio letter, they -- violation letter, they have 30 days to appeal it, and

then it has to be advertised for public hearing. And it's months and months between whatever it is that happens and whatever it is we're trying to do. I'm not sure that we want to get in the business of making travel aisle parking or fire lane parking a zoning violation as opposed to something else, but if we are, I think we need to be consistent about it. I know it happens at banks or at the Safeway or whatever. People jump out of their car, and they leave it, or people double park. Let me stop there on the parking and give somebody else a chance. Thank you.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Mr. -- Mr. -- thank you. For staff, I had a question. Do you have the actual use permit for Dauphine Steak House that limits it to 104?

**MS. BELGIN:** Yes.

**MR. HAMMACK:** Is that an attachment of --

**MS. BELGIN:** I -- we did not include it in the staff report, but I do have a copy if you wanna take a look at it.

**MR. HAMMACK:** Yeah, we'd like to see it.

**CHAIRMAN RIBBLE:** Do you have a follow-up, Mr. Hammack, or --

**MR. HAMMACK:** No. Thank you.

**CHAIRMAN RIBBLE:** Further questions?

**MS. GIBB:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Ms. Gibb.

**MS. GIBB:** Question for staff. So is this the -- it doesn't look like the resident non-RUP. Not a non-RUP, right?

**MS. BELGIN:** No, for the Dauphine Steak House, there was -- the non-RUPS for the -- were older, and none of them included the occupancy, so that Fire Marshal Occupancy Certificate was the only -- as we had discussed a little bit before, was the only way we had of determining what had previously been the capacity of the use.

**MS. GIBB:** Right, so now the --

**CHAIRMAN RIBBLE:** I think we're ready to hear from the appellant. Good morning.

**PATRICK VIA:** It's still morning?

**CHAIRMAN RIBBLE:** Afternoon, whatever.

**MR. VIA:** Good afternoon, Mr. Chairman, members of the Board of Zoning Appeals. My name is Patrick Via, and I'm here on behalf of the appellant, Bentley Properties, LLC, and Papermoon-Springfield, Inc.

I wanted to immediately jump to one question that was asked about the January letters, the January 22nd letters. That was written to Mr. Michael Lafayette and the other -- and I can't think of the other gentleman's name. Mr. Lafayette is the legal representative, one of the legal representatives for both entities. Both -- Bentley Properties, LLC, is the legal owner of the property, and Papermoon-Springfield, Inc., is operator of the property. And Mr. Lafayette represents both of those entities on their day-to-day legal aspects.

The -- as is clear, I mean, there are really four aspects to this that we're appealing. We're appealing that the occupancy is limited to 104 persons and that the Paper Moon is operating in violation of its non-RUP by virtue of the zoning inspector finding that there were 123 occupants on the property. In addition, they're appealing that the Paper Moon has expanded the area designated for patron parking and that this constitutes an expansion of the nonconforming use. It's our position, it's the appellants' position that there is

simply no facts supporting the fact that the occupancy is limited to 104 persons. That would be facts relevant to a zoning determination. We also believe that the appellant has not waived its right to appeal that determination. Finally, in connection with the parking, we believe that the parking violations that were cited were simply that, parking violations. When the appellant learned that it wa- -- of the illegality, it was corrected. To my knowledge, that parking is discontinued. The appellant certainly seeks to stop that parking. It doesn't constitute a nonconforming use, and the appellant is not impliedly or expressly attempting to expand the parking for this particular property.

A couple facts that I really wanted to draw attention to, and we've talked about a couple of those already, is the issuance of the non-RUP. The non-RUP that you saw was issued to the appellant and the appellant's -- the appellants on June 2nd, 2008. Mr. Lafayette was there as the attorney. They submitted the documents to the Zoning Permit Office. I think it's on the 2nd or 3rd floor over at the Massey Building. I waited for it to be processed and upon completion received that docu- -- the document without any limitation as to occupancy. That particular non-RUP was posted at the building that day. If necessary, Mr. Lafayette's here. He's an attorney. He's happy to talk to you about that. At some point, it changed. The appellant -- as surprised as staff is as seeing that today, the appellants were surprised when they reviewed the staff report last week seeing a non-RUP with that particular provision on that, and I also -- I should've -- I apologize for staff not having a copy of my memo. It was e-mailed twice on Friday afternoon, apparently without success, as well as to the Clerk to the Board, and yesterday morning it was faxed to the Clerk of the Board, and I guess my assistant didn't get the information that it should be faxed as well to Ms. Belgin. So I do apologize for that misstep, but in any case the surprise goes both ways. When -- on June 2nd when they received that non-RUP, they believed that they were operating in full compliance and continue to do so and were not subject to the 104 limitation that is now raised.

The second document has also been spoken about as well, and that is the occupancy load certificate, also sometimes referred to as a certificate of occupancy. It was issued by Dan Williams of the Department of Public Works and Environmental Services. It says that they're entitled to an occupancy of 219 persons. Again, that document, I have been there. It was -- it's been my -- it's been stated to me the doc- -- that document has also been posted at the site. The -- in addition and in connection with that particular document, the certificate of occupancy, pursuant to the Virginia Statewide Building Code, new construction, and that's the authority that goes to DPWES for issuing these certificates of occupancy, if there are any limitations or conditions associated with the building permit or otherwise applicable to this particular use, there should be a notation. It says shall be a notation on the certificate of occupancy, and, of course, in this particular instance, there is no notation on the -- I guess the July 29th issuance. To my knowledge, that particular document has not been rescinded, has not been revised, or has not been appealed.

Going straight to the -- I want to start out with the parking. I'm not going to talk a lot about the parking. Again, the appellants have corrected that situation. There was a parking violation. They do not allow or encourage parking in -- along fire lanes or in driveways. And they're doing their best to enforce that, and they will continue to do that. So I don't believe that that is an expansion of a nonconforming use, and I would respectfully request this Board make that determination.

Going straight to the occupancy limitation of 104, as this Board has noted, in the BZA any rights which accrue to the Paper Moon originate with Dauphine's, and Dauphine's was in business from 1960 until 2007. Again, I don't know sure exactly which part of that was a commercial nudity establishment, but certainly enough of that to establish that it was a lawful nonconforming use. Dauphine's occupied approximately 3,685 square feet of property. There were three separate certificates of occupancy issued to Dauphine's, and I believe in the memorandum that I gave to you is Exhibits A, B, and C, and you'll see none of those -- as was stated by staff, none of those documents have any indication as to occupancy limitation. It talks about the use itself, all right, not the number of occupants that are permitted to be inside.

In 1997 the then-Zoning Administrator sent a letter to Kate Hanley, the then-Chairman of the Board of Supervisors, in which the legal existence of the nonconforming use was determined, was stated. Again, that letter does not indicate any number, limitation as to the number of occupants. There are no special permit conditions, special exception conditions, rezoning conditions, or other zonings related limitations concerning the occupancy of this particular building. In fact, the Zoning Ordinance itself, when you talk about restaurants, they talk about square footage, which I believe is how parking is typically derived, and FAR. To my knowledge, there's not a specific limitation in the Zoning Ordinance that says if you're a restaurant, you're only entitled to have, you know, 10 occupants or whatever it might be. That's always a -- to my knowledge,

it's always a safety-related issue that comes from the Fire Marshal and DPWES pursuant to the Virginia statewide fire prevention code and the Virginia Statewide Building Code.

It is the position of the appellants that there was no documentation stating this 104 limitation. We -- in the January letters which the BZA is familiar with, it -- I think the words were, you know, based on our research, the latest information from the Fire Marshal. It didn't cite the notation. And in the staff report, which we received last week, it does talk about a -- I think a Fire Marshal oc- -- certificate of occupancy, but no copy was attached. Now, seeing the copy -- I haven't seen it, but I saw it distributed. So clearly there's something out there that says occupancy was limited to 104, but prior to that there was nothing. And we believe it is our position that that particular document is a safety related document. It's not relevant to a zoning determination, and I think that the zoning -- a staff member, just in speaking about the July 29th certificate of occupancy, made the comment that that's not tied into zoning limitations. And so I would argue again, and using their words, that this 104 determination upon which they rely is not tied into the zoning limitation, that is, the continuation or expansion or not of the nonconforming use.

Since that document clearly exists, you know, again I want to sort of talk about how important it is that the exact same agencies that are charged with determining safety, determining what the occupancy is, they went out and looked at the exact same square footage that is occupied by -- that was occupied by Dauphine's and is now occupied by the Paper Moon. During construction, no structural renovations were permitted. You've got the exact same structure. All that was permitted was finishes and tables and whatnot, all right. So when the zoning -- or the DPWES went out to that same facility and did the inspection using the statewide building code and the fire prevention code as their guide, they've now determined that 219 are the number of persons that are permitted to occupy the premises, and it even breaks it down on a room-by-room basis. So I would argue to the extent that they're relying upon a certificate of 2004, I think, that that is not dispositive. Rather, the dispositive term is the document before you today.

The staff report talks about how the appellants have waived their right to appeal the determination that the 104-person occupancy is relevant, and we would strenuously disagree with that. Upon receipt of the 2004 letter -- I'm sorry, the --

**CHAIRMAN RIBBLE:** If you'll just sum up.

**MR. VIA:** -- the 2008 letter, they believe that it was a statement that any occupancy is gonna be subject to the Fire Marshal. There is no 30-day notice set forth in that letter, and, therefore, it is our position that we did not waive that. When we learned of it in December, an appeal was filed, and for all the reasons set forth thus far in my memorandum and in my speech, I would respectfully request this Board reverse the Zoning Administrator's decision. Thank you very much.

**MR. BEARD:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Thank you. Mr. Beard.

**MR. BEARD:** Mr. Via, where do you think this 104 number came from?

**MR. VIA:** I can't say. I can tell you that I've had several conversations with Dan Williams of the critical structures, who -- the gentleman that signed that. I've also called the Fire Marshal's Office. I don't have the name to give you, and at that time nobody could ever cite -- and still, cite me where it comes from, so I don't know the answer to that, Mr. Beard.

**MR. BEARD:** So is it your statement, and, again, notwithstanding the other gentleman who's the corporate counsel apparently, but that the people who are in possession now, the Bentley or that group or whatever --

**MR. VIA:** Bentley Properties, LLC, and --

**MR. BEARD:** So they bought this business with this occupancy in place, with this 104 occupancy number in place.

**MR. VIA:** No, sir, my contention is they purchased this building with the understanding that the nonconforming use could continue, but this 104 number was not a set number at all. Rather, it was gonna be the latest information available from the Fire Marshal, and DPWES was gonna make that determination.



**MR. BEARD:** They own the building?

**MR. VIA:** Who owns the building?

**MR. BEARD:** You said they bought the building. Did they buy the building or the business?

**MR. VIA:** They bought both.

**MR. BEARD:** They own the building?

**MR. VIA:** I mean, they didn't buy Dauphine's. They purchased the building and continued the use. I apologize for that.

**MR. BEARD:** So they own the center, if you will, or just --

**MR. VIA:** That's correct.

**MR. BEARD:** Okay. Now, I guess lastly my question is, is your concern, if we uphold the Zoning Administrator, that they're gonna attempt to put you out of business out there? Is that any part of your concern?

**MR. VIA:** It's certainly our concern. I mean, you know, to -- they bought the -- they started the business, continued the nonconforming youth -- use with a certain expectation of a business. And they have a 15,000-square-foot building, but they knew they could only use a portion of that for their adult commercial nudity establishment, and that's all they're doing. So we believe that there's no lawful basis for this 104 number, and certainly, you know, we believe that there needs to be a lawful basis if you're gonna impose such a restriction, and, therefore, they'd want to continue.

**MR. BEARD:** Well, what do you think the remedy's gonna be if we uphold the Zoning Administrator?

**MR. VIA:** I assume there'll be an appeal to the Circuit Court.

**MR. BEARD:** Notwithstanding that, I'm saying what are -- what do you think? Are they gonna give you a fine or has anyone said to you that they're trying to revoke your RUP -- non-RUP?

**MR. VIA:** Well, I don't think -- I think pursuant to the case law that I'm familiar with, they can't revoke our non-RUP. They can just limit our use to that which was, you know, originally approved, so if they believe -- if it is your determination and the court determines that we're limited to 104, then they'll just continue business with 104 as long as it's economically viable.

**MR. BEARD:** Thank you, Mr. Chairman.

**MS. GIBB:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Ms. Gibb.

**MS. GIBB:** You know, I think when I think of a nonconforming use and not making more intense and something like this, I think of continuing at the same number of people that were there before, and so I'm interested that your opinion is that it's whatever health and safety would allow you to have now, and maybe that's right. Have you -- do you know how many were there before? Can you ask the other owner what was the most that were there before or do you think it's 104 and that won't do you any good?

**MR. VIA:** No, I don't think that it's 104 at all. I think that the fact that there is no such information on the certificate of occupancy three times, the fact that the zoning letter from the Zoning Administrator does not state occupancy, I think that's dispositive that there was no specific occupancy limitation related to this use, and, therefore, the only limitations applicable are going to be those imposed by, you know -- go ahead. I'm sorry.

**MS. GIBB:** So you think a thousand people could be in there?

**MR. VIA:** Absolutely not. I think that that would be in violation of the certificate that was issued by DPWES.

**MS. GIBB:** No, I mean before. The use that you're -- you're building on a use that was -- you're using a use that was there before, and you can't make it any more intense, so you're limited by that, right?

**MR. VIA:** Yes.

**MS. GIBB:** Yeah. Okay. So I need to know what the use was before, I think.

**MR. VIA:** Well, I think that the -- pursuant to the Nolton case and other cases in that progeny --

**MS. GIBB:** Right.

**MR. VIA:** -- it's gonna be the character of the use --

**MS. GIBB:** Right.

**MR. VIA:** -- and while the number alone -- the number alone is not dispositive. It's whether the character of the use had changed.

**MS. GIBB:** Right, and you haven't -- I'm looking at the character. You haven't increased the size of the dance -- the floor. You haven't increased the parking lot. You haven't increased the building, so the only thing that's variable is the number of customers, right?

**MR. VIA:** Correct.

**MS. GIBB:** So --

**MR. VIA:** Well, I mean allegedly correct.

**MS. GIBB:** Allegedly. So seems to me that if you can show that there were 219 people in there and on a regular basis before, then, you know, you've got my vote, but if there weren't, then it seems arguably, unless you can convince me that I'm wrong, that maybe that use is more intense.

**MR. VIA:** Again, I would argue that there needs to be some -- you know, they talked previously about the establishment of the nonconforming use and how that, you know, falls upon the appellant to determine that it was established. In this particular case, we have, you know, occupancy permits issued that don't have specific numbers to them.

**MS. GIBB:** Right, and --

**MR. VIA:** So I would argue that the only limitation to that is gonna be subject to what the safety limitations are, and in this particular instance, you've got an agency of Fairfax County making a determination that number's 219.

**MS. GIBB:** Okay, now how about the testimony from the staff that there is a occupancy permit that's posted that shows, you know, this 104?

**MR. VIA:** Can't dispute that, and the question is -- unfortunately that all that I can -- you know, Mr. Lafayette can tell you what he did. Until we received that staff report, we didn't know that it was there. They went and looked, and sure enough it is posted. We can't say that the non-RUP that's posted has the limitation on it. I don't know when that happened.

**MS. GIBB:** Okay.

**MR. VIA:** But there's no denying that right now.

**MS. GIBB:** Right. Okay.

**MR. BYERS:** Mr. Chairman.

**MR. HAMMACK:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Byers.

**MR. BYERS:** This is for staff. If this were a church, could there be a difference between the non-RUP, the number on the non-RUP, and what the Fire Marshal would provide from the standpoint of the maximum occupancy of the building or are they always the same?

**MS. BELGIN:** The reason --

**MR. CONGLETON:** Mr. Byers, I'm Michael Congleton from the Department of Planning and Zoning. Certificates issued by the Department of Public Works under Part 1 of the Building Code are based on Part 1 of the Building Code. There are many occasions, as you know here at the BZA, where you will approve a place of worship with specific limitations on the number of worshippers --

**MR. BYERS:** Correct.

**MR. CONGLETON:** -- numbers of seats, this type of thing. The building code cannot override the Zoning Ordinance. I have been trying to get Mr. Williams on the telephone. He's not available right now, but it is my understanding in many instances the actual certificate load from Public Works does not list all the specific conditions that the BZA may put on a special permit or conditions that the Board of Supervisors puts on through proffered conditions. It's based solely on the size of the room, the height of the ceilings, the number of sprink- -- the sprinkler system, the type of the doors. Same is true for the Fire Marshal. He will issue a certificate based on, again, is the building sprinklered or not, height of ceilings, type of construction.

In this particular case, however, the controlling document we have about Dauphine's is that it was limited to 104 persons, and that is the reason that when it was requested that Dauphine's be reopened under a different name, we established that as that was the maximum limitation at that time because it was a nonconforming use. If it was not a nonconforming use, in most circumstances it would be based on par- -- typical in rezoning, it's based on parking.

There seems to be a lot of testimony today from Mr. Via speaking of earlier non-RUPs that were issued to Dauphine's. We need to remember Dauphine's did not become a nonconforming use until 1980, and there was no need for them to receive a new non-RUP. They were by right until 1980. In 1980 -- in -- say in 1981 someone came in and said what are you limited to as a nonconforming use. I'm sure we would have come to the same conclusion, that you're limited to 104 persons based on the Fire Marshal's rating.

The other thing I find curious is, you know, the dueling non-RUPs. The one non-RUP that Mr. Via brought in today, which we had not seen before, if you look at it the spelling of Amherst is incorrect, and I'm sure -- I feel 50 percent confident that the reason the new non-RUP was issued because it was the wrong spelling. There is no such street as A-m-h-u-r-s-t. This is Inspector Moncure on my left. Both he and I were there on the October 8th inspection. We saw the non-RUP with the limitations physically posted on the property.

The other issue to bring to your attention is the building permit application that the appellant applied for at 3615 Amherst, and I would note Amherst is spelled wrong on the building permit, so that's why it was carried over to the non-RUP, that Mr. Boyd, who's the appellant, is listed as the owner. And there's a notation, nonconforming use, maximum occupancy limit to 104 persons, to include patrons and employees. This building permit is signed by Mr. Boyd's agent, and if you read at the bottom of all building permits is I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction or use will conform to the building code, the Zoning Ordinance, and other applicable laws and regulations.

So it's clear to us at least that the appellant knew well in advance that it was limited to 104 persons, both patrons and staff. That was written on the building permit, which the appellant's agent signed for. The non-RUP was issued with that appropriate notation. It was posted on the property. Mr. Moncure and I had conversations with Mr. Boyd saying you know you're limited to 104. He acknowledged he was. This was not a secret, and it seems -- the record seems very clear. I will be glad, though, to try to keep contacting Mr. Williams to get a full explanation as why certain certificates show a different occupancy load, but the Board

members know if the Board of Zoning Appeals limits the occupancy to 25 people in a place, it's 25 people regardless of what the building code says.

**MR. BYERS:** Right.

**MR. BEARD:** Mr. Chairman, can I ask him a question?

**CHAIRMAN RIBBLE:** Mr. Beard.

**MR. BEARD:** Mr. Connolly (sic), has anyone gone back and pulled the original plans from the Health Department on the -- Dauphine because that's -- well, if you can find them in the Health Department archives, believe me there's a set of plans that probably the gentleman Mr. Schoonover used to sit over in the bottom of the old courthouse and apply, but to put a restaurant in there, they had to have a set of plans approved. And in that set of plans, it showed the amount of seating, and in the application, it showed the amount of seating, so it -- I think a lot of this could be resolved if you could go back to the Health Department archives and find those plans.

**MR. CONGLETON:** We can contact the Health Department to see if there's any plans. Traditionally with the Department of Public Works, they hold plans for a period of three years, construction plans. Then they're either archived or destroyed, but we'd be glad to contact them.

**MR. BEARD:** Well, I'm just saying that's proba- -- most likely when this was built it was a restaurant with a kitchen taking up 40 percent, kitchen and service area, so there were an amount of tables, and it sounds, for the square footage, that that's exactly right, although that's not a lot of seating for 3600 square foot. For 3600 square foot restaurant ought to have at least 125 seats even with the kitchen, so I'm saying that's probably where all this came from, so if you could find it.

**MR. VIA:** Mr. Beard, two things in reply to Mr. Congleton. I was -- I met with Dan Williams yesterday and spoke, and he -- you know, he talked about how not this -- he has no specific knowledge as to this particular location, but an occupancy permit can change based upon how a door swings --

**CHAIRMAN RIBBLE:** Stick with the microphone, please.

**MR. VIA:** -- one way or the other. Oh, I'm sorry. I apologize, got a little excited. An occupancy permit can change based upon how a door swings, the number of ingress/egress, all of those things, so he talked a lot about that. I did -- also we found a file, and the only occupancy permit in the file of this particular was the latest one that was issued; however, there was some little notation -- it wasn't an occupancy permit -- talking about 104 occupants, so I don't know what that was.

Lastly, Mr. Beard, this document that I have before me is a copy from what I term the street file of the zoning office, and that just contains, to my knowledge, every -- all the zoning events that have happened, and this is a plat of -- it's not dated, which is why it wasn't submitted, but it was part of this restaurant, and it shows 150 seats. And I'm happy to pass that around for you.

**MR. BYERS:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Byers.

**MR. BYERS:** I mean, I take the points of everyone, but what strikes me is, in fact, that there is a building permit application dated the 13th of February -- excuse me. It's signed the 13th of February 2008 by the owner, and it specifically does say that the macu- -- maximum occupancy is limited to 104 persons, to include patrons and employees, I mean, and it's signed. I don't see a disparity necessarily, for example, with the 29 July 2008 document where it -- from a fire code standpoint, there's a difference in numbers. What is operative is the fact that the individual who owns this place signed this thing, and it's also operative that that's hanging in his establishment.

**MR. VIA:** Well --

**MR. BYERS:** I mean, if he had an issue with that, he should have brought it forward. I mean, I --

**MR. VIA:** The -- if I might reply, I mean, further down in that same building permit, there's a notation that's in the last paragraph that this -- see letter dated 1-22-08, which is the zoning letter that was sent to Mr. Lafayette and then I guess another copy to the building person. Again, if this was an important fact to them and if they would have realized that it is a dispositive statement of fact, they would have appealed it. It was their interpretation that occupancy was going to be based upon the latest information from the Fire Marshal, and so that's why they went forward. When they got this original non-RUP, it did not have a limitation on it. When they got the document from DPWES, it said 219.

**MR. HAMMACK:** Mr. Chairman.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hammack, then Mr. Hart.

**MR. HAMMACK:** First for Mr. Via, when did Bentley Properties actually receive the revised occupancy permit with these restrictions on it?

**MR. VIA:** We don't know. Again, according to my client, when we received the staff report, which was last week, that was their first -- when they saw that, they were very surprised to have seen it. I can't say for sure that -- but they don't know when it is. As I said earlier, concurred with staff, they went and looked at the non-RUP that's posted at their site, and, in fact, it's -- the one has the restriction on it.

**MR. HAMMACK:** But you do know that that was not what was given at the counter?

**MR. VIA:** That's correct.

**MR. HAMMACK:** All right. Next question's for Mr. Congleton. Concerning this Fire Marshal's occupancy certificate, is there anything in the Zoning Ordinance that allows a Fire Marshal to interpret and apply limitations for zoning purposes?

**MR. CONGLETON:** I'm not aware of anything under the Zoning Ordinance that allows the Fire Marshal to interpret the Zoning Ordinance. The Zoning Administrator is the official interpreter of the Zoning Ordinance. I would like to note, in many communities in Virginia, the building code official or the Department of Public Works will issue the occupancy permit for commercial structures; however, in Fairfax County we are somewhat unique. If you look in the Zoning Ordinance, the Zoning Administrator will issue the Non-Residential Use Permit for all non-commercial establishments. That's -- it's the Zoning Administrator's authority that allows someone to occupy, not the building official or the Fire Marshal. In Fairfax County, the Zoning Administrator has the final say, and the limitation of 104 patrons was posted on the Non-Residential Use Permit issued for 6315 Amherst, spelled correctly, not for 6315 Amhurst that doesn't exist. And that was what was posted at the establishment and has been there all this time, to the best of our knowledge, at least on all the times that Inspector Moncure and I have been there.

**MR. HAMMACK:** Well, what significance then does the appellant's Exhibit G have, which is over the signature of Dan Williams and L.R. Pylant that says the entire facility can have 219?

**MR. CONGLETON:** Well, I think Mr. Via and I have done a great job today speaking for Mr. Williams while he's not here. I think perhaps the best thing would be to get Mr. Williams in front of the BZA to explain specifically how the system works for fire ratings and live loads. It's my understanding, though, as I stated previously, that these live loads are issued with a certain number irrespective of any action by the BZA to limit the number of occupancy or proffer conditions by the Board of Supervisors. They're basing their decision on the building code. Fire Marshal's basing it on the fire code, not the Zoning Ordinance.

**MR. HAMMACK:** So, you know, what controls? I mean, if the Fire Marshal is basing his opinion on the fire code, do we know -- know that he limited Dauphine's between 1980 and 19-- 2004 to 104 patrons? Because what really is an issue here, to my way of thinking, is that the present occupant can't exceed the level of activity or the use of the prior occupant, and these restrictions may have some input on that, but if it's nonconforming and they operated at 150 and did that for years, that probably is what Mr. Via's clients should have. If they agree to less, it might be different, but, I mean, I find some pretty sharp inconsistency between 104 and 219 and having a person who's not in zoning establish the limitation for use purposes. I mean, it

may be valid for some purpose, but was that the level of activity of the nonconforming use that Paper Moon is entitled to?

**MR. CONGLETON:** It's our understanding, sir, that when Dauphine's was in operation, they were limited to 104 bodies in the facility, both patrons and staff. As Dauphine's was a nonconforming use, a nonconforming use cannot be expanded or intensified, so we ba- -- the Zoning Administrator based her interpretation that when Dauphine's became nonconforming, they were limited to 104 persons and the 3,600 square feet of area. That wa- -- those were the rules that the -- any purchaser of Dauphine's would have to live with in order to operate as a nonconforming use, and that's what was carried through both in the building permit application that the owner signed and acknowledged and in the Non-Residential Use Permit that the owner received and acknowledged and paid for and posted on his facility.

**MR. HAMMACK:** On the building permit, and maybe I'm wrong on this, but it says owner information is Frasier Boyd, and the applicant is Sam Raschadi (phonetic), AIA. Is that the architect that signed --

**MR. VIA:** It's the contractor.

**MR. CONGLETON:** That was Mr. Boyd's contractor.

**MR. VIA:** It's the contractor. Mr. -- if I --

**MR. HAMMACK:** He's the agent for the --

**MR. CONGLETON:** He's was the agent for Mr. Boyd, and he certified that he had full authority of the owner to make application for that building permit.

**MR. HAMMACK:** That's true. That's your standard language. I don't know if that certification necessarily says he agrees to what's written in the remark section.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** If Mr. Hammack's finished.

**MR. HAMMACK:** I'm finished.

**MR. HART:** All right. Thank you. Mr. Chairman, I do have a couple questions for Mr. Via and also for staff, but if I understand the elephant in the room, we are getting kicked out of the room in 22 minutes; is that right?

**CHAIRMAN RIBBLE:** That's correct.

**MR. HART:** Can I just ask quickly, very quickly, show of hands, how many speakers do we have on this case? How many of those represent an association as opposed to an individual? Okay, at least one. If we do speakers and rebuttal and keep going, I don't know that we're -- administratively we're gonna finish in 22 minutes, and I wonder if we should confront perhaps procedurally are we gonna bump this to next week or what are we gonna do. I mean, if that's --

**CHAIRMAN RIBBLE:** I think we have a choice. I mean, the --

**MR. HART:** Just to continue next -- to next Tuesday at whatever time we --

**CHAIRMAN RIBBLE:** This room has been reserved at 2 o'clock, so we just don't have a choice. We have to defer to another date.

**MR. HART:** Is -- is -- Mr. Via, you can come back in a week?

**MR. VIA:** Yes, sir.

**MR. HART:** Okay, and staff, is staff -- well, the Board of Supervisors apparently made that decision a while ago. Let me see if I can go quickly with the questions.

Mr. Via, if I'm understanding the testimony, the parking issue, you say you're not doing it anymore, whatever it was they're complaining about. You're not going to do the valet parking or the park in the aisles.

**MR. VIA:** I'd have to ask the -- they're not gonna park in the aisles, absolutely. I don't know if they're doing the valet to park the spaces or not, but they're absolutely not gonna park illegally. They're not gonna park in the aisles.

**MR. HART:** At some point the second non-RUP gets up on the wall with the limit of 104, however that came about. Maybe we'll hear from Mr. Lafayette, but why doesn't -- if not at any point up to that moment, why doesn't the applicant have to appeal the issuance of the non-RUP with a limitation of 104 that they don't like?

**MR. VIA:** Well, as stated, the applicant, the owner, and the owner's agent were unaware that a new one had been posted until it received the staff report. We can't identify when it came. All that we know for sure is the date that it was issued they read it, and it was posted on site. When it changed can't be said, so that would be the explanation. When we learned of this limitation, as soon as the notice of violation was received, that's when it was appealed, so as soon as they became aware of it, then they made the appeal. And I -- just for the record, I mean, it's important that, you know, hopefully nobody believes that we're fabricating Non-Residential Use Permits, but, you know, it sounded kind of like he talk- -- Mr. Congleton spoke about the Non-Residential Use Permit. Well, while it might have been replaced, maybe it was a mistake, I don't know the answer to any of that. There's no doubt that the appli- -- the appellants received a Non-Residential Use Permit without that condition on it.

**MR. HART:** Well, again, I don't mean to belabor that. It's -- that's a very interesting point, but I think we need to hear perhaps from Mr. Lafayette or somebody else about exactly what happened. It still seems like even if it was one or two or however, the second one in the sequence got up on the wall somehow, and it's hard to believe that someone could sneak in and, you know, substitute something in a picture frame or however that comes about. I don't -- it seems to me that they must have gotten it at some point if it's put up on the wall. But let me ask staff very quickly, if -- has the parking issue been cleared?

**MR. CONGLETON:** During the time of this appeal, I had occasion to go by the site on several evenings, and vehicles were still parked in the travel ways.

**MR. HART:** Am I correct that ultimately what -- you're not asking to shut them down. You're asking them to confine themselves to the parking spaces that are painted and 104 people, but if they do that, they can keep going?

**MR. CONGLETON:** Yes, sir, that's all we're requesting.

**MR. HART:** Okay.

**MR. CONGLETON:** I would like to add one thing, is that on -- Inspector Moncure and I were there on various occasions. When the place first opened up in July, I believe, we had talked to Mr. Boyd and we had reminded him he needs to keep track of his people, and that's why he went out and bought a clicker for the people coming in the door. If he didn't feel he needed to keep track of the patrons, why did he run out and buy a counter, which the gentleman at the front door uses every night and keeps a count of the people?

**MR. HART:** Very quickly I would like to hear at some point whether it's in the next 19 minutes or not, but the -- I would like to hear the circumstances under which Exhibit G in Mr. Via's handout was issued several weeks after the non-RUP and that -- he's gotta do that. I'd like to hear about the two non-RUPs and how that came about, if possible, and I'd like to hear about -- someone else had asked how many people did the Dauphine's have and if we have any evidence on that, other than this 104 certificate this morning, what was the deal with that, if somebody has first-hand knowledge. Thank you.

**MR. BEARD:** Let's get some speakers in, maybe a couple of them.

**CHAIRMAN RIBBLE:** Is there anyone else who would like to speak to this appeal? Is the owner of the Dauphine's in the house? Would you like to come down here. Maybe you can shed some light on this. Your name and address for the record, please.

**GEORGE MARINACOS:** George Marinacos, 7309 Brookfield Plaza, Springfield, Virginia. Good afternoon.

**CHAIRMAN RIBBLE:** You've heard a lot of questions about the numbers of patrons and everything. Does that coincide with what Dauphine's was doing?

**MR. MARINACOS:** The number was always right around 100. Quite a few years ago when they had all the big fires up in -- I think in Detroit and one up in Rhode Island where these clubs burned down and hundreds of people were burned up, Fairfax County started going around to restaurants and making sure that they were up to meeting a certain standards of code, one of them being the matching up with the non-residential use. To my memory, as I've been the owner since 1994 and it's been in my family since 1965 when my father owned it, we were in front of the Fairfax County Board of Supervisors in 1980, after which the -- we were under the non-RUP, and all that saga was born. At that point it was determined that our number -- and it was clearly posted, live load capacity or live load occupancy, 104, and it was explained to us in very clear detail that that included cooks, bottle washers, and any other live person on the premise. We've pushed the limits at the Dauphine's over the years, and I'd be hard pressed to put much more than 105 people in there with my staff, keeping the same footprint. I've heard numbers in excess of 200 that are a little bit shocking to me.

Regarding the parking issue, I've seen the cars stacked and packed with, you know, the valet service that they had over there, and that's with three quarters of that property being vacant. I hate to see what happens if they open up any other retail businesses in that shopping center. Where are the people gonna park if the Paper Moon's taking up every single iota of parking space there.

And those are of concerns to me. I've been a life-long residence. I went to Lee High School in Springfield. I love this -- I wasn't really prepared to speak today. I heard a lot of things that pertained to myself and my family and our business of many years, and anything I can do to answer your questions, clearly I'm in a position of -- I own a competitive business down the street. I'm not gonna lie to any of you, the 1320 Club. It's not my question here whether -- what happens to these people today. I just wanna' -- I came here to find out the facts.

**CHAIRMAN RIBBLE:** Questions?

**MR. HART:** Mr. Chairman.

**MR. HAMMACK:** Mr. --

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Mr. Marinacos, did you have valet parking when you had the Dauphine's there?

**MR. MARINACOS:** No, sir.

**MR. HART:** No valet parking?

**MR. MARINACOS:** None.

**MR. HART:** All right. Thank you.

**MR. HAMMACK:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Sir, would you describe how the parking worked when you had Dauphine's there.

**MR. MARINACOS:** Self-service parking. We had allocated parking spaces in front of the Dauphine's Steak House when Veneman Music was in business. At nighttime when they -- after they closed, we used some of their parking spaces as well as the spaces in back that up until recently, four or five years ago was a furniture store, and before that it was -- I remember back in the days of Bond Food (phonetic), but -- and our customers would use that parking space as overflow, our employees.



**MR. BEARD:** Mr. Chairman.

**MR. HAMMACK:** Was there ever parking in the aisles?

**MR. MARINACOS:** Never. Well, there -- the aisles, I assume you're meaning the space between the parking spaces?

**MR. HAMMACK:** Travel aisles.

**MR. MARINACOS:** No, sir. You needed egress and ingress for people to come in and come out.

**MR. HAMMACK:** All right. Thank you.

**CHAIRMAN RIBBLE:** Mr. Beard.

**MR. BEARD:** You sold it to the people that are there now.

**MR. MARINACOS:** No, sir. We were vacated our lease by Rapport Management. The owner is Carl Komesy (phonetic).

**MR. BEARD:** All right. Okay.

**MR. MARINACOS:** And there was supposed to be a bank, and then these gentlemen bought the property.

**MR. BEARD:** Now I understand. I understand. Thank you. Thank you. Now I understand. Okay.

**CHAIRMAN RIBBLE:** Okay. At this end, we got a re- -- 15-minute reprieve or addition. So we can stay here until 2:15. Anyone else to speak to this --

**MR. MARINACOS:** Thank you.

**CHAIRMAN RIBBLE:** -- please -- thank you. Good afternoon.

**PAM YORK:** Yes, good afternoon. Thank you, Mr. Chairman and members.

**CHAIRMAN RIBBLE:** Remind us what your name is.

**MS. YORK:** I will. My name is Pam York, and I live at 7504 Nancemond Street in Springfield, Virginia, and I'm also on the board of the civic association. I'm a vice president, and I'm here today to do a couple of things. First, we have some petitions again. We've been a very active community, and we're working very hard to try and take care of things. We do have several hundred people who are also very concerned with what's going on at the Paper Moon, and I would just -- I just have a couple of comments.

To remind everyone again, the Paper Moon is operating on a Nonconforming Use Permit to which they were grandfathered over the objections of the community. They also know quite well what those limitations of the Nonconforming Use Permit are, and they have chosen to violate those limitations when they can get away with it. As you just heard from the gentleman, when that little center was fully occupied, other people had parking spaces. The fact that it's not occupied, except for the Paper Moon, and they can use all of those spaces, they actually have increased their ability to park, and the valet parking, as the gentleman here said, if they're not parking anymore in the driveway, then where are they putting those extra cars? They're still doing valet parking. The cones are out there. You know, are they improperly using adjacent parking lots of other shopping centers without the knowledge of those owners. And that pretty much is it, so I thank you very much for hearing me out today. Thank you.

**CHAIRMAN RIBBLE:** Thank you. Next speaker.

**BONNIE PRITCHARD:** Hello, I'm Bonnie Pritchard. I live at 7513 June Street in Springfield. Bentley Properties and Paper Moon have limitations on their use regarding occupancy and parking, and they've been in violation of their use which is also a safety hazard. I ask you to please deny their appeal and not make another exception on Amherst as you just did this morning to a Zoning Ordinance that negatively impacts our

Springfield community. Please do what's right by enforcing these ordinances. I feel like I should stand up here -- this was the very first time I've ever been to one of these meetings, and say it seems like there's a million loopholes. So we're -- I'm just really pleading you to look at what's best for the community by enforcing the ordinances that are in place. Thank you.

**MS. GIBB:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Ms. Gibb.

**MS. GIBB:** One question for you.

**CHAIRMAN RIBBLE:** Ms. Pritchard.

**MS. GIBB:** In the petition, one of the things it mentions is billboard trucks.

**MS. PRITCHARD:** You're asking me?

**MS. GIBB:** Yeah, I thought maybe you knew, yes, about the billboard trucks.

**MS. PRITCHARD:** I haven't seen the billboard trucks.

**MS. GIBB:** Okay. All right. Thank you.

**MS. PRITCHARD:** Sorry.

**CHAIRMAN RIBBLE:** Good afternoon again.

**ROBERT DAVIS:** Hello again, Robert Davis, 6400 Julian Street. I'm a little concerned both with the dickering over what the County paperwork is supposed to say, but I will presume on the -- proceed on the notion that it's 104 people we're talking about as an occupancy requirement. I am very concerned that I'm hearing, I think, a separation of safety and zoning standards here, and I don't see how you can do that. If you consider the abysmal history of nightclub safety in this country, whether you go back to the Coconut Grove in 1942 or the more recent Rhode Island disaster in which hundreds have died, nightclubs do not have a very good safety record. It's imperative that they stay at the level of which they are allowed. You can also read in the *Washington Post* on a regular basis about surveys where doors are blocked or other items get in the way of egress in an emergency. Plus you're also doing -- dealing with an audience of people being served who are anywhere from sober to inebriated. Those kind of people need more time to get out. If you allow this unit to operate, this organization to operate at an excessive level as was found last year and you allow cars to park in such a way that people cannot get out fast enough, then you are doing a disservice to this community. The violations that were made by this organization are serious, and I would please ask you not to release them from them. Thank you.

**CHAIRMAN RIBBLE:** Next speaker, please. Good afternoon.

**DAN LEMAY:** Good afternoon. My name is Dan Lemay, 7351 Lockport Place in Horton. Good afternoon. I come here as the 2009 president of the Greater Springfield Chamber of Commerce where we represent almost 300 businesses in the nearly 80 square miles that encompasses greater Springfield. Let me begin with the mission statement of the Greater Springfield Chamber of Commerce. The mission of the Greater Springfield Chamber of Commerce is to bring local businesses together in the greater Springfield area for the purpose of developing and promoting balanced economic growth and business opportunities that are in harmony with the objectives of the community, and I share that statement with you as the driving force behind why I am here today. I speak on behalf of the board of directors of the Greater Springfield Chamber of Commerce, which voted to urge you to uphold the zoning inspector's finding and citation issued on October 25, 2008, less than five months after Paper Moon received their Non-Residential Use Permit containing the clearly indicated limitations.

As directors of the Greater Springfield Chamber of Commerce, we believe that in this case the zoning regulations fairly represent the views and wishes of the residents of Springfield. Actually the grandfathered permission in this case does not fit with the desire of the community; however, we understand the legal implement -- implications which compel us to allow this establishment in our community. We believe that the

majority of the clientele at Paper Moon travel from outside of our community to visit their establishment. Our Lee District Supervisor McKay has even made a statement about this, and he wrote this, and I quote what he wrote, this is not the type of business that we want to see in our Springfield revitalization area or anywhere else for that matter. Springfield deserves better, and I'm working with our Economic Development Authority and the County and the private sector to attract the kind of business that we do want here.

When the Paper Moon moved to the property, they were aware of the zoning limitations, as is pointed out in the staff report. Seeking exceptions for legitimate reasons to expand in order to better serve the community deserve your consideration, but seeking them purely for profit against the will of the community is not only bad business, it deserves to be rejected by the Board of Zoning Appeals. As a responsible Chamber of Commerce, we recognize that there are forms of commerce that responsible of business, especially business leaders, should not condone. In addition, it is good business to support the community in which we live and conduct our businesses. Our opposition to this business should not be viewed as a failure to support commerce. On the contrary, it should be viewed as good stewardship of the freedom we have to engage in enterprise. Again, we urge you to uphold the zoning inspector's finding and citation issued to Paper Moon on October 25th, 2008. Thank you.

**CHAIRMAN RIBBLE:** Thank you. Next speaker, please. Good afternoon.

**MICHAEL LAFAYETTE:** Good afternoon, Mr. Chairman, members of the Board. My name is Michael Lafayette, and I am the corporate counsel to Bentley Properties and Papermoon-Springfield, Inc. I can assure this panel that I obtained the non-RUP without any limitations on it myself, up here in this building, and it was handed to me. That non-RUP had no conditions on it. I then used that non-RUP and submitted it to the ABC board so we could obtain our ABC permit. I have verified it last week. I verified it again yesterday. It is in my file. It's in the ABC file. It was issued without any limitations. I assure you that's what was issued to us, and it was under the understanding that there were no limitations. That's why we moved forward.

I'd ask you -- I also wrote the letter to Ms. McLane, the Zoning Administrator, on December 17th, 2007, and which I was responded by Mr. Reale by letter dated to me January 22nd, 2008. And in that letter, specifically paragraph 2 of page 2, the only research, and I quote, it says our research indicates that Dauphine Steak House occupied 3685 square feet of floor area, and its occupancy was 104. The load number is based upon the most recent available Fire Marshal information and includes patrons and employees. There was no reference that it was limited for zoning purposes. It was a reference strictly to that made by the Fire Marshal in that area. I assure you -- and also, by the way, that letter, as the record indicates, has no notice that this is a zoning opinion subject to appeal and to give us our 30-day notice. Had I had any gumption that this was actually a determination for zoning purposes, I assure you we would have noted an appeal. It was not phrased as a zoning determination letter. It did not have the appeal notice to it, and so, therefore, there was no needed -- no need to appeal, and it was not appealed.

I assure you we do business the right way. We've come in and we've appl- -- we have obtained the non-RUP with no limitation. It was posted on the establishment. I found out about the non-RUP that had the limitation on Friday, Friday a few days ago. Somehow between the time we obtained it and to the time that we just received the staff report, it was -- a new one was sent to the establishment and then posted. I will tell you it is common practice. The establishment receives different permits, both ABC, business, and otherwise. They are instructed, when a new permit comes in, you take the old one and put it up in the frame. The date that the new one came in, I don't know, but I assure you it came -- it probably came in the mail and then was turned over by the staff at that time and then put in the mirror. We don't think the staff did anything as in the zoning staff went in and changed the zoning permit without notice. We don't think it happened that way, but I just want this panel to understand that under no circumstances were we under the understanding that we were limited to 104 as the non-RUP or as in the zoning letter request that I made, and we moved forward based upon the understanding that there was no such limitations. I'll be happy to answer any questions.

**CHAIRMAN RIBBLE:** Any questions? Good timing.

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Thank you. Mr. Lafayette, it's your testimony that Exhibit F in Mr. Via's handout, with the -- even with the misspelled street name, that's what you got at the counter and you got that yourself?

**MR. LAFAYETTE:** Yes, sir, I actually got this myself because coming up from my offices outside Richmond, as you probably have indicated or saw in my letter, we drove up, and I was with my client and one of the assistants, and we came up to obtain not just this permit, but other permits during that day. But I was physically up in -- and I don't know what the room was, and -- but I actually obtained it here.

**MR. HART:** Here or across the street?

**MR. LAFAYETTE:** I believe it was here, upstairs and --

**CHAIRMAN RIBBLE:** It was across the street.

**MR. LAFAYETTE:** Okay, I'm sorry, one of these buildings. I'm sorry. I've not been to Fairfax many times, but I actually received it, and it was on that date, because after I received it I actually -- it was not posted to -- correct, it was not posted that day. I actually took it back to my office so we could fax it to the ABC board for our ABC application. Then we made a photocopy, gave it to the client, who then posted it before January -- before June 10th, so it was posted within a couple of days. What was posted was certainly this non-RUP. This is what I have, and this is what I have in my file in Richmond, and this is what we sent to the ABC. I absolutely guarantee you that's what was given to us, and this is the first time today I just noticed about the misspelling. I had not noticed that when it was sent to us or given to me. Now --

**MR. HART:** How long did it take to get it when you were here at the -- or across the street? How long did it take?

**MR. LAFAYETTE:** Less than 30 minutes. We were here for a while, but not -- you know, not an extraordinary period of time.

**MR. HART:** Do you remember who gave it to you?

**MR. LAFAYETTE:** It was at a counter. It was a female at the counter, but I do not recall the person's name. The other thing that's interesting --

**MR. HART:** And you're saying you never got the other one? It may have come in the mail to the establishment, but you never got the Exhibit H?

**MR. LAFAYETTE:** No, I did not. And the other thing I'd like to point out, Exhibit A, if you notice the one that I received, which is Exhibit F on Mr. Via's or our response, is dated the 2nd day of June, 2008, and that is the day we were up here. What is interesting is the one that I just saw Friday, which the staff report has, it has the same issue date, but it's clearly not the same one because of what you've indicated. It does not have a revised date, and it was clearly issued sometime later, yet they used the same date. It doesn't have a revision date. It doesn't say -- have a reissue date. They used the same date. That's what I found very interesting come Friday, a few days ago, was why does it have -- if it was reissued subsequent, why doesn't it have a revision date or some other notation on there that it had been revised?

**MR. HART:** Let me -- I don't mean to cut you off, but I -- we're under the gun here.

**MR. LAFAYETTE:** Sorry.

**MR. HART:** Were you involved in getting Exhibit G, this other certificate?

**MR. LAFAYETTE:** No, that was actually obtained by the contractor after the inspection's made. It was submitted to me because I -- then I needed it for my purposes as the attorney, and I also needed to -- well, I need it for my purposes to make sure we had the correct documents, so that was obtained by the inspections -- after the inspections and then, of course, was posted, and I made sure it was posted.

**MR. HART:** Okay. Thank you.

**CHAIRMAN RIBBLE:** Next speaker, please. Staff, quickly, if you have anything to add.

**MAVIS STANFIELD:** Mr. Chairman, the photograph that I have here on the screen, this was -- this picture was taken at 2:30 in the afternoon on a Thursday. That's the front of the building. This is the boarded up section. That's where their entrance is, and this is the rear of the building on the same day at the same time. I would just make a note that Mr. Moncure has been out several times subsequent to the initial inspection. He's found that they are operating, even with special events, within that 104 occupancy load.

**CHAIRMAN RIBBLE:** Thank you. Mr. Via, any last comments?

**MR. VIA:** Appreciate the time you all spent on this long day. We've always acted in good faith. We believe everything we've done has been in accordance with the Non-Residential Use Permit and the continuation of the nonconforming use, and we respectfully appreciate your support.

**CHAIRMAN RIBBLE:** Thank you.

**MR. HAMMACK:** Mr. Via.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** Yeah, two things. A quick question for staff, have any inspections -- other than the one where Paper Moon is supposed to have 123, have any other inspections been made where they had a higher occupancy than 104?

**MR. CONGLETON:** No, sir, I believe it was just one time.

**MR. HAMMACK:** Just a one-time thing. Okay. In addition to the information requested by Mr. Hart earlier, if you could have somebody from the Fairfax County Fire Marshal's Office, either Mr. Harnett or a representative, to explain how they come up with their rulings at our next hearing --

**MR. CONGLETON:** Yes, sir.

**MR. HAMMACK:** -- on that.

**MR. CONGLETON:** We'll take care of it.

**CHAIRMAN RIBBLE:** Thank you. Via --

**MR. HAMMACK:** I think Mr. Via has a question.

**MR. VIA:** Real quick.

**CHAIRMAN RIBBLE:** Do you have a question?

**MR. VIA:** Mr. Lafayette will not be able to be here next week, unfortunately, so if you have any questions for him, hopefully I'll be able to answer next week, but I wanted to make sure you knew he will not be here.

**CHAIRMAN RIBBLE:** Thank you. The public hearing is closed.

**MR. HAMMACK:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hammack.

**MR. HAMMACK:** In Appeal Application A 2008-LE-073 made by Bentley Properties, LLC, and Papermoon-Springfield, Inc., on property located 6315 Amherst Avenue, I move that we continue this case until next week. Will that give staff enough time to research the information that's been requested? Then we'll continue it to next for additional information and testimony and for --

**CHAIRMAN RIBBLE:** From staff?

**MR. HAMMACK:** Well, and any -- if there's any new -- also any new information that the appellant can provide as well.

**MR. HART:** Second.

**CHAIRMAN RIBBLE:** Seconded by Mr. Hart. Discussion?

**MR. HART:** Mr. Chairman.

**CHAIRMAN RIBBLE:** Mr. Hart.

**MR. HART:** Yeah, if staff finds out about the sequence of the non-RUPs and what happened with -- if there really were two, if we have a cover letter or transmittal or something, how did they get the second one, did we send it to the store or what is in the file or what does -- if there's any information about that, I'd see that, too. Thank you.

**CHAIRMAN RIBBLE:** Further discussion? All those in favor of deferring this for one week, keep it open for information from staff, is that what I'm hearing, Mr. Hammack?

**MR. HAMMACK:** Yes, sir.

**CHAIRMAN RIBBLE:** Signify by saying aye.

**MS. GIBB, MR. HART, MR. HAMMACK, CHAIRMAN RIBBLE:** Aye.

**CHAIRMAN RIBBLE:** Opposed.

**MR. BEARD:** Nay.

**CHAIRMAN RIBBLE:** The vote is four to one, and this will be deferred until next week for additional information from staff.

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~ ~ ~ March 31, 2009, After Agenda Item:

Approval of April 8, 2008 and April 29, 2008 Minutes


Because of time constraints, Chairman Ribble stated that the Board would take up the approval of the minutes at its next meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 2:07 p.m.

Minutes by: Suzanne L. Frazier

Approved on: November 3, 2009

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 7, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb and Thomas W. Smith III were absent from the meeting.

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

~ ~ ~ April 7, 2009, Scheduled case of:

9:00 A.M. JEFFREY K. CAMPBELL, SP 2008-MV-094 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 3.6 ft. from one side lot line, deck to remain 6.0 ft. from other side lot line and to permit an accessory dwelling unit. Located at 4212 Old Mill Rd. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((11)) 102. (*Admin. moved from 2/3/09 at appl. req.*) (*Moved from 3/3/09, inclement weather.*)

Chairman Ribble called the applicant to the podium.

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

Robert L. Calhoun, Esquire, Redmon, Peyton & Braswell LLP, 510 King Street, Suite 301, Alexandria, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of the accessory dwelling unit with the adoption of the proposed development conditions. Ms. Hedrick noted that staff distributed a memorandum that morning advising the Board of the administrative withdrawal of the variance application.

In response to Mr. Hart's question concerning the shed, Ms. Hedrick acknowledged that it was within a Resource Protection Area, and, as it predated the Chesapeake Bay Ordinance, it was permitted to remain.

At Mr. Hart's request, Ms. Hedrick and Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, said staff would research the 30 percent backyard coverage rule as written for over the past few years and review several applications recently submitted to which that section of the Code pertained.

Discussion ensued regarding previous and recent Code revisions and the dates of permits and plats as noted in the staff report. It was clarified that the permit was dated from 1970, but there was not an approved plat at this time.

Mr. Calhoun presented the special permit request as outlined in the statement of justification submitted with the application. He clarified that the Code Statute previously discussed became effective in 2008. It was specified that the addition, which was the subject of the special permit request, was constructed in 1975. Mr. Calhoun said the filing of the special permit request arose from a Notice of Violation issued by a County zoning inspector, Rebecca Goodyear. Mr. Calhoun said County staff also called his client's attention to an error in building location of a deck, which required an amendment to the application. Mr. Calhoun said Mr. Campbell had complied with all staff's requests and asked that the BZA agree with staff's recommendations concerning the building location errors. Mr. Calhoun noted that Mr. Campbell met all the requirements for an accessory dwelling unit, and agreed to all staff's conditions.

It was clarified the shed had no electricity or plumbing.

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

Mr. Hammack moved to approve SP 2008-MV-094 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

JEFFREY K. CAMPBELL, SP 2008-MV-094 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 3.6 ft. from one side lot line, deck to remain 6.0 ft. from other side lot line and to permit an accessory dwelling unit. Located at 4212 Old Mill Rd. on approx. 21,800 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((11)) 102. (Admin. moved from 2/3/09 at appl. req.) (Moved from 3/3/09, inclement weather). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 7, 2009; and

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

1. The applicant is the owner of the land.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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



1. This approval is granted to the applicant only, Jeffrey K. Campbell, and is not transferable without further action of this Board, and is for the location indicated on the application, 4212 Old Mill Road (21,800 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), 964 square foot accessory dwelling unit, accessory storage structure (shed) and brick patio, as shown on the special permit plat prepared by Dominion Surveyors, Inc., dated July 2, 2008, as revised through January 16, 2009, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The 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 a maximum of 964 square feet, including a maximum of two bedrooms.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ April 7, 2009, Scheduled case of:

9:00 A.M.            ROGER F. PITKIN, SP 2008-MA-109 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.8 ft. from side lot line. Located at 5222 Monroe Dr. on approx. 24,543 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((6)) 4B. *(Moved from 3/3/09, inclement weather.)*

Chairman Ribble called the applicant to the podium.

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

Nina Pitkin, 5222 Monroe Drive, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval with the adoption of the proposed development conditions.

Ms. Pitkin presented the special permit request as outlined in the statement of justification submitted with the application. She explained that the existing carport needed to be replaced, and would be in keeping with the neighborhood. She noted that her neighbors were in complete support of the proposal.

Ms. Pitkin responded to Mr. Hart's questions concerning the garage's measurements, adding that the garage would provide a much needed area for additional storage.

Ms. Hedrick clarified that the new structure's depth would remain on the same pad of the carport. She added that staff was okay with the proposed dimensions of the garage.

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

Mr. Byers moved to approve SP 2008-MA-109 for the reasons stated in the Resolution

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## COUNTY OF FAIRFAX, VIRGINIA

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

ROGER F. PITKIN, SP 2008-MA-109 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 9.8 ft. from side lot line. Located at 5222 Monroe Dr. on approx. 24,543 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((6)) 4B. (Moved from 3/3/09, inclement weather). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 7, 2009; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the application meets all the submission requirements as set forth in Sect. 8-922.
3. Staff recommends approval.
4. Staff's rationale for recommending approval is adopted.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of a two-car garage (774 square feet), as shown on the plat prepared by Edward W. Dove dated April 11, 1986 as recertified by O'Neil Architects dated September 29, 2008 as revised through February 4, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,380 square feet existing + 5,070 square feet (150%) = 8,450 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. A row of shrubs and/or trees shall be planted between the proposed addition and Lot 4A, in a planting area maintained 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.

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

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

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~ ~ ~ April 7, 2009, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-001 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line and to permit an accessory dwelling unit. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (*Admin. moved from 3/20/07, 5/1/07, 9/11/07, 4/1/08, and 10/7/08 at appl. req.*)

Chairman Ribble noted that SP 2007-MA-001 had been administratively moved to May 19, 2009, at 9:00 a.m. at the applicant's request.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, said that was originally correct, but had since been indefinitely deferred.

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As it was not yet 9:30 a.m. and the next application was an appeal which was scheduled for 9:30 a.m., Chairman Ribble went to the After Agenda items.

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~ ~ ~ April 7, 2009, After Agenda Item:

Request for Additional Time  
Additional Time Request, Chan S. Park, SP 2005-SP-012

Mr. Byers moved to approve additional time to August 31, 2011. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith were from the meeting.

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~ ~ ~ April 7, 2009, After Agenda Item:

Approval of April 8, 2008 and April 29, 2008 Minutes.

Chairman Ribble commented that he thought there had been something incorrect with these minutes.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, said that was correct. A page was missing from one set, and staff had distributed corrected copies that morning, which the Board could act upon at the next meeting.

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~ ~ ~ April 7, 2009, After Agenda Item:

Request for Reconsideration  
From Karen Hennessee regarding Hermilio Machicao, SP 2009-LE-007

Chairman Ribble called the item. No motion was made, so the request was denied.

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The meeting recessed at 9:28 a.m. and reconvened at 9:34 a.m.

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~ ~ ~ April 7, 2009, Scheduled case of:

9:30 A.M. BENTLEY PROPERTIES, LLC AND PAPERMOON-SPRINGFIELD, INC., A 2008-LE-073 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are permitting occupancy of property by an excessive number of persons allowable under Non-Residential Use Permit #A-0599-08 and have expanded the parking area in violation of Zoning Ordinance provisions. Located at 6315 Amherst Av. on approx. 1.2 ac. of land zoned C-6, H-C, CRD and SC. Lee District. Tax Map 80-4 ((1)) 9. (*Decision deferred from 3/31/09.*)

Chairman Ribble noted the appeal had been deferred for decision in order for staff to provide additional information on occupancy and permits.

Cathy Belgin, Staff Coordinator, Zoning Administration, addressed the Board's previous request for information regarding the issuance of more than one Non-Residential Use Permit (Non-RUP) and the explanation concerning the building capacity, which was contained in the memorandum dated April 6, 2009, that had been distributed to the Board the previous day.

Chairman Ribble asked the appellant's agent whether he had any comments regarding the memorandum.

Patrick M. Via, Esquire, Rees Broome, PC, 8133 Leesburg Pike, Ninth Floor, Vienna, Virginia, came forward to address the Board. He said staff's specific statement that maximum occupancy certificates represent the maximum number of people that could safely occupy a structure were not the same as a Non-RUP, and that staff's previous testimony was it was not tied to zoning. Yet the sole basis for the original determination of 104 people was a certificate of occupancy. Mr. Via said it seemed as if staff wanted it both ways. He noted

now the appellant had two Non-RUPs, as well as a second Certificate of Occupancy, which reduced the number from 219 to 104. He said it seemed a consistent course of action, but that action was not consistent at all with regard to his client.

Mr. Beard commented on a calculation regarding a certain amount of gross square footage of floor space that would come up with well over 200 to 225 people. He thought perhaps that formula may have in some way come into the mix.

Ms. Belgin concurred with Mr. Beard's statement that when doing the calculations staff took into account the square footage and the uses in the area. She noted that in Paper Moon's renovation from the previous use as Dauphine's, the kitchen size was significantly reduced and the layout significantly altered. Ms. Belgin said that would explain a difference in the spatial layout and potential capacity for persons inside.

Discussion ensued regarding grandfathering the use. It was clarified that in review of the 1984 file it was found that the permitted occupancy for Dauphine's was 104, which was consistent with the 2004 determination made by the Fire Marshall. Staff specified that Dauphine's had not had any renovations, as it was a nonconforming use.

Captain Kit Hessel, Inspections Branch, Fairfax County Fire and Rescue Department, took the oath as directed by Chairman Ribble. He explained the inspection for Non-RUPs and Fire Prevention Code Permits were done on a yearly basis. He further explained that any notices of violations were recorded, sometimes referred to as a Progress Report, which usually was done at the discretion of the inspector when determining how quickly the violation could be fixed and corrected. He added that most of the information was recorded in triplicate on a quad-type sheets that were retained in the file for approximately five years, so there were no records from the 1980's.

Mr. Via stated that there was no zoning record that occupancy was ever at 104 or otherwise limited. He noted that the occupancy certificates issued had no occupancy limitations set forth, and a letter sent to the Board of Supervisors' Chairman confirmed that a non-conforming use existed, and did not set forth any maximum occupancy. Mr. Via stated that the only basis staff used was the Fire Marshall's 2004 Certificate and a note in the file from 1984, both of which referred to occupancy related to safety, and not maximum occupancy permitted to this particular non-conforming use. He added that staff had confirmed that those were two different things; that one was for safety and a Non-RUP for zoning, and he would argue that there was no information at all relating to the zoning maximum.

Referencing the staff report's Status Update, Mr. Hammack noted that the Department of Public Works and Environmental Services' (DPWES) calculation and that of the Fire Marshall's should result in the same figure, as each apparently were using the same Building Code section. He felt the Fire Marshall's computation should take precedence over zoning, as it was a matter of safety.

Mr. Via pointed out DPWES had concurrent jurisdiction to determine maximum occupancy and determined that 219 was safe, however, now the number was revised down to 104. Mr. Via maintained that there was no specific zoning restriction related to the number of occupants for this particular use. He understood that it could never exceed the determined safe capacity after non-structural alterations were permitted and made, where originally the safe occupancy was set at 219.

In response to Mr. Beard's question concerning whether the Fire Marshall's department was involved in non-structural alterations inspections, Captain Hessel said that would not be the case unless they were called in. He explained that if the proper building permits were pulled, it would be that department's follow-through.

As there were no further questions or comments, Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator for the following reasons. Mr. Hart felt the main question at hand was whether the letter of December 2, 2008 was correct with regard to whether the existing use had been extended or enlarged. The two aspects were parking and occupancy level. Concerning the parking issue, he said he did not think that was disputed and for the purpose of the Board's vote and the letter's evaluation, he would not reach the question of valet parking. He noted that the violation letter had not raised that issue, and he did not think the aspect of the parking issue was before the Board. Mr. Hart said the existing use was non-conforming. He said that under Ordinance standards now, nude dancing establishments required a special permit in order to be approved, and they must be within a

C-7 District not a C-8. Uses established before the adoption of the Ordinance could continue as long as they were not extended or enlarged. The letter dealt with the observation that vehicles were parked in aisles and the parking lot's entranceway. Mr. Hart said that parking violations were not usually an issue zoning enforcement staff or the Board would be involved with, but in the context of evaluating this use and whether the activity had been expanded, it was illustrative of the level of activity. Mr. Hart noted that there was no showing that the previous use of Dauphines had parking in aisles or the entrance, and it had not been substantially evidenced that the Zoning Administrator's letter was plainly wrong. Mr. Hart stated that whether the violations were cleared or not, based on the record before the Board, the December 2, 2008 letter was correct. There were vehicles in those areas and the placing of cars in those locations would be an expansion over and above the level of the non-conforming use. Mr. Hart said basically the previous establishment, Dauphines, was parking in the parking spaces, and that was all they were allowed to do. He said he thought that was consistent with other cases and, in general, when any use was approved, staff calculated the number of parking spaces, and the parking spaces were required to be shown on the plat with certain dimensions and locations. Mr. Hart stated that at least on the parking issue, the letter was correct.

Mr. Hart then addressed the occupancy issue stating it was more difficult, and despite some of the confusion in the paperwork, he thought the issue was whether the use itself was expanded or enlarged. He proceeded to deal with the statutory construction issue as a threshold question. He referenced 15.2-2311, which stated any violations or order from the Zoning Administrator was required to have a notice informing the recipient had 30 days to appeal. He thought there was a difference in the statute between violations and orders. Mr. Hart said it was his view that not every piece of correspondence had to contain the 30-day notice. He said that given that construction of the statute, he thought there were several documents that pushed the Board towards a conclusion that the letter was correct. He said there were several communications within the last few years, and he tended to agree with Mr. Via that the genesis of the 104-person limitation in the paperwork was debatable, as it was not clear exactly where that came from. Mr. Hart said in his view, following Gwinn versus Allworth, whether right or wrong and whether it was ever really officially part of a zoning requirement, the capacity of 104 people became a thing decided at several points. The letters clearly stated there was a use limitation of 104 people, and the letters were not appealed. The building permit evidenced the agent of the owner applied for a building permit, which specifically referenced activity would be conducted in accordance with the limitations, including that the use was limited to 104 people. That limitation was not appealed, and that was how the building permit was issued.

Mr. Hart said the Non-RUPs added another layer of confusion. He said he would conclude that there were, in fact, two Non-RUPS. He believed Mr. Lafayette's testimony that he came up and got the Non-RUP, which did not have the 104 limitation, and he took it back to Richmond with him. Mr. Hart noted that there were some papers from Mr. Via showing the transmittals back and forth with the ABC Board about the liquor license, including the earlier of the two Non-RUPS, and he believed Mr. Lafayette went to the counter and was given the Non-RUP, which did not have the 104 limitation in it. Mr. Hart said it was confusing as to why the second Non-RUP was issued with the same date, but he did not think the Board was given anything to show that either the Zoning Administrator could not issue a corrected Non-RUP if there were something wrong with it, or that something could not be changed within the 60 days, even if they were spending money to fix up the establishment and get it going again in the reliance on the issuance of the Non-RUP. Mr. Hart said there really was not any evidence to show that the second one was not issued on the same date as the first one. It was plainly apparent from the record that somehow the correction was received by the appellant. He said, whether it should have been or not, they were issued a second Non-RUP that had a limitation of 104, and that Non-RUP issuance was not appealed. Mr. Hart said he did not believe that a Non-RUP fell within a category of a violation or order under 15.2-2311. Mr. Hart said the point was reached where the 104 person capacity as a zoning issue became a thing decided, whether it should have been or not. Mr. Hart said he found the documentation was not dispositive of the issue of whether the use had been extended or enlarged and he thought they could look merely to the level of activity of the prior use. The owner of Dauphines came and testified, and there was not any evidence from anywhere that Dauphines was operating at a higher level than 104 people. He said he did not think it was seriously disputed that there were in fact 123 people there at the time of the inspection leading up to the December 2, 2008 letter, and 123 would be more than 104. Mr. Hart said his view was the limit of 104 could be established through evidence of the past level of use irrespective of documents. The documentation itself would not authorize an expansion of the use if the level of the use for the purposes of evaluating the expansion and non-conformity was already established at 104. If there were no documents at all, the limit would have been 104. He said he was not reaching a decision on the issue of the Fire Marshall's recent certificate. He said it was his view on an appeal where we were determining whether a December 2, 2008 letter was correct, the most recent amended certificate from the Fire Marshall would be extraneous to that. Mr. Hart said subsequent events would not change the

correctness of the December 2, 2008 letter. With respect to the competing certificate issue, Mr. Hart said, the one document had not addressed the certificate from the building official approximately seven weeks after the issuance of the Non-RUP, which contained a limitation of 219 rather than 104. He said he thought it would make little sense for either the Fire Marshall's office or the Building Official's office to be issuing certificates, which have a higher level of occupancy than a certificate of occupancy or a Non-RUP. Mr. Hart did not think the certificate from the building official which permitted an occupancy of 219 should have authorized an expansion of the use over the level that Dauphines had previously.

It was Mr. Hart's opinion that the Zoning Administrator was not plainly wrong and that the Zoning Administrator's determination should be upheld.

Mr. Beard seconded the motion.

Mr. Beard quoted the January 22, 2008 letter from Jack Reale, Senior Assistant to the Zoning Administrator. That paragraph stated, "A non-conforming use may continue to operate but may not be enlarged or expanded. An expansion could result from a floor area increase or by an increase in occupancy. Our research indicates that Dauphine's Steakhouse occupied 3,685 square feet of floor area and its occupancy load was 104 people. The occupancy load number is based on the most recent available Fire Marshall information and includes both patrons and employees."

Mr. Hammack commented that he was not sure if anyone knew what the grandfather occupancy was in 1980. He said the opinion of the Zoning Administrator, unless plainly wrong, should be upheld. Mr. Hammack felt the burden of persuasion shifted to the appellant. Mr. Hammack said the absence of a load limit on an application was just the absence of information not that there was no load capacity level in place. Mr. Hammack, concluded he did not think the appellant had rebutted the decision of the Zoning Administrator, and for that reason, he would support the motion.

There being no further questions or comments, Chairman Ribble called for a vote.


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

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As there was no other business to come before the Board, the meeting was adjourned at 10:08 a.m.

Minutes by: Paula A. McFarland/Emily J. Armstrong

Approved on: July 27, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 14, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 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 Ribble called for the first scheduled case.

~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. SNSA, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031-03 Appl. under Sect(s). 4-803 of the Zoning Ordinance amend SP 95-V-031 previously approved for billiard hall to permit the addition of a dance hall and change in permittee. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Admin. moved from 1/13/09 and 2/24/09 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

William L. Schmidt, Esquire, agent, 4103 Chain Bridge Road, Suite 400, Fairfax, Virginia, reaffirmed the affidavit.

Mr. Hammack gave a disclosure and indicated that he would recuse himself from the public hearing.

Chris DeManche, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting an amendment to the previously approved special permit to allow a dance hall at the site and to permit a change in permittee. He said staff concluded that the application was in harmony with the Comprehensive Plan and applicable Zoning Ordinance provisions and recommended approval of the amendment with adoption of the revised development conditions. Mr. DeManche noted that the applicant had proposed changes to Conditions 8, 15, and 16, which would remove Thursdays and add Mondays to Conditions 8 and 16. Fridays, Saturdays, Sundays, and Mondays would be added to Condition 14 with deletion of the word "daily". He said staff supports these changes.

In response to a question from Mr. Hart, Mr. DeManche stated that the hours of operation for the dance hall would be different from the billiard hall hours, specifically the dance hall hours will end one hour before closing.

Mr. Hart and Mr. DeManche discussed the anonymous letter that had been received by the Board, alleging an incident at the club on January 17, 2009 that involved 800 people. Mr. DeManche said that he had spoken with Captain Dave Moore with the Fairfax County Police Department who provided him with a list of charges issued to patrons that night, including assault with weapon, two drunk in public charges, and one larceny charge. He noted that Captain Moore said there was no breakout of a large fight as alleged in the anonymous letter.

Mr. Hart suggested a new development condition be added which would limit the number of patrons allowed on the site. Mr. DeManche said the maximum occupancy load for this establishment is 475 people.

In response to a question from Mr. Smith, Mr. DeManche said there were concerns about the intensification to the overall site, particularly with it being adjacent to an existing residential use. He met with representatives of the Fairfax County Police Department, fire inspectors, and the applicant to discuss current concerns as well as past problems associated with the site, and stated that the all prior issues with the site had been resolved.

Susan Langdon, Chief, Special Permit and Variance Branch, commented that staff had asked for a two year limit on the use since it would seem prudent to have the applicant come back in a relatively short time to see if things were operating smoothly.



In response to a question from Chairman Ribble, Ms. Langdon said that security guards were being utilized at the site.

Mr. Schmidt presented the special permit request as outlined in the statement of justification submitted with the application. He said he met with Mr. DeManche, members of the fire department, and members of the police force in late February, early March, to discuss any issues which they had with Fast Eddie's. Mr. Schmidt stated that things had dramatically improved since that meeting, noting that the current owner, Ms. Aguilar, was committed to being a good neighbor in the community by operating the business in compliance with all rules and regulations. He commented on a number of actions that had already been taken to improve the site, including providing a security guard in the parking lot to deter fights and two guards at the front entrance who would insure the occupancy limit was not exceeded.

In response to a question from Mr. Hart, Mr. Schmidt stated that bouncers on the floor would help insure that the rules are followed.

Mr. Hart suggested a change to Development Condition 6 to state that the maximum occupancy load for the premises would be 475, including employees, or a lesser number if determined necessary. Mr. Schmidt stated his agreement with the revision.

Mr. Beard and Mr. Schmidt discussed the timing for the change of ownership and request to change the permittee on the special permit. Ms. Langdon commented the special permit amendment paperwork was received in June, but that the hearing had been deferred a couple of times to work on issues at the property.

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

Mr. Hart moved to approve SPA 95-V-031-03 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

SNSA, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SPA 95-V-031-03 Appl. under Sect(s). 4-803 of the Zoning Ordinance amend SP 95-V-031 previously approved for billiard hall to permit the addition of a dance hall and change in permittee. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8, CRD and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Admin. moved from 1/13/09 and 2/24/09 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicant is the owner of the property.
2. The Board has a staff report recommending approval.
3. The Board adopts the rationale in the staff report.
4. While the Board sees the issues raised in the anonymous letter, the staff explanation is satisfactory.
5. With the changes to the development conditions, particularly the two-year time limit, the Board has put adequate controls on the use.
6. The Board will be reviewing the application in a few months, as Development Condition 20 requires not only that the application be filed within two years, but be approved within two years.
7. The Board will have a better handle when the application is again reviewed as to whether the addition of a relatively small dance floor and a small area for dancing, limited to 64 people, is going to materially change the use.
8. With this type of use, other factors, such as alcohol, big crowds, or the time of closing, usually contribute to parking lot issues late at night.

9. It is unknown whether there is a direct correlation between the size of the dance floor or number of dancers and the problems in the parking lot.

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

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

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

1. This approval is granted to the applicant only, SNSA, Inc., DBA 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. Other by-right, special exception and special permit uses may be permitted on the lot without a special permit amendment, if such uses do not affect this special permit use.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by R.C. Fields, Jr. and Associates, dated January 9, 2009, 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. 803 of the Zoning Ordinance.
5. There shall be a maximum of twenty-six (26) billiard tables and 84 seats in the facility, located at 6220 Richmond Highway.
6. The dance hall use is limited to the 960 square foot dance floor identified on the floor plan included as Attachment "A" to these conditions. The maximum occupancy load of the dance floor area shall be sixty-four (64) persons. The maximum occupancy load of the premises shall be four hundred and seventy-five (475) people, including employees, or a lesser number if determined by the Fire Marshall or Department of Public Works and Environmental Services under applicable regulations.
7. The hours of operation of the billiard hall shall not exceed 10:00 A.M. to 2:00 A.M. daily.
8. The hours of operation of the dance hall are limited to Fridays, Saturdays, Sundays, and Mondays between the hours of 8:00 P.M. to 1:00 A.M. During these times, entry to the establishment shall be limited to patrons twenty-one (21) years of age and older.
9. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Public Works and Environmental Services (DPWES).
10. A six foot high board on board fence shall be provided within ten (10) feet of the northern property line as shown on the special permit plat. The barrier requirement shall be waived along all other property lines. Ten (10) feet of planting along the northern property line shall be placed along the outside of the board on board fence and the plant materials shall be approved by the Urban Forestry Branch, DPWES.
11. Transitional screening shall be waived along all other property lines.

12. Interior parking lot landscaping shall be provided as shown on the special permit plat and as approved by the County Urban Forestry Branch, DPWES.
13. Interparcel access shall be provided to Lot 22B to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County.
14. The entrance on Jamaica Drive shall be limited to "Entrance Only" and shall be gated at 9:30 P.M. The entrance shall be narrowed to a one-way width, but shall be a minimum of 18 feet wide to allow access for emergency vehicles.
15. The applicant shall provide a minimum of one (1) security guard to police the parking lot area Fridays, Saturdays, Sundays, and Mondays from the hours of 9:00 P.M. until closing.
16. A minimum of two (2) security guards shall be assigned to the business entrance to validate the age of patrons and to ensure compliance with the maximum occupancy load requirement for the billiard hall and dance floor uses on Fridays, Saturdays, Sundays, and Mondays.
17. The applicant shall police the premises for trash and debris on a daily basis.
18. The applicant shall comply with the applicable Alcoholic Beverage Control laws.
19. The applicant shall keep the kitchen doors closed at all times, except for ingress/egress, to minimize the impact of noise on the adjacent community.
20. The dance hall use shall be approved for a period of twenty-four months from the approval date of this special permit. A special permit amendment must be filed prior to the expiration date and approved by the BZA or the dance hall use shall cease at the end of the twenty-four month period.

These development conditions incorporate and supersede all previous development conditions.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless 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 4-0. Mr. Byers was not present for the vote. Mr. Hammack recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107). (Decision deferred from 2/24/09) (Moved from 3/3/09, inclement weather)

Chairman Ribble noted that VC 2008-MV-008 had been administratively moved to the April 21, 2009 meeting at the applicant's request.

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~ ~ ~ April 14, 2009, Scheduled cases of:

9:00 A.M. LYNN HARVEY TJEERDSMA, SP 2008-MV-085 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 and eave to remain 3.9 ft. from side lot line. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15 (Concurrent with VC 2008-MV-006). (Decision deferred from 11/18/08 and 1/27/09)

LYNN HARVEY TJEERDSMA, VC 2008-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15. (Concurrent with SP 2008-MV-085). (Decision deferred from 11/18/08 and 1/27/09)

Chairman Ribble called the case.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant had requested that the hearing be deferred, and suggested the July 28, 2009 meeting.

Mr. Beard moved that SP 2008-MV-085 and VC 2008-MV-006 be deferred to July 28, 2009, at the applicant's request.

Mr. Smith and Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Byers was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. JOSEPH TAHAN, SP 2009-SU-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.0 ft. from side lot line. Located at 12516 Thompson Rd. on approx. 21,821 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((1)) 78.

Chairman Ribble called the applicant to the podium.

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

Joseph Tahan, 3603 Lamplight Drive, Fairfax, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a special permit to allow construction of an addition 16.0 feet from the eastern side lot line. A minimum side yard of 20 feet is required. She stated that construction had already commenced on the site, noting a December 1, 2008 building permit had been turned down by the Zoning Permit Review Branch because it encroached into the minimum side yard and needed a special permit. Ms. Caffee stated that staff recommended approval of the application subject to the proposed development conditions.

In response to several questions by Mr. Hart, Ms. Caffee explained that there was no copy of a building permit in the file since the permit was never processed. The only information available to staff was gathered from the Fairfax Inspections Database Online, showing that a building permit was applied for on December 1, 2008. She said the applicant would have to address when the construction began and how it began without a building permit in place.

Ms. Caffee stated that Jessie Ruckert was the applicant and contact person for the building permit, not the applicant. Mr. Hart commented that he had received a letter stating that Mr. Ruckert was deceased and the application was a ruse. Ms. Caffee said the applicant could better address the issue.

Mr. Hammack noted that the applicant had been issued electrical and plumbing permits. Ms. Caffee said those permits were separate from the building permit and believed a stop work order was placed on the plumbing permit.

In response to a question from Mr. Hammack, Ms. Caffee said the septic field issue had just come to her attention, but that the Health Department was now involved in the process. She noted that if the Board approved the proposed addition, the capability of the septic field to handle a larger occupancy would be determined when the applicant applied for a plumbing permit.

Mr. Tahan presented the special permit request as outlined in the statement of justification submitted with the application. He said a room and an enclosed porch were already within the footprint of the house, but in bad condition. He torn them down and started to combine these two extensions into one unified structure. Mr. Tahan said the Health Department inspected and approved the septic field and plumbing, but required him to move the washing machine to connect with the septic tank. He stated that work on the existing structure was complete with all permits having been submitted separated and approved.

In response to a question from Mr. Hammack, Mr. Tahan said Jessie Ruckert was the previous owner who was deceased. His spouse died in 2008 and the property was sold through their daughter. He said that when he applied for the building permit, the records had not been updated and still showed the previous owners.

Mr. Hart and Mr. Tahan discussed the history of the application, with Mr. Tahan stating that this was his first experience with a building permit and he did not know a special permit was necessary to rebuild a structure that was already on the site.

Chairman Ribble called for speakers.

Euhl H. Banks, Jr., 12514 Thompson Road, stated his property abuts the subject property and indicated his support for the application.

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

Mr. Hammack moved to approve SP 2009-SU-006 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

JOSEPH TAHAN, SP 2009-SU-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 16.0 ft. from side lot line. Located at 12516 Thompson Rd. on approx. 21,821 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((1)) 78. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable staff recommendation.
3. The application satisfies the requirements of Sect. 8-006 and the additional standards under 8-922.
4. The applicant has met the six required standards as set forth under Sect. 8-922 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 the provisions of the reduction of certain yard requirements as contained in Sect(s). 8-922 of the Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by David T. Currin, Tri-Tek Engineering, dated December 5, 2008, signed through December 8, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (758 square feet existing + 1,137 (150%) = 1,895 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance.

Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.
5. The applicant shall obtain all applicable permits required to complete the construction, including plumbing, electrical, and septic.

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

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

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

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. TINA LE, SP 2009-LE-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.5 ft. from side lot line. Located at 7421 Renee St. on approx. 22,158 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((7)) 9.

Chairman Ribble called the applicant to the podium.

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

Tina Le, 7421 Renee Street, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a reduction in minimum yard requirements to allow an enclosed carport addition to remain 13.5 from the side lot line. She noted that the Zoning Ordinance required a minimum side yard of 20.0 feet, requiring a modification of 6.5 feet, 32.5% reduction.

Ms. Le presented the special permit request as outlined in the statement of justification submitted with the application. She said that the carport was enclosed to a garage shortly after she purchased the property in June of 2008 and was being used as living space. Ms. Le said she did not realize there was a problem with the carport/garage space until she received a Notice of Violation.

In response to a question from Mr. Hart, Ms. Caffee stated that the steps coming off the retaining wall were allowed by right.

Chairman Ribble called for speakers.

Hassan Edjlali stated he was a neighbor of the applicant. He noted that she had made numerous improvements to the property and stated his support of their request.

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

Mr. Byers moved to approve SP 2009-LE-010 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

TINA LE, SP 2009-LE-010 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.5 ft. from side lot line. Located at 7421 Renee St. on approx. 22,158 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((7)) 9. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant has complied with requirements A through G of Sect. 8-914 of the Zoning Ordinance.

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

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

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

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

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

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

- 1. This special permit is approved for the location of the addition (enclosed carport) as shown on the plat prepared by Charles Andrew L. Westerman, Alexandria Surveys International, LLC., dated October 14, 2008, revised through February 26, 2009, submitted with this application and is not transferable to other land.
- 2. Within 120 days of approval of this application, building permits for the addition shall be diligently pursued and obtained or the addition shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

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

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. WILLIAM C. VEALE AND DEBORAH C. VEALE, SP 2008-SP-088 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction an addition 23 ft. from the rear lot line and an addition 18 ft. from the rear lot line and 5.0 ft. from side lot line such that side yards total 15.8 ft. Located at 9214 Bexleywood Ct. on approx. 9,744 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 246. (Decision deferred from 1/6/09)(Admin. moved from 3/3/09 for ads)

Chairman Ribble called the applicants to the podium.

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

Jeremy Fleming, 5795 Burke Center Parkway, Fairfax, Virginia, agent for the applicants, reaffirmed the affidavit.

Shannon Caffee provided an update of this application for the Board since the last hearing in January of 2009. She noted that due to design issues, the application had been deferred for decision. Ms. Caffee stated that the applicants were still requesting approval of two special permits. The first was unchanged; i.e., to allow the construction of a two story addition with living space above and storage below. The revised second request was to allow construction of a deck with lattice screening and storage below approximately 18 feet from the rear lot line, such that side yards totaled 20.6 feet. She stated that the applicants had amended the design to no longer encroach further in the side yard than the existing dwelling. Ms. Caffee said staff now recommended approval for the application in whole subject to the proposed development conditions.



Mr. Fleming thanked the staff for working so closely with the applicants on the redesign of the additions. He said the reworked design now had the approval of the Barrington Homeowners Association.

Chairman Ribble called for speakers.

Bill Cooper, Vice President of the Barrington Homeowners Association, said he was only present to make sure the plans presented to the Homeowners Association were the same ones before the Board today.

In rebuttal, Mr. Fleming stated that there had been a mistake in the plans submitted for the staff report that was caught, but he had resubmitted a revised correct floor plan to Ms. Caffee. He said that information was contained in the Staff Report Addendum given to the Board before the start of the hearing.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2008-SP-088 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

WILLIAM C. VEALE AND DEBORAH C. VEALE, SP 2008-SP-088 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction an addition 23 ft. from the rear lot line and an addition 18 ft. from the rear lot line and 5.0 ft. from side lot line such that side yards total 15.8 ft. Located at 9214 Bexleywood Ct. on approx. 9,744 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 246. (Decision deferred from 1/6/09)(Admin. moved from 3/3/09 for ads) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicants are the owners of the property.
2. The property is zoned PDH-2.
3. The application meets all the requirements of Sect. 8-922.
4. The applicant has gone to great lengths to meet with the homeowners association and to work with staff, eventually obtaining the approval, effectively, of both.
5. The applicant reduced the side yard infringement by increasing the side yard setback.
6. The applicant decreased the rear yard setback, which is a favorable situation since it backs up on park 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 the provisions of reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of the proposed two story addition (conservancy with storage below) and one story addition (roofed deck with lattice below) as shown on the plat prepared by Timothy D. Farrell, B.W. Smith and Associates, Inc., dated April 1, 2008, revised through March 18, 2009 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (6,187 square feet existing + 9,280.5 (150%) = 15,467.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. AMY AND JEFFREY WILCOX, SP 2009-DR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.5 ft. from side lot line. Located at 1709 Forest La. on approx. 11,240 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 2.

Chairman Ribble called the applicant to the podium.

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

Andrew Golkin, agent for the applicant, 15687 Alderbrook Drive, Haymarket, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a special permit to allow construction of an 8.6 square foot chimney addition, 11.5 feet from the northern side lot line. She noted that a modification of 0.5 feet or 4% was being requested. Ms. Hedrick stated that staff recommended approval of the application subject to the proposed development conditions.

In response to a question from Mr. Beard, Ms. Hedrick confirmed an addition to the house had been approved by the Board in 1999. She said this request was just to add a chimney.

Mr. Golkin presented the special permit request as outlined in the statement of justification submitted with the application. He said the chimney would be added to the north side of the property since it appeared to be the best place for it when considering the sight lines from adjacent properties.

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

Mr. Beard moved to approve SP 2009-DR-008 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

AMY AND JEFFREY WILCOX, SP 2009-DR-008 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 11.5 ft. from side lot line. Located at 1709 Forest La. on approx. 11,240 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 2. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicants are the owners of the property.
2. The applicants have met all requirements of Sect. 8-922.
3. The basic request was addressed under the variance approval in February of 1999, and just a chimney is being added.
4. This is just a small adjustment of four percent for a chimney.
5. Staff recommends approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a chimney addition (8.6 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC, dated October 21, 2008, signed October 27, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,108 square feet existing + 3,162 square feet (150%) = 5,270 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. MARK PRICE, SP 2009-DR-009 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 22.2 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 9.5 ft. from rear lot line. Located at 8338 Springhaven Garden La. on approx. 37,157 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 24C and 24E.

Chairman Ribble noted that SP 2009-DR-009 had been administratively moved to the April 21, 2009 meeting at the applicant's request.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:00 A.M. ANTHONY NGUYEN, SP 2008-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 3811 Whispering La. on approx. 14,543 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((13)) 241. (Admin. moved from 2/10/09 and 3/31/09 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Nicki Fung, the applicant's daughter, and Anthony Nguyen, 3811 Whispering Lane, Falls Church, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of an accessory dwelling unit in the basement. She said the applicant would modify the design of the lower level in order to restrict the total floor area of the accessory dwelling unit, resulting in a 605 square foot living area. Ms. Johnson said it would include two bedroom, two bathrooms, shared laundry/utility room, and a full kitchen, noting that the applicant's 77-year-old mother would occupy the space. She said staff recommended approval of the application subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Johnson stated that the applicant purchased the property in 2003, and the second kitchen and bath were already in the existing dwelling. She said there were no records showing a building permit had ever been issued or inspections made on the property.

Mr. Hart asked if this was Mason District case that Supervisor Gross recently mentioned where an application for an accessory dwelling unit had been deferred so that the applicant could turn 55.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that this was the case Supervisor Gross referred to. She noted that this case originally came before the BZA as an appeal and it was suggested that

the applicant apply for a special permit. Ms. Langdon stated that the Zoning Ordinance requires that either the occupant of the main residence or the occupant of the accessory dwelling unit has to be 55 or older, or handicapped.

In response to a question by Chairman Ribble, Ms. Fong said she would be speaking for her father. She then presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Fong stated that the facilities had already been installed when her parents bought the house. She said her grandparents were going to live in the basement, noting that her grandmother had health problems.

Mr. Byers and Ms. Langdon discussed Supervisor Gross' objection to the application, with Ms. Langdon noting that the problem lay with how long it was taking to get to the public hearing. She stated that she had contacted Supervisor Gross and explained the situation.

In response to a question from Mr. Hart, Ms. Fong said she went over the proposed development conditions with her father and he agreed to them.

In response to a question from Chairman Ribble, Ms. Johnson stated that she had met with the applicant on site and discussed the proposed development conditions with him.

Chairman Ribble called for speakers.

Bob Saylor, 3812 Whispering Lane, Falls Church, Virginia, spoke in opposition to the request. He said the residence was a boarding house which had a series of borders over the years. Mr. Saylor said he had never seen an elderly person at the house, only several middle-aged and younger people coming and going.

Mr. Hart, Ms. Langdon, and Ms. Fong discussed the allowable age for the occupants of an accessory dwelling unit. Ms. Fong noted that her grandparents were living at the house but went back to their country for the birth of a baby and planned on returning in the next couple of months.

There being no further speakers, Mr. Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-MA-097 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

ANTHONY NGUYEN, SP 2008-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3811 Whispering La. on approx. 14,543 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((13)) 241. (Admin. moved from 2/10/09 and 3/31/09 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 14, 2009; and

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

1. The applicant is the owner of the property.
2. The staff recommends approval.

AND 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, the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, and the other applicable sections 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, Anthony H. Nguyen, and is not transferable without further action of this Board, and is for the location indicated on the application, 3811 Whispering Lane (14,543 square feet), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the house location survey plat prepared by The Engineering Groupe, Inc., D/B/A Absolute Surveys, dated September 19, 2002, signed September 24, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The 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 a maximum of 605 square feet, including a maximum of two bedrooms as shown on Attachment 1.
6. The applicant shall remove the carport structure from any minimum required yards, or bring it into conformance with the Zoning Ordinance within 30 days of approval of this special permit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulations and inspections for building, safety, health, and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance, or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. A building permit and all required final inspections shall be obtained for the accessory dwelling unit. If access is required by building code from the recreation room to the outside basement stairs, a door shall be installed between the recreation room and the kitchen.
11. Parking shall be provided as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established. 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. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:30 A.M.           SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Admin. moved from 8/7/07 and 11/6/07 at appl. req.) (Decision deferred from 2/26/08, 5/13/08, 6/17/08, and 12/16/08)

Chairman Ribble noted that the applicant had requested a deferral of A 2007-LE-017 to October 27, 2009.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, stated that there were still some outstanding issues with the special exception and special permit applications which the staff and appellant were working through.

Mr. Byers moved that A 2007-LE-017 be deferred to October 27, 2009, 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.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:30 A.M.           RDA, INC., T/A EASTERNS AUTOMOTIVE GROUP, A 2008-PR-074 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a storage yard to be operated on property in the C-7, H-C and SC Districts in violation of Zoning Ordinance provisions. Located at 8590 Leesburg Pi. on approx. 3.59 ac. of land zoned C-7, HC and SC. Providence District. Tax Map 29-3 ((1)) 54A.

Chairman Ribble called the case.

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

Mavis Stanfield, Deputy Zoning Administrator for Appeals, said staff requested that the case be dismissed. She said the violation had been cleared.

Mr. Byers moved that A 2008-PR-074 be dismissed. Mr. Smith seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:30 A.M.           JOHN DENNIS HALL JR., CYNTHIA R. BAUSO, A 2008-LE-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining outdoor storage, have erected a fence in excess of four feet and an accessory storage structure all in the front yard, and are allowing the parking of a vehicle on the unpaved surface of the front yard on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62. (Deferred from 7/1/08, 8/5/08, 10/7/08, and 1/6/09 at appl. req.)

Chairman Ribble noted that the applicant had requested a deferral of A 2007-LE-011 to July 7, 2009.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, asked that the Board open the public hearing and continue the proceedings to July 7, 2009.

Mr. Smith moved to continue A 2007-LE-011 to July 7, 2009. Mr. Byers seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:30 A.M. FLEET PROPERTIES, INC., A 2008-PR-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Storage Yard, a Junk Yard, and a Contractor's Offices and Shops on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit and is allowing overflow parking from Columbia College, Inc. on the property without an approved shared parking agreement, all in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 and 1/13/09 at appl. req.)

Chairman Ribble called the case.

Mr. Hart gave a disclosure and indicated that he would recuse himself from the public hearing.

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

Chairman Ribble noted that the appellant had requested a deferral of A 2008-PR-035.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, said the appeal had been going on for quite a while. She said Mark Jenkins, agent for the appellant, told her a site plan had very recently been submitted. Ms. Stanfield said it was staff's position that without the incentive of legal action, the chances are not likely that the site plan would be actually completed, approved, and implemented. She said staff recommended that the Board not grant the deferral request and uphold the Zoning Administrator's position.

Mark Jenkins, agent for the appellant, said the minor site plan application that would resolve the issues was filed the previous day. He confirmed the filing with the engineer. Since the Board last met about the appeal, he said the appellant felt it was necessary to go to several engineering/survey firms given the reality of the present day economy to get the best price. Mr. Jenkins noted that a contract was signed in early March to prepare a site plan. He pointed out that the towing company that was present on the property was the biggest problem with the site and that it was no longer there. Mr. Jenkins felt there had been steady progress and asked that the Board allow the appeal to be deferred to permit the site plan to be completed. He suggested a July meeting date.

In response to a question from Mr. Beard, Mr. Jenkins said that if the Zoning Administrator was upheld, he would then have to file an appeal and divert their resources to attorneys. He reiterated his disagreement with staff that there has not been any progress with the appeal.

Ms. Stanfield stated that if the Board upheld the Zoning Administrator and Mr. Jenkins filed an appeal, Mr. Jenkins and the County Attorney would work out a reasonable time frame for resolving the matter.

Mr. Jenkins stated he was not aware of any authority to modify statutory appeal hearings. He asked for this one deferral so the actual issues could be addressed.

Chairman Ribble called for speakers to address the deferral request. There were none.

Mr. Hammack moved to continue the hearing to July 7, 2009. He said the progress had been slow, but understood the appellant's desire to obtain the least expensive engineering cost for the site plan. Mr. Hammack stated that inasmuch as the minor site plan was filed the previous day, it was a significant step towards getting the issues corrected.

Mr. Beard seconded the motion.



Mr. Byers said he would not support the motion, since the appeal had been ongoing since July of 2007. He felt the Board had already given the appellant more than enough time and said the Zoning Administrator should be upheld.

The motion carried by a vote of 4-1 with Mr. Byers opposed. Mr. Hart recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, Scheduled case of:

9:30 A.M. K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Contractor's Office and Shop on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 and 1/13/09 at appl. req.)

Chairman Ribble called the case.

Mr. Hammack stated that he thought this case and the previous one were being held together. He said his motion addressed both appeals.

Mark Jenkins, attorney representing Fleet Properties, said that although these appeals had always been companion cases, he did not represent K&H Lawn Services.

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

Chairman Ribble noted that the applicant had requested a deferral of A 2008-PR-036.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, referred to her previous objection to a deferral of the appeal.

Chris York, owner of K&H Lawn Services, 8300 Merrifield Avenue, Fairfax, Virginia, asked that this appeal be deferred to July 7, 2009.

Mr. Hammack moved to continue A 2008-PR-036 until July 7, 2009, for the reasons stated in the previous case. Mr. Beard seconded the motion which carried by a vote of 4-1 with Mr. Byers opposed. Mr. Hart recused himself from the hearing. Ms. Gibb was absent from the meeting.

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~ ~ ~ April 14, 2009, After Agenda Item:

Request for Additional Time  
George d'Angelo, VC 2006-DR-003

Mr. Byers moved to approve 24 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was March 19, 2011.

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~ ~ ~ April 14, 2009, After Agenda Item:

Approval of April 8, 2008 and April 29, 2008 Minutes


Mr. Beard moved to approve the minutes from the April 8, 2008 and April 29, 2008 meetings. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Suzanne L. Frazier

Approved on: November 3, 2009

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 21, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.; Thomas Smith was absent from the meeting.

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

~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107). *(Decision deferred from 2/24/09) (Moved from 3/3/09, inclement weather) (Admin. moved from 4/14/09 at appl. req.)*

Chairman Ribble called the applicants to the podium.

Mr. Hart made a disclosure that his law firm had hired the applicant's agent, and used her as an expert witness in a case in Richmond. That case was over, and he indicated he did not believe his ability to participate in the case would be affected.

Shannon Caffee, Staff Coordinator, informed the Board that the applicants had requested a deferral of their case to July 28, 2009, and staff concurred with the deferral.

As there were no speakers in the audience to speak to the issue of deferral, Chairman Ribble called for a motion.

Mr. Beard moved to defer SP 2008-MV-1007 to July 28, 2009, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. DAVID & JULIE RIFE, SP 2009-MV-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 8827 Camfield Ct. on approx. 14,656 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((5)) (3) 35.

Chairman Ribble called the applicants to the podium.

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

David Isaac, 3033 Silent Valley Drive, Fairfax, Virginia, the designer and applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-MV-012, subject to the proposed development conditions.

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

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

Mr. Hammack moved to approve SP 2009-MV-012 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

DAVID & JULIE RIFE, SP 2009-MV-012 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 8827 Camfield Ct. on approx. 14,656 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-2 ((5)) (3) 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 April 21, 2009; and

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

1. The applicants are the owners of the land.
2. The applicants have satisfied all of the six enumerated standards set forth in that section of the Ordinance.
3. There is a favorable staff recommendation.
4. There is a letter of support signed by four neighbors on Camfield Court.

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. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by George M. O'Quinn, Dominion surveyors, Inc., dated April 28, 2008, revised through January 21, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,968 square feet existing + 2,952 (150%) = 4,920 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.
5. Prior to approval of the final building inspection for the addition, the existing paved area adjacent to the proposed garage shall be removed and the area scarified and mixed with topsoil. At least 5 evergreen trees, a minimum of 6 feet in height and a maximum of 10 feet apart, shall be planted in the area between the garage and the southern lot line.

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

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

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

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~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. SUSAN D. SHANNON, SP 2008-BR-099 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 5400 Glenallen St. on approx. 16,229 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (19) 18. *(Admin. moved from 1/13/09 for notices.) (Moved from 3/3/09, inclement weather.)*

Chairman Ribble called the applicant to the podium.

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

Susan D. Shannon, 5400 Glenallen Street, Springfield, Virginia, reaffirmed the affidavit.

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

In response to Mr. Hart's question concerning the fence's height, Ms. Hedrick said the measurement of the fence was taken from the surveyor.

Jim Ciampini, Property Maintenance Supervisor, Zoning Enforcement, reviewed the notes taken by the site inspector Leo Conrad. In the interim, Chairman Ribble continued the case, calling upon the applicant.

Ms. Shannon presented the special permit request as outlined in the statement of justification submitted with the application. She explained the heights of the split-level portion of the house's measurements in relation to the surrounding fence. The fence was there when she purchased the house, and there were no issues. She added that the fence had been there for 15 years.

Mr. Hammack questioned what had happened to the first violation. It was clarified that there was only one violation, but there had been three different inspectors.

Mr. Ciampini noted the measurements taken by Inspector Mertz reported that certain areas of the fence were 6.6 feet in height.

In response to Mr. Beard's questions, Mr. Ciampini said that the original inspector, Leo Conrad, had informed him there were no sight distance problems with this corner lot.

In response to Ms. Gibb's question concerning other fences in the neighborhood, Ms. Shannon concurred that there were several others also 6.0 feet in height.

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

Mr. Byers moved to approve SP 2008-BR-099 for the reasons stated in the Resolution.

Discussion followed concerning the motion. Mr. Hart commenting that he supported the motion, but his concern was over the field measurement of 6.6 feet, as the Board was approving a 6.0-foot fence. He said

there may be another violation, because of the neighbor's complaint. He was unsure what could be done about that, or what portion of the fence would be cut down, but he thought the approval could not be taller than 6.0 feet.

Chairman Ribble said he was not convinced about the field measurements several years ago, and was not sure what, if anything, may have changed.

At Mr. Hammack's request concerning guidelines for measurement, Ms. Shelby Johnson, Department of Planning and Zoning, explained the Ordinance language pertaining to fence heights, posts, applicable lattice work, and post caps. There was discussion regarding the point from which the fence was measured in the original inspection where it was said to be 6.6 feet in height.

Ms. Hedrick said staff recently re-measured the property specifically for the height of the fence with certification at a maximum of 6.0 feet.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SUSAN D. SHANNON, SP 2008-BR-099 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 5400 Glenallen St. on approx. 16,229 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (19) 18. (Admin. moved from 1/13/09 for notices) (Moved from 3/3/09, inclement weather) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 21, 2009; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,229 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. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Dominion Surveyors, Inc., dated March 17, 2005 as revised through September 17, 2008, as submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. MARK PRICE, SP 2009-DR-009 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 22.2 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 9.5 ft. from rear lot line. Located at 8338 Springhaven Garden La. on approx. 37,157 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 24C and 24E. (*Admin. moved from 4/14/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Mark Price, 8338 Springhaven Garden Lane, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-DR-009, subject to the proposed development conditions.

In response to Mr. Hart's question concerning patios versus front walkways, Ms. Hedrick explained the particulars of the structure with regard to the walkway, and the fact that it was a zoning issue requiring a special permit.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, further explained the Ordinance requirements and standards for patios versus decks, and walkway.

Mr. Price presented the Special Permit request as outlined in the statement of justification submitted with the application.

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

Mr. Hart moved to approve SP 2009-DR-009 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARK PRICE, SP 2009-DR-009 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 22.2 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 9.5 ft. from rear lot line. Located at 8338 Springhaven Garden La. on approx. 37,157 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 24C and 24E. (*Admin. moved from 4/14/09 at appl. req.*)  
Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 21, 2009; and

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

1. The applicant is the owner of the land.
2. With respect to the accessory structure, the Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. The lot is very oddly shaped; very wide and shallow.
5. The house is to one side; the drainfield right next to the house and taking up most of the rest of the

- width of the lot.
6. The only place the pool house could fit by-right would be in the far side of the drainfield, which is not practical or feasible; where they placed it is kind of at the top of a hill.
  7. The adjacent neighbor who would be most affected is supportive of it.
  8. Based on the record before the Board, this is going to be concealed enough with landscaping that it is not going to bother anybody.
  9. With the renderings that are shown, it is going to be a very high-quality structure.
  10. There should not be any negative impact on anybody.
  11. With respect to the mistake section application, the patio in the front, there has been good faith shown that this gentleman purchased the home from a previous owner; the builder or whoever did it, it was done for the previous owner.
  12. It looks in the photographs just like front steps for a house, and it is not sure how it was classified as a patio or under what circumstances, but it is not bothering anybody.
  13. It seems perfectly logical to have steps coming straight out from the front door down to the driveway; if you did not have it, it is not known how you would get from the door to the driveway.
  14. The Board has found that all the standards have been met.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. This special permit is approved for the location and size (540 square feet) of an accessory structure (pool house), as shown on the plat prepared by Highlander Surveying Services P.C., dated September 4, 2008 as revised through February 17, 2009, as submitted with this application and is not transferable to other land.
2. The accessory pool house shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.



3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

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

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

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~ ~ ~ April 21, 2009, Scheduled case of:

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

Chairman Ribble noted that SPA 81-A-022-09 had been administratively moved to April 28, 2009, at 9:00 a.m., at the at the applicants' request.

Shelby Johnson, Staff Coordinator informed the Board that the case was subsequently moved to May 19, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville and Hunter Mill Districts. Tax Map 18-3 ((1)) 6. *(Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, 9/16/08, 11/4/08, 12/16/08, 2/24/09, and 3/24/09 at appl. req.)*

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm had two cases where the attorneys from the Prince William office of the applicant's agents/attorneys represented other parties, but they had nothing to do with this application. He indicated he did not believe his ability to participate in the case would be affected.

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

Sara V. Mariska, Esquire, Walsh, Colucci, Lubeley and Walsh PC, 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, reaffirmed the application.

Shelby Johnson, Staff Coordinator, made staff's presentation. Originally staff recommended approval, but recent concerns from the Virginia Department of Transportation (VDOT) made staff reconsider, and now felt they could not recommend approval.

Addressing Chairman Ribble's question of how this last minute issue came about, Martha Coella, Fairfax County Department of Transportation (FCDOT), explained staff held discussions with VDOT concerning the left-turn lane, with last minute reconsideration of providing right-of-way on the north side of Sunset Hills Road instead of the church's proposed south side. VDOT cited a grading issue and also tapered/transmission lanes were problematic. Ms. Coella said staff felt there was a workable solution, but additional time was needed to develop a solution.

At Chairman Ribble's request for clarification of why this was a last minute matter, Ms. Coella explained that VDOT originally believed it was a workable design, but the site reviewer and Paul Kraucunas, with VDOT, reviewed it that morning, and found it was not a workable design.

Michael Davis, FCDOT, added that although it was unfortunate that this was a last minute matter, staff wanted to assure the applicant's proposal would be approvable. Mr. Davis also noted that there was still an outstanding issue, although not considered significant, with the design which was discussed that morning with VDOT in an effort to resolve it before the meeting.

Discussion ensued regarding the application's previous deferrals, and whether the case could go forward or if it needed to be deferred. Ms. Johnson recommended a deferral date of June 23, 2009, but staff preferred a two-week deferral.

Ms. Johnson suggested a deferral date to May 5, 2009.

Chairman Ribble asked if there was anyone present who wished to address the matter of deferral.

John Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, came forward to speak. At the request of the Chairman, Mr. Thoburn took the oath affirming that his testimony would be the truth. He explained that he was the adjoining neighbor to the church, and did not believe VDOT could resolve the issue in two weeks. He began to argue that he did not agree a turn lane was needed at all.

Chairman Ribble interjected that Mr. Thoburn must address his comments solely on the matter of a deferral.

Mr. Thoburn restated the church should not be required to spend thousands of dollars on an unnecessary turn-lane so a deferral was not necessary. He stated that the church should be allowed its public hearing that morning, and the Board should approve the application. He adamantly claimed that VDOT would not make its decision within a couple of weeks.

Chairman Ribble called for a motion.

Ms. Gibb then moved to continue SPA 82-D-047-02 to May 5, 2009, at 9:00 a.m. Mr. Hammack seconded the motion.

In response to Mr. Hart's concern over re-advertising, Ms. Johnson said continuing the hearing within 30 days did not require re-notification.

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

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~ ~ ~ April 21, 2009, Scheduled case of:

9:00 A.M. VIENNA HERITAGE CENTER, SP 2007-DR-085 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 10602 Leesburg Pi. on approx. 2.23 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 49. (Deferred from 1/10/30/07, 1/29/08, and 7/29/08 at appl. req.) (Admin. moved from 4/1/08 for notices.)

Chairman Ribble noted that SP 2007-DR-085 had been deferred indefinitely.

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~ ~ ~ April 21, 2009, Scheduled case of:

9:30 A.M. MATTHEW D. FERGUSON, A 2008-PR-049 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has conducted land disturbing activities by installing a brick and slate walkway in the side yard and has altered the pre-existing drainage swell without an approved grading plan in violation of Zoning Ordinance provisions. Located at 1907 Gables La. on approx. 11,102 sq. ft. of land zoned R-3 and H-C. Providence District. Tax Map 39-1 ((32)) 40. (*Admin. moved from 10/28/08 and 1/27/09 at appl. req.*)

Chairman Ribble noted that A 2008-PR-049 had been administratively moved to June 30, 2009, at 9:30 a.m., at the applicant's request.

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~ ~ ~ April 21, 2008, Scheduled case of:

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

Chairman Ribble noted that this appeal was for decision only.

Mr. Hart made a disclosure that after the original hearing his law firm had engaged the applicant's agent as an expert witness. That matter was ongoing, and Mr. Hart indicated he would recuse himself from the rest of the hearing.

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

Doug W. Hansen, Staff Coordinator, Zoning Administration Division, made staff's presentation. Staff's opinion was that waiting for an answer regarding the road frontage improvements was not an excuse for inactivity on a site plan, and should not be the basis for preventing completion of a majority of the site plan. Ten months had transpired since the original BZA hearing, and the appellant still had not authorized development of a complete site plan for the property despite the continuances granted by the BZA. Staff continued to believe the appellant had not made a good faith effort to bring the property into compliance, and staff believed the appellant would not come into compliance absent further action by the BZA. Therefore, staff requested the BZA uphold the determination of the Zoning Administrator as contained in the original Notice of Violation, so that legal action may be initiated to bring the property into full compliance with the Zoning Ordinance.

Vice Chairman Hammack assumed the Chair and recognized Mr. Beard.

In response to Mr. Beard's request for clarification, Mr. Hansen stated that the contract had not been finalized, and there was no authorization given to complete the site plan beyond the waiver of road frontage improvement. Mr. Hansen then listed the dates of actions taken on the application, at Mr. Beard's request. He conceded that staff was unsure whether there was encroachment onto the RPA, and staff was unable to affirm exactly how close it may be.

Chuck Cohenour, Senior Zoning Inspector, responded to Mr. Beard's question concerning whether staff had been denied access to the property. An aerial sighting made it unnecessary for a scheduled site visit. He added that it appeared from the aerial view that Danella was encroaching into the sensitive area.

Chairman Ribble assumed the Chair.

J. Charles Curran, Esquire, Counsel for the Cronan appellant, Kidwell, Kent & Curran, Woodson Square 9695 C. Main Street, Fairfax, Virginia came forward, and gave the following information: the contract timeline and situation; that the contract was going forward towards site plan; facts concerning the invitations to staff welcoming them to conduct inspections and ascertain the RPA matter, to which they had continually refused; he disagreed with staff's determination that the appellant was not acting in good faith; and, proceeded to give the history of the property. Mr. Curran noted that the majority of items cited by Zoning Enforcement were corrected, and enforcement action was unnecessary. He disagreed with staff's position that as an outdoor storage yard, the use was limited to 250 square feet, and that the use was permitted in an I-5 District. He recalled the December 16, 2008, BZA meeting when, at that time, the appellant did not have the cooperation of Fairfax Hydrocrane. He then filed an unlawful retainer on behalf of the appellant, with Fairfax Hydrocrane Company retaining Mr. John Ferrell as their attorney. Mr. Curran said that process had obtained the full cooperation of Fairfax Hydrocrane, and he saw no further impediments to full compliance of the Ordinance. He then requested additional time to file the site plan. He submitted that the long-standing history and service of the business warranted the consideration.

Discussion ensued with Mr. Curran responding to Mr. Beard's question concerning the engineer's authorization and the processing of the site plan.

There was more discussion regarding the appellants given time frame and lack of completion of previously designated requirements. The main issue presented was the lack of any site plan. Mr. Curran explained that a site plan could not be made until the waiver was approved. The purpose of the waiver was to reduce costs. The waiver was not approved, so the appellant needed to submit a new proposal.

Mr. Curran believed the property had been substantially cleaned up, but Mr. Cohenour disagreed, and then specified what still needed to be done.

Chairman Ribble asked if there was anyone else to speak to this appeal.

Frank McDermott, Esquire, came forward, informing the Board that he had not expected to testify, and therefore, should be sworn in.

At the direction of the Chairman, the clerk gave the oath to Francis A. McDermott, Esquire, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, attorney for Danella, Construction Company of Virginia, Inc., who swore his testimony would be the truth. He said he had requested the two appeals, Cronan and Danella, be heard separately, and that the testimony heard that day could affect his client's portion of the property. He explained that the record must be corrected. He argued that the topography made it so that this was not an RPA issue. Mr. McDermott assured that his client would have always allowed County staff access to make site visits. Prompted by Mr. Beard, Mr. McDermott stated that Danella Construction had leased the land from the Cronan family in yearly terms.

John Farrell, agent for Fairfax Hydrocrane Company, came forward to speak, and was administered the oath to swear or affirm that his testimony would be the truth. He explained the matter of the waiver submitted for the site plan. It was clarified that a change in statute stated a waiver submitted by a commercial property must be approved or denied within 60 days. If the county did not act on the application within that time period, then it was considered to be approved.

Discussion ensued regarding the waiver for the site plan, the costs of bringing the property into compliance, and whether the appellant would be able to continue its operations.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, addressed Mr. Hammack's questions concerning the RPA matter. She mentioned the possibility of toxins and fuels being drained and polluting the stream.

Chairman Ribble closed the public hearing.

Mr. Beard addressed Appeal A 2008-SU-008. He commented that he could not imagine the County would move forward with litigation, while the matters were expeditiously being worked out. If he believed there was

good intent on the appellant's part with moving forward with the site plan, and the Zoning Administrator was upheld, he thought he could not see how anything actually changed except that the County may have more authority to assure that things did proceed. Mr. Beard then moved that the BZA uphold the determination of the Zoning Administrator.

Mr. Byers seconded the motion.

For discussion, Mr. Hammack acknowledged that the case was a tough call, but given the testimony heard, he would not support the motion. He said the County had allowed the appellant to operate for years, and now the County sought an immediate remedy. Mr. Hammack said that he had some reservations about not supporting the motion, but there had been cleanup, and progress was being made. He clarified that it was his inclination to defer the decision for 60 days to allow filing of the site plan, and give the process a little more time to work itself out. Mr. Hammack also noted that there were cost issues the appellant must consider, which the County did not appear to care much about.

In response to Chairman Ribble's question whether Mr. Hammack's statement was his substitute motion, Mr. Hammack said he was willing to make it a substitute motion.

Ms. Gibb commented that although sympathetic with the County, she found herself aligning with Mr. Hammack's position. She was unsure of the RPA issue, and believed there should be an on-site visit to ascertain the facts. She would support a deferral, because of the current economic times, the fact that this family business was operating for so long, and that the brothers were cooperating with the County.

Chairman Ribble asked Ms. Gibb if her statements were a second to Mr. Hammack's deferral request, to which she concurred.

Mr. Byers concurred with Mr. Hammack that it was difficult, and he believed everyone took into consideration the current economic times. However, he would point out, with regard to moving quickly, the violation was issued January 30, 2008, and the appellants were notified April 28, 2008 that a site plan must be submitted, and building permits and Non-RUPS obtained. Mr. Byers said it was his judgment that this was a significant amount of time during which the appellant could have taken action and worked with the County for a resolution. He continued that the situation was basically tying the hands of the County, and giving it absolutely no leverage to take any action. It was his concern that months from now, the case would again come before the Board with exactly the same things being said. He said he understood the business was there for a long time, but that did not make it right when everyone in the County had to comply with the same rules. Mr. Byers said he thought 18 months was sufficient time to show some progress, and he did not think that was being done. He recalled that at the initial hearing, he voted to approve additional time, but essentially, the only action taken was getting a determination of a waiver on the frontage. Concluding his remarks, Mr. Byers said initially he thought granting additional time was the right thing to do, but now this second time facing the same issues, he thought the Board should concur with the Zoning Administrator's position.

In response to Chairman Ribble's question, Mr. Curran said it was February 2008 when he was retained by the appellant, and submitted the appeal.

Mr. Beard stated he considered himself very pro-business. He explained that he had supported the initial deferral, and he was very sympathetic to the appellants and their situation. He stated that if there was a good faith effort to move things along and obtain a site plan, then there should be no issue in upholding the Zoning Administrator.

Chairman Ribble commented that he thought the site plan issue was moving along, and after Ms. Gibb's reminder of the current economical times, finding an engineer that would be retained at a reasonable price was probably not easy.

Discussion ensued regarding the pros and cons of upholding the Zoning Administrator versus further deferral of the decision.

Mr. Hammack stated he would consider a 60-day deferral, but for the record, he preferred the original motion of upholding the Zoning Administrator.

Ms. Gibb commented that she thought the waiver was an essential part of the site plan process.

Mr. Beard stated he would withdraw his motion, conditioned upon the seconder, but with the caveat that if after two months there was no site plan or substantial progress evident, he would be very concerned.

Mr. Byers commented that the appellants were advised in April 2008 that they needed a site plan. They could have taken immediate action and would have gone through the whole process to which the case at hand would not be before the Board. Mr. Byers surmised that there were decisions made on how to approach the case, and he thought the decision was not to do anything and essentially appeal it, find out the results of an appeal, and if absolutely necessary go back to seek the waiver and obtain the site plan. He noted that was exactly how the situation had played out. Mr. Byers reminded everyone that when this issue came up, it was not difficult economic times. He said the fact was the issue would have been resolved a long time ago, and certainly resolved before September 2008, when the recession was beginning to be experienced. Mr. Byers stated his opinion was that what had transpired was a plan, that the matter could have been resolved a long time ago, and it was the responsibility of the appellant. He said that basically what was being said was whether they believed the Zoning Administrator was right in her opinion. He thought she was, and that there had been adequate time to resolve this issue.

Mr. Byers then stated that he would defer to Mr. Beard, but noted his substantial concern if, after the deferral time, the application came before the Board with nothing haven been done.

Mr. Beard clarified that he did not mean he disagreed with the Zoning Administrator. He just sought to facilitate a deferral.

Chairman Ribble called for a motion.

Mr. Hammack moved to defer the decision to June 23, 2009 at 9:30 a.m. Ms. Gibb seconded the motion.

In discussion, Mr. Hammack said he too shared the concerns of his fellow colleagues.

Chairman Ribble called for a vote. The motion carried by a vote of 4-0-1. Mr. Byers abstained from the vote. Mr. Hart recused himself from the vote. Mr. Smith was absent from the meeting.

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~ ~ ~ April 21, 2008, Scheduled case of:

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) *(Decision deferred from 12/16/08.)*

Chairman Ribble called the case.

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

Chairman Ribble asked for staff's presentation first.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, stated that staff's presentation was part of the Cronan appeal previously heard.

Francis A. McDermott, Esquire, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, attorney for Danella, Construction Company of Virginia, Inc., who was a tenant on a portion of Lot 12, came forward. He stated that his client wanted to be in compliance, but was not the owner of the land, could not pursue the site plan, should not have the burden of any frontage improvements, and could not provide stormwater management just for its own site. Mr. McDermott added that his client could not get a building

permit, as the land owner must sign off on it. He noted that it was a huge cost for roadside improvements, of which his client had no desire to participate in, being a tenant with no responsibility to do so. Mr. McDermott continued that his client was present as a tenant on a portion of the property, and the violations, notices and issues did not pertain to the portions of the property his client leased or controlled. Their area was specifically delineated by cyclone fencing and jersey walls. He proceeded to list the many services provided by Danella Construction, which were essential to both the residential and economic wellbeing of the County, and which should not be forced to operate out of Prince William County, Loudoun County, or even further out than that. The service needed to operate where it was, as it was an excellent location, but if the property could not come into compliance, they would be forced to leave. Mr. McDermott said it was appreciated that they allowed a deferral of the main appeal. They viewed themselves as a passenger in the main boat, because the site plan was the Cronan's responsibility, and Danella would participate economically in that. He requested the Board allow them to continue its use while progress was on-going on the site-plan process. He added that the result of the waiver was a significant meaningful result for the family, who could not afford the cost of designing and constructing the frontage improvements.

As there was no one else to speak to the appeal, and staff had no further comments, Chairman Ribble closed the public hearing.

Mr. Beard moved to defer decision to June 23, 2009, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by vote of 5-0. Mr. Hart recused himself from the vote. Mr. Smith was absent from the meeting.

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The meeting recessed at 11:41 a.m. and reconvened at 11:49 a.m.

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~ ~ ~ April 21, 2008, Scheduled case of:

9:30 A.M. ALFRED BOWLES, JANET S. BOWLES, COLLEN S. EDMA, A 2009-MA-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 7304 Austin St. on approx. 17,673 sq. ft. of land zoned R-3. Mason District. Tax Map 60-1 ((7)) 17.

Chairman Ribble called the case.

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

Charles Fitzhugh, Staff Coordinator, Ordinance Administration Branch, made staff's presentation. Mr. Fitzhugh pointed out that the first few pages of the staff report incorrectly listed one of the three property owners as Edma S. Collen, and it should be Collen S. Edma.

Mike Caudle, Code Enforcement Strike Force, responded to Mr. Hart's questions concerning the dwelling's floor plan as depicted in staff photographs.

In further clarification for Mr. Hart, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, explained Zoning Enforcement's position on the removal of stoves, because repeatedly their experience had been that one would remove the stove, and after staff had left, move it right back in, thereby once again having a complete kitchen.

Robert Burke, Combination Residential Inspector, addressed Mr. Hart's question concerning expiration dates of inspections permits.

Mr. Hammack questioned whether the name, concerning Edma S. Collen, listed on the application and notifications were not the same as the deed and land records.

Sheila C. Salmon, Esquire, 1100 Connecticut Avenue, N.W., Suite 1100, Washington, D.C., agent for the appellants, verified that Collen was the first name, and Edma was her client's last name. Ms. Stanfield confirmed that the notifications and advertisement were correct.

Ms. Salmon, the appellants' agent, presented the argument forming the basis for the appeal. She clarified that they did not believe their unit constituted as a second dwelling. She addressed questions concerning the original permit drawn in 2005, and explained that a follow-up inspection occurred, which was signed off on, and the case closed. Ms. Salmon said her clients bought the house in 2008, unaware of any issues related to outstanding building permits or violations, with respect to occupancy of the house. She stated that her clients were not maintaining two separate and independent dwelling units, contrary to what staff had determined. She noted that the entire issue seemed to be an existence of a stove in the basement, but there is nothing in the Ordinance that expressly or explicitly prohibits more than one cooking facility within the dwelling. She pointed out that staff's report contained several references to a prior BZA appeal and a Fairfax County court case; however, none were provided to the appellants; therefore, they were unable to verify the authenticity. She quoted the numerous regulations and restrictions preventing her clients' eligibility for a special permit without major renovations, and which would adversely affect the occupancy. She clarified that the residents were all related by blood or marriage.

In response to Ms. Gibb's question concerning applicability of obtaining a second kitchen permit, Ms. Stanfield explained that staff's position was the appellants were utilizing it as a second dwelling unit, and therefore, a second kitchen letter would not be issued.

Ms. Stanfield further explained the particulars about this case, differing it from others having come before the Board.

For additional clarification addressing Ms. Gibb's suggested scenarios and questions, Mr. Caudle said the history of this case determined staff's position.

Ms. Salmon stated that the previous owners with their situation had nothing to do with her clients' situation, and that it was a waste of County resources to pursue this matter on that basis.

Discussion ensued regarding the number of occupants, the fact that it was a shared mortgage with no rent being paid, the fact that this case was not about occupancy but of a second dwelling unit, and removal of the downstairs kitchen facility.

Ed Tobin, Property Maintenance Supervisor, Zoning Enforcement Branch, addressed Mr. Beard's question, explaining the rules regulating family members, and who was permitted to live in a household.

Ms. Salmon pointed out that the issue of occupancy could not be discounted, and it was the totality of the circumstances. She said it was not the mere presence of a kitchen to be looked at, and that there was nothing in the Code explicitly prohibiting a second cooking facility within the dwelling unit.

At Mr. Beard's request, staff explained the circumstances of the original complaint, which was submitted by the first property owner, because he had a person leasing his house and renting out the lower level to other people against his wishes. The complaint was actually made through the local police department, at which time the police asked the Strike Team to look into it for those matters. The original owner sold the house within just a couple of months after making the complaint, which basically was against himself and his own tenants, but not the present owners, the appellants.

Discussion ensued regarding the house's utilities, the technicalities involving qualifying for a second kitchen, and the dilemma of staff's position being that there was a second kitchen, though they could not present evidence that the area was used as a second dwelling.

Mr. Caudle explained that the downstairs was designed so that it could be used as a second dwelling.

Discussion ensued regarding the permit approved in 2005, and whether a mistake was made in approving it. Mr. Fitzhugh gave the history of the actions taken and legal notices issued regarding the house before the appellants purchased the house. He stated that currently, Zoning Enforcement asked that everything be removed, including all appliances, sink, and for all the utilities to be capped. He added that this was not the first time that this property was before the Board for this issue.



Ms. Salmon interjected that the history cited by Mr. Fitzhugh was that of the previous owner.

Chairman Ribble called for speakers.

Carl Cohen, 2415 Claremont Drive, Falls Church, Virginia, came forward to speak. He said Alfred Bowles was his nephew, and that he was a former Planning Commissioner. Over the years, he strove to encourage the provision of housing for all ranges of people, and he thought the circumstances here was a family-destroying effort by Zoning Enforcement. He pointed out that the property had been occupied for some time by unrelated people, while owned by a previous owner. Mr. Cohen said he was very disturbed that this treatment seemed a consistent effort to throw the people out of their home, or, to an effect, take away their ability to function there at great cost. He explained the circumstances of the living arrangements, noting that the basement area housed Mrs. Bowles' handicapped son. Mr. Cohen stated that appellants' situation cried out for common sense.

Mr. Fitzhugh submitted that the definition of a dwelling unit does not address the fact that one cannot have two dwelling units in a home, or perhaps two kitchens. He said Ms. Salmon pointed out that the basement was rather large.

In rebuttal, Ms. Salmon said staff was suggesting that the basement be made smaller in order to meet the standard, which would be significant, and would adversely affect the family. She restated that staff's sole support was that there was a kitchen, and there were no other facts presented that supported that the area was functioning as a second dwelling unit. She maintained that was not the intention, and it was not known what was the previous owner's design or arrangement had been. Ms. Salmon concurred with an observation of Mr. Byers, that with exception of the stove and the microwave, the basement was consistent with the approved plan. She concluded that this family should not have to suffer as a result of the County falling down on the job, or because of what some previous owner did.

Discussion ensued regarding whether applying for a special permit was feasible, and whether to defer or make a final decision that day.

Ms. Salmon stated it should go forward that day.

Chairman Ribble closed the public hearing.

Mr. Hammack noted that the case was not an easy one, based on the testimony and evidence presented. He stated he saw no evidence that it was being utilized as a second dwelling. Mr. Hammack then moved to uphold the removal of the cooking facilities, and overturn the Zoning Administrator's determination regarding the second dwelling issue. Mr. Hart seconded the motion.

Mr. Byers commented that he would not support the motion. He said the original permit approved the stove and the microwave, and that the County should have identified any issues at that time. Mr. Byers stated that blind adherence to the law without common sense and judgment was not right, and he thought the Zoning Administrator should be overturned.

Mr. Hart said he supported the motion. He said they had to go by what the Ordinance stated, although this provision did not have a clear definition, and there were things subject to multiple interpretations. He thought the appellants had satisfactorily rebutted the contention that the facility was being used or was intended for use as a separate dwelling. He agreed with Mr. Hammack that the stove and microwave were never approved, and that was clearly defined in the plans, but the letter directing the removal of the other things went too far. He said he thought the Zoning Administrator would have been correct to direct the appellants to remove the stove and the microwave. Mr. Hart said he thought there was not any showing that this was a non-discretionary error, as he thought someone reviewing the plans for a building permit application at the counter was supposed to use his discretion. That was not done, and this was permit was issued.

Ms. Gibb commented that she was not persuaded by any evidence that there was a dwelling unit under Section 2-501. She pointed out that the Notice of Violation did not require the removal of everything.

Mr. Beard said this was an unfortunate situation pursuant to the Strike Team showing up the first day the folks occupied the house. It was unfortunate not only for the appellants, but also the Strike Team. He said

because of the situation, it should garner some slack from the County, and he concurred with Ms. Gibb that a second kitchen letter should be issued. Mr. Beard said if he represented the County, he would apologize to the appellants. He said he would not like to support the motion but offer an alternative motion.

Mr. Hammack reviewed the Ordinance language Ms. Gibb pointed out, considered it carefully, concurred that the language was predicated on if it were a second dwelling unit. He stated he would amend his motion, with his seconder's approval, to solely overrule the Zoning Administrator.

Mr. Hart explained his hesitation to overturn the Zoning Administrator's decision, because he did not see the Board as having present authority to approve the stove and microwave.

Mr. Byers seconded the amended motion.

Chairman Ribble called for a vote.

The motion to overrule the Zoning Administrator carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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~ ~ ~ April 21, 2009, After Agenda Item:

Request for Additional Time  
Trustees of All Saints Episcopal Church, SPA 2002-LE-041

Mr. Beard moved to approve six months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting. The new expiration date was June 27, 2009.


Discussion ensued regarding assuring a motion was made to cancel the April 28, 2009 meeting, as there were no land-use cases or appeals. Ms. Gibb moved to cancel the Board of Zoning Appeals meeting scheduled for April 28, 2009. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:25 p.m.

Minutes by: Paula A. McFarland and Emily J. Armstrong

Approved on: July 27, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 5, 2009. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.; V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:03 a.m.

As a Board Matter, Mr. Byers acknowledged that the father of Susan C. Langdon, Chief, Special Permit and Variance Branch, was recuperating at home after successful heart treatment. The Board wished Susan's dad a speedy and complete recovery.

Mr. Byers also moved that the BZA support the re-nomination of John F. Ribble III for another five-year term, and direct the BZA Secretary to execute a letter to the Circuit Court to so indicate. The motion was seconded by Mr. Hart and Mr. Smith, and carried by a vote of 6-0. Mr. Beard was absent from the meeting.

There were no further Board Matters, therefore, Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. He then called for the first scheduled case.

~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. FAIRFAX COMMUNITY CHURCH OF GOD, SPA 01-S-038 (In association with SE 2008-SP-039) (modification to site to permit telecom facility) (*Admin. moved from 3/10/09 at appl. req.*)

Chairman Ribble noted that SPA 01-S-038 had been administratively moved to June 23, 2009, at the applicant's request and then was subsequently deferred indefinitely.

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. TIMOTHY T. MURRAY AND POLLY A. MURRAY, SPA 2007-SU-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.0 ft. from side and 14.0 ft. from rear lot lines and addition 5.9 ft. from side and 10.2 ft. from rear lot lines. Located at 13603 Gladwyn Ct. on approx. 8,382 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 161A. (*Admin. moved from 3/3/09 at appl. req.*)

Chairman Ribble called the applicants to the podium.

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

Timothy T. Murray, 13603 Gladwyn Court, Chantilly, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 2007-SU-024, subject to the proposed development conditions.

In response to Mr. Hart's questions concerning the architectural renderings contained in the staff report, Ms. Caffee explained that the design would be a more continuous roof line. She confirmed with Mr. Hart that Development Condition 4 would be amended to add his suggested provision.

Mr. Murray presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the purpose of the improvements was to increase their living space and allow them to enjoy the outside. He said the front and rear porches were in keeping with the neighborhood.

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

Mr. Hammack moved to approve SPA 2007-SU-024 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TIMOTHY T. MURRAY AND POLLY A. MURRAY, SPA 2007-SU-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.0 ft. from side and 14.0 ft. from rear lot lines and addition 5.9 ft. from side and 10.2 ft. from rear lot lines. Located at 13603 Gladwyn Ct. on approx. 8,382 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 161A. (Admin. moved from 3/3/09 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 2009; and

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

1. The applicants are the owners of the land.
2. The applicants have satisfied the six required standards specifically set forth in the Code Section.
3. A somewhat similar application was approved by the Board previously, and its applicant came back to make some changes because of the recommendation of the Zoning Administrator.
4. There is a favorable staff report to support this.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the locations and sizes (enclosed deck 392 square feet; front porch 270.4 square feet; side porch 272 square feet; back porch 259.2 square feet and open rear deck 194.4 square feet for a total of 1,388 square feet) of additions, as shown on the plat prepared by Wachob & Wachob, Inc., dated November 20, 2006 as revised through February 26, 2007, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,193.6 square feet existing and 4,790.4 square feet (150 percent) = 7,984 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat included in Attachment 1 to these conditions, except for the roof-lines and unattached columns which may be modified and/or deleted.

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

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

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

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. CAROLE S. JACKSON, TRUSTEE, SP 2008-DR-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6817 Tennyson Dr. on approx. 12,500 sq. ft. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((3)) 14. (*Admin. moved from 2/10/09 and 3/24/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Carole Jackson, 6817 Tennyson Drive, McLean, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2008-DR-102, subject to the proposed development conditions.

Ms. Jackson presented the special permit request as outlined in the statement of justification submitted with the application.

Staff clarified that their reason for recommending approval in this case was largely dependent on the fact that the property was surrounded by commercial properties.

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

Mr. Byers moved to approve SP 2008-DR-102 for reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CAROLE S. JACKSON, TRUSTEE, SP 2008-DR-102 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line. Located at 6817 Tennyson Dr. on approx. 12,500 sq. ft. of land zoned R-4 and SC. Dranesville District. Tax Map 30-4 ((3)) 14. (*Admin. moved from 2/10/09 and 3/24/09 at appl. req.*) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 2009; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed addition as shown on the plat prepared by George M. O'Quinn, Dominion surveyors, Inc., dated November 30, 2007, revised through October 8, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,277 square feet existing + 6,415.5 (150%) = 10,692.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. THOMAS R. AND SHARON G. MORRIS, SP 2009-PR-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.1 ft. from side lot line. Located at 3023 Oakton

Meadows Ct. on approx. 3,870 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((27)) 12. (Deferred from 3/24/09 at appl. req.)

Chairman Ribble called the applicants to the podium.

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

Rochelle E. Hill, 10511 Judicial Drive, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

In response to Mr. Byers' question, Ms. Caffee said this case came to staff's attention through a Notice of Violation as prompted by a complaint.

Mr. Hart questioned whether the applicants, if they chose, could level legal action against the builder for knowingly continuing a construction that was not in compliance with Ordinance standards.

In response to Mr. Byers' question, Ms. Caffee said the Statement of Justification noted something which seemed to indicate that the owners gave permission for their contractor to obtain the permits, go forward, and construct the deck while they were out of the country.

Ms. Hill pointed out that the Board had recently approved a similar case in the same community. Ms. Hill stated that the mistake was done in good faith. She referenced an opposition letter from a neighbor, which, in essence, supported the fact that the error was done in good faith. The neighbor spoke with the contractor several times about what he was doing, while the Morris's were not present.

In response to Mr. Hart's question concerning the contractor, Ms. Hill said he was out of business. She confirmed that the applicants agreed with the development conditions.

Discussion ensued regarding the design of the townhome, Development Condition 2, and whether a Hold Harmless provision was applicable.

Steven K. Fox, Esquire, 10511 Judicial Drive, Fairfax, Virginia, also counsel for the applicants, responded to Mr. Byers' question concerning a reason someone would complain about the structure facing a common area. He submitted that it was kind of a cascading effect, because a previous deck was already in place, although a neighbor's request to build one was denied, so staff was notified.

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

Mr. Hart moved to approve SP 2009-PR-002 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

THOMAS R. AND SHARON G. MORRIS, SP 2009-PR-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.1 ft. from side lot line. Located at 3023 Oakton Meadows Ct. on approx. 3,870 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((27)) 12. (Deferred from 3/24/09 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 2009; and

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

1. The applicants are the owners of the land.
2. The applicants have shown that the structure was put there in good faith.
3. The applicants were using it as a rental unit and were not there.
4. It appears the contractor did this on his own.
5. The placement of this deck is unique in that the row of townhouses that this end unit is in is turned 90 degrees so that the deck is not really adjacent to anything.
6. Although it might have a greater impact in a different configuration, the way this deck is adjoining common area, which has a storm sewer easement and another maintenance easement a little beyond that, it will not have a significant impact on anybody.
7. The photographs confirm that there will not be a significant impact on anybody, as evidenced by the fencing and vegetation.
8. With the development condition requiring the Department of Public Works and Environmental Services to approve it or the structure is moved out of the easement, the Board remains consistent with previous approvals.
9. If this application came before the Board without already having been built, it probably would not be approvable because the reduction is more than 50 percent of the distance; the Ordinance would not allow that except in a mistake scenario.
10. Under these unusual facts, the application clears all those hurdles.

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 existing deck as shown on the plat prepared by Charles F. Dunlap, Walter L. Phillips, Inc. dated October 17, 2008, submitted with this application and is not transferable to other land.



2. Prior to the issuance of a building permit, the applicant shall obtain written approval from the Department of Public Works and Environmental Services, Land Development Services Division, for the deck to remain within the storm sewer easement or the deck or portions thereof shall be removed from the easement. If required by DPWES, the applicant shall execute a Hold-Harmless Agreement related to the storm sewer easement in a form acceptable to the County Attorney's Office.
3. Within 6 months of approval of this application, building permits and final inspections for the deck shall be obtained or the deck shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

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

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. MONIQUE KRAMER, SP 2009-DR-011 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and a reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.6 ft. from side lot line. Located at 8518 Old Dominion Dr. on approx. 2.15 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 27A.

Chairman Ribble called the applicants to the podium.

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

Monique Kramer, 8518 Old Dominion Drive, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-DR-011, subject to the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Discussion ensued regarding signage uses and limitations.

Ms. Kramer presented the special permit request as outlined in the statement of justification submitted with the application. She explained her services primarily were for pediatric patients, and the basement area requiring the special permit would have specific equipment which was not at her clients' home. Ms. Kramer next addressed the issue of an error in building location. She stated she did not know how the building error occurred, and it was no fault of hers because the error occurred prior to her ownership of the property.

At Vice Chairman Hammack's request, Ms. Kramer explained her property's access and egress from Old Dominion Drive. She said it was a private, concealed driveway and the parking spaces were completely out of sight.

Discussion ensued regarding signage, preventing an appearance of a commercial look for a home professional business, and amending the language of Development Condition 7, so as to be more specific.

Chairman Ribble resumed the Chair.

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

Ms. Gibb moved to approve SP 2009-DR-011 for the reasons stated in the Resolution.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, responded to Mr. Hammack's question concerning evidence of licensing or certifications. Chairman Ribble noted that Ms. Kramer had previously stated she was a licensed Physical Therapist specializing in pediatrics.

Mr. Smith suggested that, in addition to the street number address, the owner's name be listed on the signage.

Ms. Gibb accepted Mr. Smith's suggestion as an amended motion.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MONIQUE KRAMER, SP 2009-DR-011 Appl. under Sect(s). 8-907 and 8-914 of the Zoning Ordinance to permit a home professional office and a reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.6 ft. from side lot line. Located at 8518 Old Dominion Dr. on approx. 2.15 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 27A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 2009; 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 and staff's recommendation of approval, the applicant has met all the required standards for a home professional office.
3. The lot is surrounded on three sides by road and on the other side it is heavily wooded.
4. The entrance appears to be separate and discrete.
5. The house is a good fit for a use that will have only one employee and only 20 clients a week.
6. Regarding the error in building location, the applicant has presented testimony that the mistake, which seems fairly modest, just a small corner of the property in the 20-foot setback, an addition put on by a previous owner, is in an area of the lot that is heavily wooded and does not have an impact on any property.
7. The error was due to no fault of the applicant, and the applicant has met Standards A through G.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-907 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This approval is granted to the applicant only, Monique Kramer, and is not transferable without further action of this Board, and is for the location indicated on the application, 8518 Old Dominion Drive, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses, including the dwelling 13.6 feet from the eastern side lot line, as indicated on the special permit plat prepared by Stephen L. Moore Land Surveying, Inc., dated January 22, 2009, 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. Appointments shall be scheduled so that there is a maximum of one (1) patient on site at any one time, and there shall be a minimum of fifteen (15) minutes between the end of one appointment and the commencement of the next. The maximum number of patients shall be limited to four (4) daily.
6. The maximum hours of operation of the home professional office shall be limited to 10:00 a.m. to 5:00 p.m., Monday through Friday.
7. A sign shall be posted at the entrance to the home professional office to prevent solicitations. Notwithstanding what is shown on the plat, no other signs except an address and the owner's name on the columns on the Old Dominion Drive, shall be permitted on the site.
8. The dwelling that contains the home professional office shall be the primary residence of the applicant.
9. Two (2) parking spaces shall be provided in the asphalt driveway for patients, depicted on the plat as Parking Space 1 and Parking Space 2.
10. The area utilized for the home professional office shall not exceed 508 square feet.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. ACCOTINK UNITARIAN UNIVERSALIST CHURCH, SPA 85-S-083-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-083 previously approved for church with nursery school to permit an increase in enrollment and staff. Located at 10125 Lakehaven Ct. on approx. 10.78 ac. of land zoned R-1. Springfield District. Tax Map 87-2 ((1)) 26.

Chairman Ribble called the applicant to the podium.

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

Peter Todd Akers, 6227 Wilmington Drive, Burke, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 85-S-083-03, subject to the proposed development conditions.

Mr. Hart questioned Development Condition 7 with regard to the lack of differentiation between employees and volunteers.

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

Chairman Ribble called for speakers.

Barbara Breckenridge, 9052 Babble Wood Court, Springfield, Virginia, came forward to speak. As the President of the pre-school, she asked to increase their present enrollment of 40 to 45, the maximum standard for licensed child day care centers, with an increase of staff from 10 to a total of 15 of whom only 9 would be in attendance per day.

In response to Mr. Smith's question, Ms. Breckenridge clarified the number of present staff personnel on any given day.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SPA 85-S-083-03 for the reasons stated in the Resolution.

Ms. Johnson responded to Mr. Byer's question regarding the requested reduction of parking spaces as it pertained to the church and school activities.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ACCOTINK UNITARIAN UNIVERSALIST CHURCH, SPA 85-S-083-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-S-083 previously approved for church with nursery school to permit an increase in enrollment and staff. Located at 10125 Lakehaven Ct. on approx. 10.78 ac. of land zoned R-1.

Springfield District. Tax Map 87-2 ((1)) 26. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 5, 2009; and

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

1. The applicant is the owner of the land.
2. This is a large lot and a modest change to the application.
3. The staff's rationale in the staff report, which includes a recommendation for approval, is adopted.

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

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

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

1. This approval is granted to the applicant only, Accotink Unitarian Universalist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 10125 Lakehaven Court, 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 H. Aubrey Hawkins Associates, Ltd., dated May 29, 1992, as revised through March 23, 1994.
3. A copy of this Special Permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved special permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main area of worship shall not exceed 200.
6. The total maximum daily enrollment of children in the nursery school shall not exceed 45.
7. The maximum number of employees for the nursery school shall be limited to 15.
8. The maximum hours of operation for the nursery school shall be limited to 9:00 am to 1:30 pm, Monday through Friday.
9. Parking shall be provided as depicted on the special permit amendment plat, and shall consist of a minimum of 51 parking spaces. All parking shall be on site as depicted on the special permit amendment plat.
10. The applicant shall obtain approval of a parking reduction through the Department of Public Works and Environmental Services (DPWES) as required by Sect. 11-106.3 of the Zoning Ordinance, prior to the issuance of a new Non-RUP for the church and nursery school uses. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the nursery school shall be reduced to meet parking requirements as determined by DPWES.

11. Transitional screening shall be modified along the northern and eastern lot lines to permit existing vegetation to satisfy the requirements. The existing vegetation shall be maintained and preserved as depicted on the special permit amendment plat to satisfy the transitional screening requirements. Dead or dying plant material shall be replaced to maintain the transitional screening as outlined above, as approved by the Urban Forest Management Division (UFMD), DPWES.
12. The barrier requirement shall be waived along all lot lines.
13. All signs on the property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance.
14. The 150 foot-wide Open Space Easement to the Board of Supervisors that was recorded among the land records of Fairfax County shall run with the life of this special permit.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ May 5, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville and Hunter Mill Districts. Tax Map 18-3 ((1)) 6. (*Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, 9/16/08, 11/4/08, 12/16/08, 2/24/09, and 3/24/09 at appl. req.*) (*Continued from 4/21/09.*)

Chairman Ribble called the case noting that it had been continued from April 21, 2009, because of a situation with Virginia Department of Transportation (VDOT).

Shelby Johnson, Staff Coordinator, confirmed that the application was heard April 21<sup>st</sup>, and the Board continued the case to allow the applicant time to resolve issues related to the proposed frontage improvements along Sunset Hills Road.

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

Mr. Hart made a disclosure that his law firm was engaged in a case where attorneys from the agent's Prince William office were involved. He indicated he did not believe his ability to participate in the case would be affected.

At the direction of Chairman Ribble, the agent for the church, Sara V. Mariska, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, Virginia, reaffirmed the affidavit.

Ms. Johnson said that after subsequent discussions with VDOT, County staff, and citizens, the applicant had submitted a revised special permit amendment plat depicting an enlargement of the site's entrance to accommodate a designated right- and left-hand turn lane for exiting vehicles. Utilizing the lanes during specific hours would be prohibited, and a retaining wall which the applicant would be required to maintain had been added to the plat. She noted that additional evergreen trees were added to the plat to further screen the new structure from view along Sunset Hills Road. Staff recommended approval of SPA 82-D-047-02, subject to the revised proposed development conditions dated May 5, 2009.

Martha Coello, Fairfax County Department of Transportation (FCDOT), addressed Mr. Hart's concern about the left turns that should be prohibited at certain hours. She said staff was aware of the citizens' concerns, but presently signage was believed to be sufficient to deter turns during peak hours. Ms. Coello said this issue had been discussed with other cases, and at times staff had suggested a physical barrier, but considering this case's circumstance signage should be sufficient.

Ms. Coello responded to Mr. Hart's questions concerning the morning peak hours and the future installation of a metro station and its effect on traffic directions. Staff had considered the impact of a metro station. Discussion ensued regarding consideration for a round-about or more right-of-ways and any conflict VDOT may have with the various options being considered.

Ms. Mariska gave a brief history of the church and school, noting that no changes had been made since 1981, and that the facility had simply outgrown its capacity to service its congregation. She explained the two phases of the proposed development to expand the sanctuary and increase the school's enrollment. She said the proposed improvements would be architecturally compatible with the surrounding low-density residential area. The applicant had decreased the size of each facility to respond to staff's concerns about site intensity. Ms. Mariska noted the application now exceeded Ordinance requirements for interior parking lot landscaping and tree cover requirements. The existing location to the site on Sunset Hills Road would not be modified, and an access point on Hunter Mill Road which had been closed would remain closed except for access by emergency vehicles. She listed slight modifications to several of staff's development conditions, which would better serve the applicant's interests.

Ms. Mariska and Ms. Johnson responded to Mr. Hart's questions concerning clarification of several development conditions. It was noted that these revised development conditions were drafted the night before the meeting.

Mr. Byers questioned Ms. Mariska on certain hours of the school's operations, and the desired turning directions when entering and exiting the site. Mr. Byers pointed out the importance of providing a traffic light to assure safety.

Mr. Smith requested Ms. Mariska to clarify the site's signage and whether or not there may be a way the County could enforce infractions when motorists ignore the directional signs. Ms. Mariska said she would look into the matter with VDOT about regulatory signage.

Staff responded to Mr. Hammack's questions regarding access and egress of the site and clarification concerning several development conditions proposed by the applicant. Ms. Johnson addressed the proposed changes to the existing development conditions and explained staff's rationale for its position on each.

Chairman Ribble called for speakers in support or in opposition to the application.

Jody Bennett, 1459 Hunter View Farms, Vienna, Virginia, came forward and spoke in support of the application. Her main points were the following. The Church made it known to the community for years of its objective to expand its use, so that was not a change. Staff and the church had responded to the community's concerns about harmony. There were major concerns about heavy traffic congestion. There was a petition for a round-about, which the community believed would improve conditions in the intersection. She stated that she and others in the community supported the application.

John Thoburn, 1630 Hunter Mill Road, Vienna, Virginia came forward and spoke in support of the application. His home was adjacent to the Church. He felt offended that the Church would be asked to cut down its sanctuary, as the church's traffic was not an issue. The interchange was overwhelmed by millions of square feet of offices, and he thought it was ridiculous that the church was being asked to keep the low-density plan by reducing its sanctuary.

James Ferguson, 12524 Philmont Drive, Herndon, Virginia, a Trustee of the Church and Chairman of the Building Commission, came forward and spoke in support of the application, citing some of the building plans of the church. One of the church's goals for its expansion was to continue to provide a facility for the many community activities within and outside of the church.

Ms. Johnson addressed Mr. Hart's questions concerning Development Condition 21, regarding the trees and lowering the bond.

In response to Ms. Gibb's question, Ms. Langdon further clarified the bond issue concerning the trees.

Discussion ensued regarding the bond procedure, subsequent return of funds at a project's final bond release, and the Urban Forestry's participation throughout the process.

Ms. Mariska briefly addressed the issue of the tree bond. She clarified that she and the engineer had already determined a reasonable amount of liability, but they would be willing to discuss changes to this amount. She explained that, with how the conditions were structured, there were multiple avenues for remediation in place, so the tree bond was not the only existing remedy.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SPA 82-D-047-02 for the reasons stated in the Resolution.

Mr. Hart suggested an amendment to the specific language of Development Condition 35.

Mr. Hammack, accepted the language.

Mr. Byers commented that he thought the applicant had been very conscientious, but from his previous experiences there would be a myriad of citizens contacting the Supervisor's office complaining about there being no traffic light installed at that intersection. Mr. Byers said he would support the motion, but respectfully disagreed with FCDOT's position regarding current and future traffic congestion. He urged that the situation be looked at carefully to improve the safety of that one intersection, as it would only become worse.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. Of land zoned R-E. Dranesville and Hunter Mill Districts. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, 9/16/08, 11/4/08, 12/16/08, 2/24/09, and 3/24/09 at appl. req.) (Continued from 4/21/09) 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, 2009; and

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

1. The applicant is the owner of the land.
2. Staff's response to the changes proposed by the applicant, for the most part, were reasonable, and we have a favorable staff report.
3. Staff's rationale as set forth in the staff report is adopted.
4. With the adoption of the development conditions, the issues regarding ingress and egress have been



resolved satisfactorily.

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

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

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

1. This approval is granted to the applicant only, Trustees of Reston Presbyterian Church and is not transferable without further action of this Board, and is for the location indicated on the application, 10610 Sunset Hills Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap, Walter L. Phillips, Inc., dated November 15, 2007, as revised through May 4, 2009.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a Non-RUP for Phase I construction, the seating capacity in the main area of worship may increase from 300 to a maximum of 450.
6. Upon issuance of new Non-RUPs, the maximum total daily enrollment for the private school of general education may increase from 50 children to 100 children ranging from kindergarten to eighth grade in Phase I, and 175 children in Phase II ranging from kindergarten to twelfth grade.
7. The maximum hours of operation for the private school of general education shall be 8:30 am to 3:30 pm, Monday through Friday.
8. The maximum total daily enrollment for the child care center shall be 100 children in Phase I, and 175 children in Phase II.
9. The maximum hours of operation for the child care center shall be 7:00 am to 8:30 am, and 3:30 pm to 6:00 pm, Monday through Friday.
10. Staff/teachers for the private school of general education and child care center combined, shall not exceed (12) school employees in Phase I; and 20 employees in Phase II.
11. No more than 25 students shall occupy the outdoor recreation area at any one time.
12. The operator of the private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods.
13. The design of the buildings shall be in substantial conformance with the architectural renderings included as Attachment 1 of these conditions irrespective of the notation "conceptual purposes only". The architectural treatment of the buildings shall consist of a pitched roof; split face and ground face concrete masonry; horizontal siding; synthetic stucco; clad and aluminum window systems; and asphalt shingles.

14. The building height shall not exceed forty-five feet (45') for the structure shown in Phase I, and shall not exceed thirty-five (35') for the structure shown in Phase II, per the definition in the Zoning Ordinance.
15. All parking shall be on-site, as depicted on the special permit amendment 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, school of general education and child care center to permit the shared use of the church parking lot for the church, school and child care center 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 and child care center shall be reduced to meet the parking requirements as determined by DPWES.
16. The four temporary trailers depicted on the plat shall not be placed on the site prior to site plan approval and can remain on the site for a time period not to exceed three (3) years from the date of site plan approval. This time period may be extended for up to (3) years with prior approval of the Zoning Administrator, but in no case shall the trailers remain on site for more than 30 days upon the issuance of a Non-RUP for Phase I, whichever occurs first. The temporary trailers shall be placed on site in the least disruptive manner so as not to damage the trees that are shown to be preserved on the SPA Plat.
17. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.
18. The applicant shall conform strictly to the limits of clearing and grading as shown on the SPA Plat, subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SPA Plat, they shall be located in the least disruptive manner necessary as determined by the Urban Forest Management Division (UFMD), DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
19. The applicant shall install construction mats as approved by UFMD, DPWES along the limits of clearing and grading that is adjacent to the proposed tree save area to the north to minimize the impact of traffic by construction equipment and personnel within these areas.
20. 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 shall be subject to the review and approval of the UFMD, DPWES. 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 8 inches in diameter and greater, and 25 feet to either side of the limits of clearing and grading as shown on the special permit amendment plat for the entire site. Irrespective of that shown on the SPA Plat, the tree preservation plan shall provide for the preservation of those areas shown for tree preservation (tree save), those areas outside of the limits of clearing and grading shown on the special permit amendment plat and those additional 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 any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan. The applicant shall also submit concurrently a monetary value for each tree surveyed that is to be preserved. The monetary values shall be determined using the Trunk Formula Method contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, and shall be subject to review and approval by UFMD. The Location Factor of the Trunk Formula Method shall be based on projected post-development Contribution and Placements ratings. The Site rating component shall be equal to

at least 80%. The combined total of monetary values identified in the approved Tree Preservation Plan for trees designated to be preserved shall serve as a baseline sum in determining the amount of the Tree Bond.

21. A letter of credit, or a cash contribution equal to one half (50%) of the total monetary value of trees to be designated to be preserved as identified above shall be placed with the County. The Tree Bond letter of credit shall be prepared in a manner acceptable to the County Attorney naming the County as beneficiary to ensure the preservation, conservation, replacement, removal and/or treatment of the trees identified in the Tree Preservation Plan, and to ensure the undisturbed areas identified on the approved SPA Plat. The cash or Tree Bond shall be held by the County as a cash reserve that can be used by the County to ensure the preservation, conservation, replacement, removal and/or treatment of the trees identified in the Tree Preservation Plan and as approved on the site plan, and for work relating to the protection and management of undisturbed areas identified on the approved SPA Plat. If the applicant fails to complete any work identified in the approved site plan, then the County may use cash or money from the Tree Bond to accomplish the required work. If the County must use all or part of the cash or Tree Bond to accomplish the outstanding work, then the applicant will replenish the cash or Tree Bond to its full amount. If the applicant fails to replenish the cash or Tree Bond to its full amount, then the cash or Tree Bond may be used by the County to replenish the Tree Preservation Deposit to its full amount. The cash/Tree Bond may be used by the County as described in the Tree Preservation condition, above. Any cash or funds remaining in the Tree Bond shall be released along with the project's final bond-release, or sooner, if approved in writing by UFMD, DPWES.
22. The applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chainsaw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
23. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.
24. The applicant shall root prune and mulch, as needed to comply with the tree preservation requirements of these conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
  - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
  - Root pruning shall be conducted with the supervision of a certified arborist.
  - Immediately after the Phase II erosion and settlement (E&S) control activities are complete, mulch shall be applied at a depth of three (3) inches within designated areas without the use of motorized equipment.
  - Mulch shall consist of wood chips, shredded hardwood and/or pine bark mulch. Hay or straw mulch shall not be used within tree preservation areas.
  - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
25. The applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation conditions, and UFMD, DPWES approvals. The applicant shall actively monitor the site to ensure that inappropriate activities such as the storage of construction materials, dumping of construction debris and traffic by construction equipment and personnel do not occur within the designated tree save areas. During any clearing of tree/vegetation/structure removal on the applicant property, a representative of the applicant shall be present to monitor the process and ensure that the activities are conducted in conformance with these conditions and as approved by UFMD, DPWES. The applicant shall restore understory plant materials, leaf litter and soil conditions to the satisfaction of UFMD, DPWES if these are found to be damaged, removed or altered in any manner not allowed in writing by UFMD, DPWES. The monitoring schedule shall include, weather permitting, once weekly inspections during Phase I activities and once monthly inspections during Phase II activities. This schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFMD, DPWES.
26. A Landscape Plan, in substantial conformance with that shown on the SPA Plat shall be filed with the site plan for review and approval by UFMD, DPWES. The applicant shall add a note to the first and all subsequent site plans stating, "Final locations of all trees to be planted inside the tree save areas shall be determined in the field at the time of landscaping operations and coordinated with UFMD, DPWES, the project arborist and the landscape contractor".
27. Notwithstanding that which is shown on the SPA Plat, the applicant shall meet the requirements of the Tree Conservation Ordinance pursuant to County Code, Chapter 122.
28. Transitional screening shall be modified along the western lot line to permit existing vegetation on site, but shall be supplemented as shown on the plat, with the following modifications:
- Additional plantings shall be provided along the northern lot line adjacent to the proposed sanctuary in Phase I to meet the intent of Transitional Screening 1;
  - Additional plantings shall be provided along the western lot line adjacent to the expanded parking lot in Phase II to meet the intent of Transitional Screening 1; and,
  - Landscaping shall include substantial ornamental and shade trees, shrubs, foundation and understory plantings to soften the appearance of the graded areas including the building and patio areas, and evergreen trees between the building and Sunset Hills Road.
- The size, species and location of plantings shall be provided in consultation with UFMD, DPWES.
29. The barrier requirement shall be waived along the western lot line.
30. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
31. Any proposed 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. All lighting shall be full cut-off luminaries and shall be controlled by timers (except for security lighting). Any new outdoor lighting fixtures shall not exceed 12 feet in height, measured from the ground to the highest point of the fixture. No new uplighting of landscaping, signage or architecture shall be provided.
32. The treatment of the abandoned septic field shall comply with requirements of the Fairfax County

Health Department.

33. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
34. Stormwater Management (SWM) and Best Management Practices (BMP) measures may be provided via an extended detention facility and infiltration trenches as shown on the SPA Plat as determined by DPWES, which shall be privately maintained. If a modification of the PFM to permit the proposed SWM/BMP as shown on the SPA Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SPA Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
35. Prior to issuance of the first Non-RUP, the applicant shall construct all road improvements to include an eastbound left turn lane, through transition lane and roadway shoulders and, if deemed necessary by VDOT, a retaining wall a maximum of three (3) feet in height, along Sunset Hills Road, in consultation with the Fairfax County Department of Transportation (FCDOT), and as approved by the Virginia Department of Transportation (VDOT). The conditioned improvements to Sunset Hills Road shall be open and operating, but not necessarily accepted into the VDOT system. However, upon demonstration by the applicant that, despite diligent efforts, the road improvements have been delayed due to the time necessary for VDOT engineering/construction related issues, the Zoning Administrator may agree to a later date for the completion of said improvements. If a retaining wall is required, a license agreement to permit the location and maintenance of the proposed retaining wall within the right-of-way shall be obtained.
36. Prior to the issuance of the first Non-RUP, the applicant shall install a sign at the Sunset Hills Entrance to prohibit left turns from the site onto Sunset Hills Road between the hours of 7:00 am to 9:00 am, Monday through Friday, as approved by FCDOT.
37. Prior to site plan approval, adequate sight distance shall be provided from the entrance along Sunset Hills Road onto the application property as determined by VDOT.
38. The applicant shall obtain a sign permit for any proposed sign 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 construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to this special permit amendment. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ May 5, 2009, Scheduled case of:

9:30 A.M. ANTHONY NGUYEN, A 2008-MA-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 3811 Whispering Ln. on approx. 14,543 sq. ft. of land zoned R-2 and H-C. Mason District. Tax Map 61-3 ((13)) 241. (Decision deferred from 5/13/08, 6/10/08, and 12/9/08)

Chairman Ribble noted that appeal A 2008-MA-004 had been withdrawn.

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

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~ ~ ~ May 5, 2009, Scheduled case of:

9:30 A.M. ABDULREZA JALALI, A 2009-SP-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 Cluster District in violation of Zoning Ordinance provisions. Located at 5822 Parakeet Dr. on approx. 10,375 sq. ft. of land zoned R-3 Cluster. Springfield District. Tax Map 78-2 ((11)) 85. (Admin. moved from 4/28/09)

Chairman Ribble called the appellant to the podium.

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

Charles Fitzhugh, Deputy Zoning Administrator for Appeals, Zoning Administration Division, made staff's presentation. It was staff's position that both the main level of the house and the basement apartment contained separate facilities for living, sleeping, eating, cooking, and sanitation. Mr. Fitzhugh explained that the appellant resided at a different location, which precluded him from meeting the owner occupancy criteria for approval of a special permit for an accessory dwelling unit. The appellant claimed that the basement kitchen was the only fully-functioning kitchen at that property, so their position was that removing the basement's kitchen would cause great hardship and result in the home having no fully functioning kitchen. Staff recommended that the Board uphold the determination made by the Zoning Administrator.

Discussion ensued as prompted by Mr. Hart's questions concerning documents contained in the staff report, the location of the utilities, and the fact that the appellant testified he purchased the property as an investment and it was being rented.

Mr. Jalali, 9676 Woodhenge Court, Burke, Virginia presented his argument, which focused on his intent when he purchased the home, and the fact that the upstairs kitchen was not fully functioning.

In response to Ms. Gibb's question concerning the current basement residents, Mr. Jalali stated that two college students currently resided there. In June they would move out, and his mother would begin living there again. The upstairs housed his son in the master bedroom, and his two college friends were renting the other two bedrooms. He assured that if he was aware the downstairs kitchen had no permit, then he would not have bought the house.

In response to Ms. Gibb's question, Mr. Fitzhugh clarified that four unrelated people were permitted to live in the same dwelling.

In response to Mr. Hart's questions, Mr. Jalali explained the different locks on the various doors located throughout the house.

Discussion ensued regarding second kitchens and staff's difficulty in determining what was permissible.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, responded to Mr. Hart's questions concerning possible ways things could be worked out, and the reason why a permit for a second kitchen could not be issued at this stage. Ms. Stanfield clarified that removal of the stove was not enough to bring the applicant into compliance, because it could easily be reinstalled once approved by the inspector, and they would once again have an unapproved second dwelling unit.

Chairman Ribble called for speakers.

Edreece Azimi, 6316 Hunt Chase Court, Centreville, Virginia, stated he supported the appellant. He argued that any violation was committed by the previous owner and was not the fault of Mr. Jalali.

Nora Poist 9353 Kite Street, Burke, Virginia, came forward to speak. As an original homeowner in the neighborhood, she noted that the subject house had always been rented. She had never seen the mother downstairs, but had seen many different people coming and going, including a time when the renters were a group of college students who regularly had noisy parties. Ms. Poist said she would not have a problem with her neighbor if, indeed, the mother lived in the basement and the stove was removed.

In rebuttal, Mr. Jalali explained that his mother was not seen because she did not drive. While she was living there she did not leave unless someone else was picking her up. He also expressed that having to take out the basement kitchen would destroy his investment.

Chairman Ribble closed the public hearing.

Mr. Byers commented that the Board was charged to determine whether the Zoning Administrator was correct in the determination that was made. He noted that the property owner, Mr. Jalali, admitted there were three additional people living in the dwelling, there was a second kitchen located in the basement, and there was no lease, yet Mr. Jalali had been collecting rent. Mr. Byers said that regardless of Mr. Jalali's mother's health, she had not resided in the house for some time.

Mr. Byers then moved to uphold the determination of the Zoning Administrator. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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The meeting recessed at 12:10 a.m. and reconvened at 12:16 a.m.

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~ ~ ~ May 5, 2009, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. on approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B.

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. on approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B.

Chairman Ribble called the two concurrent cases.

Ms. Gibb disclosed that her firm represented the appellant's, Alfred and Audrey Thompson, and indicated that she would recuse herself from the public hearing.

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

Charles Fitzhugh, Staff Coordinator, Ordinance Administration Branch, made staff's presentation. Staff maintained that both appellants were aware of the zoning limitations regarding junk and storage yard usages in residential districts from the past zoning enforcement actions brought against them. Staff requested that the BZA uphold the Zoning Administrator's determination of January 8, 2009.

Walton Thompson, 2012 Novum Road, Reva, Virginia, brother of the appellant, came forward. He was not asked to represent his brother, who was unable to attend, and he would give his testimony in a few minutes.

Brian Kelly, 5812 Three Penny Drive, Fairfax Station, Virginia, came forward to speak. He agreed that a portion of the property was used for storage of commercial vehicles and equipment. He maintained that

Mr. Thompson bought the property around 1931, and would testify it was continuously used as a storage yard for construction and commercial equipment. Mr. Kelly said Mr. Thompson was ill, and he and his son were both unable to attend the meeting. Therefore, the appellants requested that the Notice of Violation be withdrawn or deferred until he and/or his son could be heard.

Jim Wentink, Family Tree Care, came forward to speak. He said Mr. Thompson asked that he come and speak for him. He proceeded to read Mr. Thompson's written statement, which explained his failing to be present. Mr. Wentink asked if the Board would allow a deferral until their situation improved.

Chairman Ribble responded that the Board will consider any and all requests, however, a motion must be made to that effect.

In response to Mr. Hammack's question, Mr. Kelly explained that Mr. Thompson could not be present because his health was poor, and he wanted to spend as much time as possible with his wife as she was critically ill.

Responding to a question from Mr. Hammack about how much time was necessary for a deferral, Mr. Wentink said Mr. Thompson asked for as much time as was allowed. Mr. Kelly said he had already cleared a lot of his materials, and the property was looking better.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said it was difficult for staff to respond to a deferral request without a proposed date. In response to Mr. Hart's question, Ms. Stanfield said this would be the first deferral.

Mr. Hart commented that he was inclined to defer it, and mentioned the appellant's should consider being represented by an attorney.

Mr. Thompson, the appellant's brother, said he resented staff considering the property a junk yard. He said some of the equipment called junk was his farm equipment with which he worked the farm for 56 years. Mr. Thompson said he was in favor of deferring the case for as long as possible. He noted that the site was in the process of being cleaned up, and restated that he did not want his home place called a junk yard. He requested that the description junk yard be taken off the record, and would appreciate the consideration of a three to six month deferral.

As there was no one present who wanted to speak to the matter of deferral, Chairman Ribble asked for a motion.

Mr. Hammack moved to continue A 2009-PR-004 and A-2009-PR-007 to August 11, 2009, at 9:30 a.m., at the request of Mr. Thompson, Mr. Wentink, and Mr. Kelly, due to the explanation that one appellant was gravely ill, and the other unable to be present at the hearing. He commented that he believed the continuance for three months was adequate, and reluctant to go with six months, because it is unknown how one's health may be. He said that perhaps the appellants may want to retain a lawyer at that time, which could take an additional 90 days or six months.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing. Mr. Beard was absent from the meeting.

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~ ~ ~ May 5, 2009, After Agenda Item:

Request for Additional Time  
Trustees for the Congregation Olam Tikvah, SPA 81-P-068-3

Ms. Gibb moved to approve six 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 June 2, 2009.

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~ ~ ~ May 5, 2009, After Agenda Item:

Consideration for Acceptance of Appeal  
JBG Rockwood Sunrise Valley, LLC

Chairman Ribble called the after agenda item.

Referencing her May 5, 2009 memorandum, Leslie B. Johnson, Senior Deputy Zoning Administrator, explained that it was the position of the Zoning Administrator that the appeal was not filed in a timely manner by the agent, Benjamin F. Tompkins, Esquire.

Ms. Gibb disclosed the firm Reed Smith was suing her law firm, so she recused herself from this matter.

Benjamin F. Tompkins, Esquire, Reed Smith LLP, 4110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, came forward to explain his client's position. He listed the dates and content of correspondence and meetings held with staff. Mr. Tompkins noted that Ms. Johnson's December 16, 2008 e-mail was unclear with its instructions, and his position was that the Zoning Administrator's opinion that the appeal was untimely filed was inappropriate and wrong. He argued this matter was inconsistent with the Supreme Court's holding that appeals must have an element of finality in order to trigger the appeal requirement. Mr. Tompkins respectfully asked the Board to overturn the Zoning Administrator's determination that the appeal was not timely filed.

Discussion ensued regarding the enforceability of an e-mail correspondence as an official determination of the Zoning Administrator. There was debate because the December 16<sup>th</sup> e-mail implied the parties were still in discussion, and it was not explicitly stated that this was the appealable determination.

Responding to the discussion, Mr. Tompkins said the matter of finality was the issue, and explicit language was necessary.

Mr. Byers moved to accept the appeal of JBG Rockwood Sunrise Valley, LLC. Mr. Smith seconded the motion.

Mr. Hart explained that he did believe the e-mail was a determination.

Mr. Byers cautioned on the use of e-mails as legal documentation. He asserted that there had to be some sort of finality.

Chairman Ribble called for the vote. The motion carried by a vote of 3-2. Mr. Hart and Mr. Hammack voted against the motion. Ms. Gibb recused herself from the matter. Mr. Beard was absent from the meeting.

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~ ~ ~ May 5, 2009, After Agenda Item:

Approval of March 8, 2005 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 3-0. Mr. Smith and Mr. Byers abstained from the vote. Mr. Beard was absent from the meeting.

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~ ~ ~ May 5, 2009, After Agenda Item:

Additional Time Request  
Trustees for Living Savior Lutheran Church, SPA 86-S-023-02

Mr. Byers moved to approve 24 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was March 21, 2011.

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~ ~ ~ May 5, 2009, After Agenda Item:

Additional Time Request  
First Baptist Church Chesterbrook, Trustees, SP 2004-DR-004

Mr. Hart moved to approve 24 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting. The new expiration date was December 8, 2010.

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~ ~ ~ May 5, 2009, After Agenda Item:

Additional Time Request  
Trustees of Holy Trinity Lutheran Church, SP 2004-PR-032


Mr. Hart moved to approve 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 February 10, 2011.

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As there was no other business to come before the Board, the meeting was adjourned at 1:30 p.m.

Minutes by: Paula A. McFarland and Emily J. Armstrong

Approved on: July 27, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 12, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ May 12, 2009, Scheduled case of:

9:00 A.M. MARY B. DULEY, SP 2009-SP-013 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6538 Koziara Dr. on approx. 9,296 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 479A.

Chairman Ribble called the applicant to the podium.

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

Mary A. Duley, 6538 Koziara Drive, Burke, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a 724 square foot accessory dwelling unit to be located within the basement of the existing dwelling. It would consist of 32.6% of the total gross floor area. She said the applicant wanted to construct a kitchen in the basement for the purpose of a mother-in-law suite, and would include one bedroom, one bathroom, and a living room area. A storage room and utility room in the basement were not included in the application. Ms. Caffee stated that staff was recommending approval of the application with adoption of the development conditions contained in the staff report.

Steve Endress, 8934 Burke Lake Road, Springfield, Virginia, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application.

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

Mr. Byers moved to approve SP 2009-SP-013 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARY B. DULEY, SP 2009-SP-013 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6538 Koziara Dr. on approx. 9,296 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 479A. 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 May 12, 2009; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-3 cluster.
3. The area of the lot is 9,296 square feet.
4. The staff recommends 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 appropriate sections 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, Mary B. Duley, and is not transferable without further action of this Board, and is for the location indicated on the application, 6538 Koziara Drive (9,296 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 house location survey plat prepared by Dewberry & Davis dated January 27, 1981, stamped through November 3, 1991, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(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 a maximum of 724 square feet, including a maximum of one bedroom as shown on Attachment 1.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit.
10. Parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ May 12, 2009, Scheduled case of:

9:00 A.M. COURTNEY G. FILER & BRIAN C. FILER, SP 2009-HM-014 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.2 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 22.1 ft. from rear lot line and 11.6 ft. from side lot line such that side yards total 19.3 ft. Located at 13469 Lake Shore Dr. on approx. 8,775 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((9)) 46.

Chairman Ribble called the applicant to the podium.

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

Arif H. Hodzic, the applicant's agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to minimum yard requirements based on an error in building location to permit an existing deck to remain 3.2 feet from the western side lot line. She noted that a minimum yard of 8.0 feet was required, with permitted extensions of 3.0 feet, therefore, a modification of 1.8 feet or 36% was being requested. Ms. Hedrick said the applicants were also requesting approval of a 12% reduction of the rear yard, 2.9 feet, and a 4% reduction, 0.7 feet, from the total side yards to allow the construction of a one story addition. She said staff recommended approval of the application with adoption of the proposal development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the purpose of the application was to bring the deck into conformance with the Zoning Ordinance, and noted that it had been constructed by the previous owners without a permit. Mr. Hodzic stated that the applicants also wished to build a small addition onto the back of the house for a mud room and breakfast room, and to enlarge the garage storage area.

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

Mr. Hammack moved to approve SP 2009-HM-014 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

COURTNEY G. FILER & BRIAN C. FILER, SP 2009-HM-014 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.2 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 22.1 ft. from rear lot line and 11.6 ft. from side lot line such that side yards total 19.3 ft. Located at 13469 Lake Shore Dr. on approx. 8,775 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((9)) 46. 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 12, 2009; and

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

1. The applicants are the owners of the property.
2. The applicants have met the standards specifically set forth in Sect(s). 8-006 and 8-914.
3. The noncompliance in construction of the original deck was done by a previous owner and, therefore,

- no fault of the present owner.
4. The applicants have met the six required standards set forth in Sect. 8-922.
  5. The Board has a favorable staff report and adopts the reasons set forth by the staff.

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one story addition (264 square feet), and deck, as shown on the plat prepared by Alexandria Surveys International, LLC, dated August 19, 2008 as revised through January 20, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,364 square feet existing + 3,546 square feet (150%) = 5,910 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The one story addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. A building permit and final inspections for the deck shall be obtained within 120 days of final approval of this application or the deck shall be removed.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and 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.

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~ ~ ~ May 12, 2009, Scheduled case of:

9:00 A.M. MARK J. STADSKLEV AND SUSAN M.K. STADSKLEV, VCA 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-DR-139 previously approved for waiver of the minimum lot width to permit modification of development conditions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.

Chairman Ribble noted that VCA 2002-DR-139 had been administratively moved to the July 7, 2009 meeting at the applicant's request.

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~ ~ ~ May 12, 2009, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that, according to the conditions specified in Special Permit Amendment SPA 81-A-022-8, the expiration date for the mausoleums and columbariums approved with SPA 81-A-022-4 and extended by SPA 81-A-022-5 shall continue to remain in effect. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (Admin. moved from 10/7/08, 1/13/09, 3/24/09, and 5/19/09 at appl. req.)

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to the July 28, 2009 meeting at the applicant's request.

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~ ~ ~ May 12, 2009, Scheduled case of:

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

Chairman Ribble noted that A 2008-BR-064 had been administratively moved to the July 28, 2009 meeting at the applicant's request.

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~ ~ ~ May 12, 2009, Scheduled case of:

9:30 A.M. RICHARD LORD, A 2008-SP-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. (Admin. Moved from 10/21/08, 1/27/09, and 2/10/09 at appl. req.)

Chairman Ribble noted that A 2008-SP-043 had been administratively moved to the August 11, 2009 meeting at the applicant's request.

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~ ~ ~ May 12, 2009, After Agenda Item:

Approval of February 26, 2008 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Byers seconded the motion which carried by a vote of 7-0.

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~ ~ ~ May 12, 2009, After Agenda Item:

Request for Additional Time  
Trustees of McLean Korean Presbyterian Church, SPA 73-D-150-3

Mr. Hart moved to approve 24 months of additional time. Ms. Gibb seconded the motion which carried by a vote of 7-0. The new expiration date was March 12, 2011.

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~ ~ ~ May 12, 2009, After Agenda Item:

Request for Additional Time  
Trustees of Washington Farm United Methodist Church, SPA 75-S-177

In response to a question from Mr. Hammack, Susan Langdon, Chief, Special Permit and Variance Branch, stated the applicant requested an additional 5 years so that the Church could raise money and decide on a final design.

Responding to a question from Mr. Byers, Ms. Langdon stated that the Board has previously granted extensions of 60 months, noting that this was the applicant's first request for an extension.

Mr. Hart and Ms. Langdon discussed the length of time requested. Ms. Langdon explained the staff's review process when extension requests were submitted and noted that staff felt the transportation in the area would not be significantly changing in the next five years. For that reason, staff did not object to the request.

Mr. Beard moved to approve 60 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was January 11, 2014.

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~ ~ ~ May 12, 2009, After Agenda Item:

Request for Additional Time  
Bush Hill Presbyterian Church, SPA 99-L-024

Mr. Byers 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 February 8, 2010.

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~ ~ ~ May 12, 2009, After Agenda Item:

Request for Additional Time  
Andrew Arnold and Leslie Overstreet, SP 2006-MV-048

Mr. Smith moved to approve 6 months of additional time. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date was November 7, 2009.

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As there was no other business to come before the Board, the meeting was adjourned at 9:22 a.m.

Minutes by: Suzanne L. Frazier

Approved on: October 6, 2009



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



John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 2, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 2, 2009, Scheduled case of:

9:00 A.M. SHERRY BROWN, SP 2008-MV-059 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 11.6 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((11)) 11. *(Admin. moved from 9/16/08, 12/2/08, and 3/3/09 at appl. req.)*

Chairman Ribble noted that SP 2008-MV-059 had been administratively moved to September 15, 2009, at 9:00 a.m. at the applicant's request.

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~ ~ ~ June 2, 2009, Scheduled case of:

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

Chairman Ribble called the applicant to the podium.

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

Mr. Hart disclosed his firm had two cases where the applicant's agent represented adverse parties. They were unrelated to this case, so he did not believe his ability to participate in the case was hindered.

Mr. Smith disclosed he had done legal work for the firm of Hazel & Thomas in the past, but he did not believe his ability to participate in the case would be affected.

Deborah Hedrick, Staff Coordinator, said the applicant requested that the public hearing be continued to August 11, 2009.

Jerry Emrich, Esquire, Walsh, Colucci, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, the applicant's agent, reaffirmed the affidavit. He said the applicant requested the opportunity to meet with staff to address and resolve several issues.

As there were none present to speak to the matter of a continuance, Chairman Ribble called for a motion.

Mr. Beard moved to continue SPA 81-A-022-09 to August 11, 2009, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 2, 2009, Scheduled case of:

9:00 A.M.           ANDREA JUNG, SP 2009-SU-015 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 14570 Woodland Ridge Dr. on approx. 11,301 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 65-1 ((2)) 31.

Chairman Ribble called the applicant to the podium.

Mr. Hart disclosed his firm had a business relationship with an immediate neighbor to the applicant, and indicated that he would recuse himself from the public hearing.

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

Stephen D. Scavuzzo, Esquire, 8200 Greensboro Drive, Suite 900, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Mr. Scavuzzo presented the special permit request as outlined in the statement of justification. He said after the previous violation filed in November 2007, the applicant sought to be in compliance by reducing the number of dogs from eight to four. He pointed out that those neighbors in opposition were opposed to eight dogs, but there were only four now. Mr. Scavuzzo noted that the applicant was very close to the required lot size to keep four dogs by-right. He explained the dogs had never posed an issue, as they were well behaved and well taken care of.

Discussion ensued regarding the type of dogs being permitted through approval of the application. Mr. Scavuzzo explained the applicant housed rescue dogs, so the intent was to allow four dogs at one time without specification of breed, since some of the dogs were intended to be adopted by other families. Any dogs adopted would be replaced with another rescue dog whose breed would vary.

In response to Mr. Byers question concerning the measurements of the rear lot, Bruce Miller, Property Maintenance Inspector, Zoning Enforcement Branch, said he took measurements of the total lot but no measurements of just the rear yard area.

In response to Ms. Gibb's question, Mr. Miller explained the nature of the complaint, which was due to noise and a high number of dogs.

Chairman Ribble called for speakers.

Andrea Margaret Hall, previously Andrea Jung, 14570 Woodland Ridge Drive, Centreville, Virginia, came forward to speak. She said she and her ex-husband had rescued dogs for over 13 years. Ms. Hall noted she had ten years of animal rescue experience, as she she was involved with many groups and organizations, had performed behavior assessments, spoke at County schools about rescue, and she had a close professional relationship with veterinarians. She maintained that the dogs would remain in the house and never be left outside unsupervised. The dogs would be exercised twice daily by a professional service and the yard cleaned daily. Ms. Hall expressed she was an animal lover, so sought permission to keep four dogs.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, responded to Board members' questions concerning similar cases, noting that staff proposed appropriate development conditions based on the requests of the applicant.

Andrea's ex-husband, Donald Jung, 8030 North Park Street, Dunn Loring, Virginia, came forward to speak. He said he too loved dogs, and was active in the volunteer rescue program for years. He assured the dogs were well-kept. He explained what a barker-breaker was; that it was a high-pitched noise, not an electric shock; that only recently was there a complaint about barking; and, therefore, they utilized the effective device.

Ms. Clair Listen, 312 North Henry Street, Alexandria, Virginia, came forward to speak in support. She too worked with rescue, and was impressed with how nice, clean and well maintained both the house and the yard were. Ms. Listen said she believed that it was an owner's responsibility to keep dogs well, not the number of dogs kept. She believed Ms. Jung very capable of keeping dogs.

Chairman Ribble then asked if there were any speakers in opposition.

Ron Koch, 14568 Woodland Ridge Drive, Centreville, Virginia, came forward to speak. He was Chairman of the Newgate Forest Homeowners Association, and was the most affected neighbor by the application. He noted there were as many as eight dogs previously; that Ms. Jung should have known the Association's rules and Ordinance's regulations, and that only two dogs were allowed by-right. He explained Ms. Jung's back yard orientation in relation to neighbors' homes, and maintained that the neighbors were all affected. He said the neighbors' quality of life would be severely impacted.

Holly Hammerlie, 6371 Woodland Ridge Court, Centreville, Virginia, came forward to speak. Her issues concerned the fact that she was impacted by her neighbor. She pointed out that she was a dog-trainer teaching in a rural area outside the country, and that the anti-barking device actually impacted all the dogs in the neighborhood. The Jungs had never accepted invitations to talk about the situation. Mr. Hammerlie said she, too, did not want precedent set with the approval of this application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-SU-015, with proposed changes to the development conditions. He proposed the four dogs be allowed to be kept at present. In the future if one or more of the dogs passed away, he proposed three dogs be allowed to be kept at any one time. Mr. Beard seconded the motion.

Discussion ensued regarding all the issues raised, including the number of dogs kept by right, consideration to the neighbors, and the position of the applicant permitted to keep three dogs after one passed away.

Chairman Ribble called for a vote on Mr. Hammack's motion, which failed by a vote of 2-4. Mr. Byers, Mr. Smith, Ms. Gibb and Chairman Ribble voted against the motion. Mr. Hart recused himself from the hearing.

Mr. Smith made a substitute motion to approve SP 2009-SU-015, for the reasons stated in the Resolution. His proposed changes would be to allow all four dogs for the present, with only two dogs total allowed in future after some pass away.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

ANDREA JUNG, SP 2009-SU-015 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 14570 Woodland Ridge Dr. on approx. 11,301 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 65-1 ((2)) 31. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 2, 2009; and

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

1. The applicant is the owner of the land.

2. The applicant is approved for keeping the four dogs named in the applicant's Statement of Justification with the recognition that in the future this approval is subject to the Group 9 Special Permit regulations for the limitation to two dogs, who then could be part of a rescue program.

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. 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, Andrea H. Jung, a/k/a Andrea Hall, and is not transferable without further action of this Board, and is for the location indicated on the application, 14570 Woodland Ridge Drive (11,301 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. The applicant shall have the ability to maintain the existing four (4) dogs whose type and photograph are identified in the Staff Report, and the applicant's Statement of Justification, which lists each dog's age and breed as indicated in Attachment 1. If any of these specific animals pass away 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 area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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

Ms. Gibb seconded the motion, which carried by a vote of 4-2. Mr. Beard and Mr. Byers voted against the motion. Mr. Hart recused himself from the hearing.

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~ ~ ~ June 2, 2009, Scheduled case of:

9:00 A.M. LEO GRANDINETTI, SP 2009-PR-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 accessory storage structure to remain 4.8 ft. from side lot line and 5.8 ft. from rear lot line. Located at 2509 Buckelew Dr. on approx. 10,190 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((2)) 56.

Chairman Ribble called the applicant to the podium.

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

Leo Grandinetti, 2509 Buckelew Drive, Falls Church, Virginia, came forward and reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Mr. Grandinetti presented the special permit request as outlined in the statement of justification submitted with the application. He had no garage, and after he spoke with County staff, he assumed a shed was permitted. He placed it on the edge of his lot to best utilize the land; constructed a platform on which to place it; met Ordinance requirements for the roof's angle; assured it was well-screened; but, was unaware of the 10-foot setback. Mr. Grandinetti pointed out that the shed housed thousands of dollars worth of expensive parts and equipment to protect. Because of the land's contour, he admitted that his neighbors below him did not have much of a view of his shed, but it was clearly visible to the neighbors residing above him. Referencing an opposition letter that complained of a fallen tree, he explained the facts noting legal documentation determining that he was not liable, and that it was an act of God.

In response to Mr. Hart's questions, the applicant said there was no electricity or plumbing, it was a play area for his son, and that the tarp hanging on the rear of the shed was utilized as a curtain/drape, and could easily be taken down.

Chairman Ribble called for speakers.

Alice Rooney, 7319 Allen Avenue, Falls Church, Virginia, came forward to speak in opposition. She said she was 96 years old, and one of an original residents of the neighborhood. Ms. Rooney stated that the shed was an eyesore; that it was clearly visible from her home; and her view from her backyard, as well as her adjacent and contiguous neighbors' view was ruined.

Ms. Rooney responded to Mr. Hammack's questions concerning the location of her lot; the visibility of the shed; if the area was considered ugly and un-kept; and her relationship with the rest of her neighbors and the applicant.

In rebuttal, Mr. Grandinetti said Ms. Rooney never approached him about the shed problem. He noted he installed landscaping to resolve a run-off problem after being told about it. He said he has kept her informed of maintenance conditions/problems, as well as an insurance matter. Mr. Grandinetti assured he tried to be a good neighbor.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny SP 2009-PR-017 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

LEO GRANDINETTI, SP 2009-PR-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 accessory storage structure to remain 4.8 ft. from side lot line and 5.8 ft. from rear lot line. Located at 2509 Buckelew Dr. on approx. 10,190 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((2)) 56. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 2, 2009; 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 the reduction will impair the purpose and intent of this Ordinance.
3. The granting of this special permit will be detrimental to the use and enjoyment of other properties in the immediate vicinity.

4. The granting of this special permit could create an unsafe condition with respect to both other properties and public streets.
5. To force compliance with setbacks requirements will not cause unreasonable hardship upon the owner.

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. Hart seconded the motion, which carried by a vote of 5-2. Mr. Beard and Ms. Gibb voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refilling an application. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 2, 2009, Scheduled case of:

9:00 A.M.        BETH A. OLIVER, SP 2009-BR-019 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.7 ft. from the side lot line. Located at 7605 Cosgrove Pl. on approx. 11,710 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (46) 30. (*Admin. moved from 6/9/09.*)

Chairman Ribble called the applicant to the podium.

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

Beth and David Oliver, 7605 Cosgrove Place, Springfield, Virginia, came forward and reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Ms. Oliver presented the special permit request as outlined in the statement of justification submitted with the application. They purchased the home in 1993; the addition in question was built in 1973; they purchased the house in good faith; and they thought it was in compliance with County Code. She referenced a water main, of which they became aware of last year in May, which was not noted on the plat but was contained in the Board's package that morning. Ms. Oliver noted that the Ordinance setback requirements differed from their covenant, and proceeded to give the Board its history. She listed the intentions of their proposal, and that they sought to meet Ordinance standards.

David Oliver informed the Board of the documents stamped and approved by the County evidencing the conformance and approval of the structure.

Ms. Oliver noted that they were in the process with the Water Authority to amend the easement agreement.

Mr. Oliver said during their discussions, the Water Authority indicated they would not want to prevent the applicants from building the addition, but were concerned that the original addition was constructed within the easement.

Ms. Oliver, concluding her presentation, she corrected the fact that the carport was built in 1973 instead of 1997, and she pointed out that their house was about 43 feet from their neighbor's, which left room for a bull dozer if the watermain became an issue.

Mr. Hammack referenced the revised development conditions to which Ms. Oliver said they were in discussion with staff concerning a concrete slab, and until all was settled, they would not put any money into

their proposal. She said it was quite a shock to learn that their kitchen fell within the easement, and that there could be problems.

Discussion ensued regarding all issues raised, including the Water Authority granting additional time for uses within its easements; staff amending its standard development condition for allotted time allowed by the Water Authority; the applicants' financial hardship if a portion of their house had to be torn down; what may be considered a reasonable time to find a solution; the applicants' predicament that no permits could be approved while the concrete foundation was at issue; the legal position of holding the County harmless; and the fact that the addition was permitted 36 years ago.

Chairman Ribble closed the public hearing.

Mr. Hart commented on the facts of the application, and that the Water Authority had no problem with the structure being in the easement for 30 years. He modified several of the development conditions and clarified language.

Mr. Hart moved to approve SP 2009-BR-019 for the reasons stated in the Resolution.

Mr. Beard seconded the motion.

Discussion ensued concerning Development Condition 2 regarding the easement, a contingency, and a reasonable time-frame to execute action. The friendly amendment made by Mr. Hammack was accepted by Mr. Hart and Mr. Beard.

Chairman Ribble called for a vote.

The motion carried by a vote of 7-0.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

BETH A. OLIVER, SP 2009-BR-019 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.7 ft. from the side lot line. Located at 7605 Cosgrove Pl. on approx. 11,710 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (46) 30. (Admin. moved from 6/9/09) 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 2, 2009; and

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

1. The applicant is the owner of the land.
2. This is another situation where going back many years there are a lot of potential places this went wrong, but it all can be put back together.
3. The applicants want to go forward with this application first, and they are certainly entitled to that.
4. Regarding the several concrete slabs on the property, that matter will be clarified by Development Condition 3.
5. Concerning a Hold Harmless Agreement, with these limited facts it is not necessary, as the issue is sorted out with the Water Authority.
6. As the structure has been in the easement for 30 years, it is not positive that the Water Authority is in such a strong position because they apparently have done nothing up until today.



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 existing addition as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated December 15, 2008, revised through March 5, 2009, submitted with this application and is not transferable to other land.
- 2. Within 12 months of approval of this special permit, the applicant shall apply for and gain approval from the Fairfax County Water Authority for all applicable structures to remain within the easement.
- 3. Within 6 months of approval of this special permit, the applicant shall remove or relocate the concrete slab between the addition and Lot 31 on the eastern side of the property, to bring it into conformance with Zoning Ordinance requirements.

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

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

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~ ~ ~ June 2, 2009, Scheduled case of:

9:00 A.M.        EDWARD J. KOZERKA, SP 2009-MV-016 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. from rear lot line and reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from the

front lot line. Located at 8068 Fairfax Rd. on approx. 12,172 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 51 and 507A.

Chairman Ribble noted that SP 2009-MV-016 had been administratively moved to August 11, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 2, 2009, Scheduled case of:

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

Chairman Ribble noted that A 2009-MA-010 had been administratively moved to September 22, 2009, at 9:30 a.m., at the applicant's request.

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~ ~ ~ June 2, 2009, Scheduled case of:

9:30 A.M. MINH-NGUYET THI HUYNH, TRUSTEE, A 2009-MA-011

Chairman Ribble noted that A 2009-MA-011 had been withdrawn.

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~ ~ ~ June 2, 2009, After Agenda Item:

Request for Additional Time  
Heritage Fellowship United Church of Christ, SPA 84-C-045

Mr. Byers moved to approve 12 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was April 30, 2010.

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~ ~ ~ June 2, 2009, After Agenda Item:

Request for Additional Time  
Trustees of Beacon Hill Missionary Baptist Church, SP 2004-HM-013

Mr. Hammack moved to approve 18 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 7-0. The new expiration date was October 19, 2010.

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~ ~ ~ June 2, 2009, After Agenda Item:

Request for Additional Time  
Ernest W. Lawrence III & Alison E. Lawrence, SP 2006-M-026

Ms. Gibb moved to approve nine months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was December 26, 2009.

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~ ~ ~ June 2, 2009, After Agenda Item:

Request for Additional Time  
James C. Thoennes, SP 2006-SU-037

Mr. Hart moved to approve six months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was October 3, 2009.

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Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, responded to Mr. Hart's question concerning a statute for an automatic approval of time extension requests for special permits or special exceptions.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Supervisors Fairfax County v. Board of Zoning Appeals in Circuit Court of Fairfax, CL 2008-2729, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 20102). Mr. Smith seconded the motion, which carried by a vote of 7-0.

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The meeting recessed at 11:31 a.m. and reconvened at 11:54 a.m.

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Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Paula A. McFarland

Approved on: March 22, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 16, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 16, 2009, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 (church w/private school of general education)

Chairman Ribble noted that SP 2009-SU-018 had been administratively moved to July 14, 2009, at 9:00 a.m., at the applicant's request.

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the hearing had subsequently been moved to August 11, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 16, 2009, Scheduled case of:

9:00 A.M. SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SPA 2004-SP-052 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2004-SP-052 previously approved for a place of worship to permit modification of development conditions. Located at 12501 and 12519 Braddock Rd. on approx. 15.64 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25.

Chairman Ribble called the applicant to the podium.

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

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

Lynne J. Strobel, the applicant's agent, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a modification to Development Condition 25 regarding the length of time the temporary trailers were allowed to remain. The applicant proposed to amend the condition to allow the operation of two temporary trailers currently located on the subject property for a period of five years from the time of the special permit amendment approval. Ms. Caffee stated that the original special permit had been approved by the Board on November 29, 2005. She explained that due to difficulties in obtaining the building permits for the temporary trailers, the construction had been delayed, and a non-residential use permit required for occupancy had not been issued for the trailers until September 16, 2008. No other changes were proposed to the previously approved application. Staff recommended approval of SPA 2004-SP-052 subject to the proposed development conditions.

In response to Mr. Hart's question regarding the number of trailers involved, Ms. Caffee explained that there were two separate trailers that were attached to each other, resulting in one cohesive trailer.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained that there had been a series of delays associated with the installation of the trailers, which included the approval of a minor site plan in error that had to be resubmitted and resolved. She said the trailers served an important function by generating interest in the permanent temple which was to be constructed on the property and allowed a consistent place of worship until the

building could be constructed. Ms. Strobel said that the fundraising for the permanent structure had considerably slowed down as a result of economic changes, with individuals who had made prior commitments no longer being able to afford to do so. She said there would be no additional clearing of the land, and the amendment would allow the existing condition to remain and the applicant to use the trailers in which it had made a considerable investment.

In response to Ms. Gibb's question regarding the amount of money spent on getting the site plan twice approved, Ms. Strobel consulted with a member of the audience, after which she responded that the total cost for the trailer installation was approximately \$450,000, and the first time through the site plan process was approximately \$75,000. She said she did not know the exact cost of the second process, but it had been considerable, especially for a non-profit.

In response to Ms. Gibb's question concerning whether Ms. Strobel had seen a letter regarding the site being unsightly, Ms. Strobel said she had seen an e-mail which raised some concerns about the visibility of the trailers. She indicated the location of the trailer and the landowner she understood the correspondence had come from on an exhibit using the overhead viewer and said there was considerable vegetation between the two locations that would not be removed. She said the house was set back from the property line and estimated that the distance between was about 400 feet.

In response to Mr. Hart's question regarding whether five years would be a sufficient amount of time to complete the fundraising, construct the building, and obtain a non-RUP, Ms. Strobel said the applicant was hopeful, and she thought five years was within staff's acceptable tolerance.

Ms. Caffee said the applicant had originally requested three more years and had revised the request to five years. She said that staff was hesitant because the temporary trailers were supposed to go away and the temple structure built, but staff had settled on five years.

Mr. Hart said he understood the rationale in the subject application, but he would have a problem rationalizing on other sites the use of semi-permanent trailer structures because of funding issues because it was supposed to be an interim finite temporary thing. He said that if a trailer was to be somewhere for a longer period, different development conditions about the appearance of the trailer and screening would be needed.

Mr. Beard asked for more information regarding the change in the fundraising and whether the completion of the project was likely within the requested five years. Ms. Strobel said there were still fundraising activities and contributions being made, and the applicant had already made a significant investment and was confident in its desire to pursue the project. She said the applicant was serious about building on the site, would continue to work to do so, and believed it was a doable situation.

In response to Mr. Byers' questions regarding the definition of "permanent" and whether six years would be considered permanent, Susan Langdon, Chief, Special Permit and Variance Branch, said that if the applicant had wanted to continue meeting in the trailers and never build the temple as approved by the special permit, staff would consider that permanent. She said six years would not be considered permanent if there was a timeframe and at the end of the five or six years, the trailers were gone. She advised the Board that there had been much discussion between staff and the applicant regarding the length of the additional time for the trailers, and because of the location of the trailer and the installation of the driveway and part of the parking lot, staff felt they could support five years, but had advised the applicant they would not likely support the extension of more time, and the applicant was expected to continue with the construction.

Mr. Byers said that if there had been zero dollars or a small percentage in fundraising, the probability of the project happening within the five-year timeframe was problematic, and there had to be a balance with the neighborhood. He said the question was whether someone would want to see a temporary trailer for six years with no evidence that anything was moving forward. Ms. Strobel said the applicant felt it had approximately 20 percent of the funds committed to the project and was confident they would be able to proceed.

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

Mr. Hammack moved to approve SPA 2004-SP-052 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Byers said he would not support the motion based on the timeframe. He said he would prefer it come back to be reviewed in three years. He noted that Ms. Strobel had indicated that 20 percent of the funding had been raised, but he assumed at least \$475,000 of that had been spent on the trailer and the submission of the site plan. He said it would be better to have the Board take a second look at the situation in a more graduated way.

Chairman Ribble called for the vote. The motion carried by a vote of 5-2. Mr. Beard and Mr. Byers voted against the motion.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SRI VENKATESWARA LOTUS TEMPLE OF VIRGINIA, SPA 2004-SP-052 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2004-SP-052 previously approved for a place of worship to permit modification of development conditions. Located at 12501 and 12519 Braddock Rd. on approx. 15.64 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 24 and 25. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 16, 2009; and

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

1. The applicant is the owner of the land.
2. The applicant is in for an amendment to a place of worship for a modification of previously approved development conditions, dealing with only one development condition to extend the three-year approval of the temporary trailers for another five years from the date of the amendment approval.
3. There were reservations shared amongst the Board members about having a temporary trailer become a de facto permanent trailer.
4. Given the amount of investment that the temple has already put into the site and the unusual economy, the five-year extension would be allowed.

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

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

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

1. This approval is granted to the applicant only, Sri Venkateswara Lotus Temple of Virginia, and is not transferable without further action of this Board, and is for the location indicated on the application, 12501 and 12519 Braddock 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 Professional Design Group, Inc., dated May 6, 2004, as revised through October 4, 2005.
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 worshippers in the main area of worship shall be 364.
6. Parking shall be provided as depicted on the Special Permit Plat, except as modified by Condition 25.
7. All parking shall be provided on-site, except as otherwise provided in these development conditions. No parking shall be permitted on Braddock Road or other local streets. In the event parking cannot be completely accommodated on-site, the applicant shall provide a shuttle service to transport worshippers to and from the subject property from an approved legal off-site parking location. Such off-site parking location shall be approved by the Zoning Administrator.
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 modifications:
  - Additional plantings shall be provided along the eastern lot line adjacent to the proposed stormwater management pond, and in the northwestern portion of Lot 24, to screen the view of the developed area from Braddock Road. Additional plantings shall be provided along the western lot line (Lot 25) between the parking lot and the western lot line to supplement existing vegetation to screen the parking lot from the adjacent residential use if deemed necessary by Urban Forestry Management (UFM). The size, species and location of plantings shall be provided in consultation with UFM.
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 UFM of DPWES.
10. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
11. The barrier requirement shall be waived along all lot lines.
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. 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 UFM, for review and approval. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including UFM, 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 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 shall be subject to the review and approval of Urban Forest Management, DPWES.

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 10 inches in diameter and greater, and 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 plat, and those additional 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 identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.”

All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc. shall be subject to the review and approval of Urban Forest Management, DPWES.

The use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rake and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM, DPWES.

The applicant shall 1) root prune, 2) mulch, and 3) 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 all tree preservation areas. 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, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- Tree protection fence shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area.
- Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 4 inches extending 10 feet inside the undisturbed area without the use of motorized equipment
- An Urban Forest Management, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.\*

15. A minimum of 60% of the site shall be preserved as undisturbed open space. There shall be no clearing or grading of any vegetation in the undisturbed open space except for dead or dying vegetation, as determined by UFM. No structures or fences shall be permitted in the area of undisturbed open space.
16. If public sanitary sewer is not available, a special permit amendment will be required to incorporate a septic drainfield on the site.
17. If blasting is required, and before any blasting occurs on the application property, the applicant will insure that blasting is done per Fairfax County Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented.
18. If DPWES, in coordination with the Air Quality and chemical Hazards Section of the Health Department and with the Soil Science Office, determines that a potential health risk exists caused by the presence of rock containing asbestos on the site, the developer shall:
  - a. Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risk.
  - b. Commit to appropriate construction techniques as determined by DPWES, in coordination with the Air Pollution Control Division and with the Soil Science Office, to minimize this risk. Such



techniques may include, but shall not be limited to, dust suppression measures during all blasting and drilling activities, covered transportation of removed material presenting this risk and appropriate disposal.

19. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. All lighting shall be full cut-off luminaires and shall be controlled by timers (except for security lighting). No uplighting of landscaping, signage or architecture shall be permitted.
20. The maximum height of the building, measured from the lowest ground level to the top of the building, excluding the spire, shall be 60 feet.
21. Unless required by DPWES to construct a dry stormwater detention pond, the applicant shall provide bioretention Stormwater management/Best Management Practices facilities that include, to the extent possible, plant materials that can assist in screening the development from Braddock Road. Subject to approval by DPWES, the pond shall be designed with structural elements to increase holding time, such as sediment traps and forebays and/or trickle ditch check dams to divert water into the pond floor. The pond shall be designed to encourage the establishment of a shallow marshy wetland floor to create a naturalized planted environment.
22. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
23. A geo-technical engineering and soil study shall be submitted to DPWES for review and approval as determined necessary by DPWES and implemented as determined by DPWES.
24. Notwithstanding that which is shown on the plat, the temporary trailers and associated parking shall be placed on Lot 25 in an area to be cleared for the main place of worship, driveway, and/or parking lot.
25. The temporary trailer depicted on the plat shall be approved for a time period not to exceed five years from the date of approval of this special permit amendment application. Development Condition Numbers 1, 2, 3, 4, 16, 19, 22 and 25 shall be implemented prior to the issuance of the Non-RUP for the trailer. The trailer shall have a maximum of 100 seats. Thirty-three (33) parking spaces shall be provided prior to issuance of the Non-RUP for the trailer, in an area now depicted as a parking area on the Special Permit Plat. Additionally, the access road shall be constructed and transitional screening along Braddock Road adjacent to the access road, as depicted on the plat, shall be installed prior to issuance of the Non-RUP for the trailer.

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

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

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

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~ ~ ~ June 16, 2009, Scheduled case of:

9:00 A.M. HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-03 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 previously approved for billiard hall with an eating establishment to permit dance hall. Located at 14100, 14114 - 14116 Lee Hwy. on approx. 9.3 ac. of land zoned C-7, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman Ribble noted that SPA 95-Y-069-03 had been administratively moved to July 14, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 16, 2009, After Agenda Item:

Request for Reconsideration  
Leo Grandinetti, SP 2009-PR-017

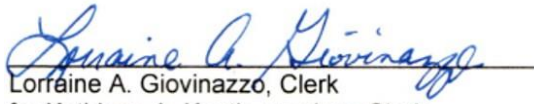
The request for reconsideration was reviewed; however, no motion was made; therefore, the request for reconsideration was denied.

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As there was no other business to come before the Board, the meeting was adjourned at 9:25 a.m.

Minutes by: Kathleen A. Knoth

Approved on: October 6, 2009

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 23, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 23, 2009, Scheduled case of:

9:00 A.M. FAIRFAX COMMUNITY CHURCH OF GOD, SPA 01-S-038 (In association with SE 2008-SP-039) (modification to site to permit telecom facility) (*Admin. moved from 3/10/09 and 5/5/09 at appl. req.*)

Chairman Ribble noted that SPA 01-S-038 had been indefinitely deferred.

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~ ~ ~ June 23, 2009, Scheduled case of:

9:00 A.M. GEOFFREY S. DEAS AND EDNA C. ROSARIO-MUNOZ, SP 2008-MV-086 Appl. under Sect(s). 8-914 and 8-917 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 1.8 ft. from side lot line and to permit modifications to the limitations on the keeping of animals. Located at 2002 Basset St. on approx. 11,919 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (10) 9.

Chairman Ribble called the applicants to the podium.

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

Geoffrey S. Deas, 2002 Basset Street, Alexandria, Virginia, reaffirmed the application.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to Mr. Hammack's question, Ms. Hedrick said there was no difference between a deck and a patio in the Zoning Ordinance.

Mr. Deas presented the special permit request as outlined in the statement of justification submitted with the application. He said the first request was to keep the brick walkway, which was already installed with a patio before they purchased the property. The deck area was harmonious with the neighborhood, and had no negative impact on the neighbors. Mr. Deas also requested to keep their three elderly dogs; that he was unaware there was a limitation to the keeping of animals; the dogs were rescued and greatly loved; and, when deployed to Iraq, they provided company and a sense of security to his family. Mr. Deas said the dogs were inside pets; that he bought the house because of its expansive back yard; that the dogs were rarely left unattended; that the yard was continually cleaned up; that he would not replace one if one should pass; and, they were kenneled whenever the family went out of town. He submitted that the special permit would probably only last a few years because of the advanced age of the animals.

In response to Mr. Beard's question concerning a complaint, Mike Adams, Inspector, Department of Code Compliance, concurred it was a complaint that brought the County's involvement, but he had not made a site visit and could not attest to the yard's condition. There was a brief discussion concerning bamboo in the yard.

Chairman Ribble called for speakers.

Edward Quin, 2000 Basset Street, Alexandria, Virginia, came forward to speak in opposition. His main point dealt with the constant, loud, shrill barking whenever Mr. Deas let the dogs outside. He said that the deck

was another area where the dogs would bark, and that his family's quality of life was adversely affected because of the noise. Mr. Quin said he once talked to Mr. Deas about the barking, and was told that was what dogs did. He said he had no recourse but to file a complaint.

Discussion ensued regarding the letters of support; the neighbors' misunderstanding that the dogs would all be taken away if there was a complaint; and, that everyone wanted to be good neighbors. Mr. Quin said that for years he had not had the heart to complain, and he was unsure whether having just two dogs would make a difference.

In rebuttal, Mr. Deas submitted the patio was not a significant issue, but keeping his dogs was most important. He noted that he went to his neighbors and received their support for keeping his three dogs, and when he spoke with Mrs. Quin, she said she had no problem but that her husband was the one with the complaint. Mr. Deas pointed out that a 7-foot privacy fence was installed to shield his property from the Quin's, and his wife went to great extremes to modify her schedule to closely monitoring and assure no barking. Mr. Deas said Mr. Quin's children have been in his yard to play with his dogs.

Discussion ensued regarding a development condition that the dogs not be allowed unattended on the screened porch, and staff's clarification of the proposed language. Mr. Deas said he had no objection.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-MV-086 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

GEOFFREY S. DEAS AND EDNA C. ROSARIO-MUNOZ, SP 2008-MV-086 Appl. under Sect(s). 8-914 and 8-917 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 1.8 ft. from side lot line and to permit modifications to the limitations on the keeping of animals. Located at 2002 Basset St. on approx. 11,919 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (10) 9. 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 23, 2009; and

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

1. The applicants are the owners of the land.
2. The special permit to permit three dogs is granted primarily because if the applicants' yard was a few hundred square-feet larger, four dogs can be kept as a matter of right.
3. The development conditions will not allow replacing a third dog after the first of the three dies, which would bring them into compliance; and, given the age of the dogs, it is imagined that will not be too long.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-917 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

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

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

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

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

- 1. This approval, related to the number of animals, is granted to the applicants only, Geoffrey S. Deas and Edna C. Rosario-Munoz, and is not transferable without further action of this Board, and is for the location indicated on the application, 2002 Basset Street (11,919 square feet) and is not transferable to other land.
- 2. The applicants 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 applicants' existing three (3) adult dogs. If any of these specific animals pass away 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 area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
- 5. At no time shall the dogs be left outdoors or on the screen porch unattended for continuous periods of longer than 30 minutes.
- 6. The deck shall be permitted to remain as shown on the house location survey prepared by Steven L. Moore, dated March 8, 2009.

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

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

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~ ~ ~ June 23, 2009, Scheduled case of:

9:00 A.M. NANCY LONGMYER, TRUSTEE OF THE NANCY W. LONGMYER REVOCABLE TRUST, SP 2009-MA-020 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 2.0 ft. from side lot line and 0.4 ft. from rear lot line, dwelling to remain 14.1 ft. with eave 13.8 ft. from side lot line and addition to remain 11.1 ft. from side lot line and to permit an accessory dwelling unit. Located at 3108 Sleepy Hollow Rd. on approx. 23,487 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((7)) 39.

Chairman Ribble called the applicant to the podium.

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

Nancy Longmyer, 3108 Sleepy Hollow Road, Falls Church, Virginia, reaffirmed the application.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of special permit SP 2009-MA-020, subject to the proposed development conditions.

Ms. Longmyer presented the special permit request as outlined in the statement of justification submitted with the application. She said the accessory dwelling was a basement apartment which already had a kitchen in poor condition, which was there when she bought the house in 1972. Around 1979, she refurbished the space for an apartment for her mother-in-law, and then over the years proceeded to renovate the apartment a little at a time with plans to rent it after her daughter left for college. She was unaware there could not be two kitchens in one house. She said she was 72 years old with serious health conditions; that her daughter would feel more secure if someone else were in the house; and, she did not want to live alone. Ms. Longmyer retained contractors to construct the required renovations. She explained the use of the shed was built without knowledge of setbacks and height limitations. She submitted a petition of support from her neighbors. Ms. Longmyer noted that removal or relocation of the shed would be most expensive, as well as leave no storage for her garden tools.

In response to Mr. Byers' question, Ms. Longmyer said a disgruntled tenant called zoning and complained.

Discussion ensued regarding the shed, the topography, the flooring, whether there was plumbing or electricity, the carport, and whether there was a necessity for a permit.

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

Mr. Byers moved to approve SP 2009-MA-020 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

NANCY LONGMYER, TRUSTEE OF THE NANCY W. LONGMYER REVOCABLE TRUST, SP 2009-MA-020 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 2.0 ft. from side lot line and 0.4 ft. from rear lot line, dwelling to remain 14.1 ft. with eave 13.8 ft. from side lot line and addition to remain 11.1 ft. from side lot line and to permit an accessory dwelling unit. Located at 3108 Sleepy Hollow Rd. on approx. 23,487 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((7)) 39. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 23, 2009; and

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

1. The applicant is the owner of the land.
2. It has been established that for conditions for approval, standards A through G have been established.
3. Staff recommends approval of the accessory dwelling unit.
4. The shed has been in existence since 1980 with no complaints.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. The approval, for the accessory dwelling unit, is granted to the applicant only, Nancy Longmyer, Trustee of the Nancy W. Longmyer Revocable Trust, and is not transferable without further action of this Board, and is for the location indicated on the application, 3108 Sleepy Hollow Road (23,487 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat prepared by APEX Surveys, dated August 12, 1994, as revised through May 4, 2009, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The 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. Prior to occupancy of the accessory dwelling unit, the applicant shall bring the accessory dwelling unit into conformance with the Residential Building Code as required by the Department of Public Works and Environmental Services.
6. Prior to occupancy of the accessory dwelling unit, all applicable permits and final inspections shall be obtained for the kitchen located within the unit.
7. The accessory dwelling unit shall contain a maximum of 672 square feet, including a maximum of one (1) bedroom.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. Parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ June 23, 2009, Scheduled case of:

9:00 A.M. THE KING'S CHAPEL, SPA 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2002-SP-051 previously approved for church with child care center and nursery school to add a private school of general education. Located at 12925 Braddock Rd. on approx. 10.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2A.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm had two cases where there were attorneys from the law firm representing the applicant, who were on the opposing side to the cases at his law firm, but indicated he did not believe his ability to participate in the case would be affected.

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

Sara Mariska, the applicant's agent, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, reaffirmed the affidavit.



Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 2002-SP-051, subject to the proposed development conditions.

It was noted that the Virginia Department of Transportation (VDOT) had requested the applicant to improve the existing right-turn lanes to meet current Virginia Department of Transportation design standards. The applicant had indicated its intent to request a modification or waiver of these current standards. A development condition had been proposed to accommodate both of these requests. With the exception of the aforementioned, there were no additional site modifications proposed with this application.

The applicant requested that the approval of a modification of the transitional screening requirements in favor of existing vegetation and waiver of barrier requirements in conjunction with SP 2002-SP-051 carry forward with this amendment application. Staff supported that request. There were revised development conditions distributed that morning, and these revisions were intended to clarify the applicant's proposed commitments and staff's requests. None of the changes represented substantive changes to the commitments which were discussed in the Staff Report. Staff concluded that this proposal was in harmony with the Comprehensive Plan, in conformance with the applicable Zoning Ordinance standards, and recommended approval.

Jerry Stonefield, Environmental Site Review, Department of Public Works and Environmental Services, said the Stormwater Compliance Specialist, Gary E. Switzer, Department of Conservation and Recreation (DCR), Commonwealth of Virginia, was unavailable, but he would do his best to answer questions. He said the County-issued violation concerning erosion and sediment control was resolved; however, the Notice of Corrective Action issued by DCR was still outstanding, and the applicant was in the process of making revisions to address the issues.

Ms. Mariska presented the special permit amendment request as outlined in the statement of justification submitted with the application. She noted that the application proposed no changes to the existing childcare and nursery uses, which were allowed to operate during both stages. Ms. Mariska explained the resolution with VDOT concerning a waiver request, which the church had applied for regarding the turn lane requirements. She explained the resolution of the violations issued by DPWES. She noted that the outstanding state violation's Corrective Action was in the process of resolution through submission of a revise site plan. She noted that the school proposed to lease space in an existing building that had a current occupancy permit; that staff recommended approval; and that the issues about storm water did not impact the current land use application.

Matthew T. Marshall, Engineer and agent, Land Design Consultants, Inc., 9401 Centreville Road, Suite 300, Manassas, Virginia, gave a brief history of his involvement with the application. He noted that there was an inherent conflict between the Public Facilities Manual (PFM) and State Code requirements; that they prepared a revised site plan, approved in 2004 to comply with the current PFM requirements for adequate outfall; and the revision would double the pond's size complying with the Detention Method. The County reviewed it, returned it with comments, and the applicant has addressed the 10 to 12 technical comments anticipating resubmission later in the summer.

In response to Mr. Hart's question, Ms. Mariska said the school's commencement was the end of August 2009.

Discussion ensued regarding a VDOT waiver; the issue of adequate outfall; communications with concerned citizens/neighbors; presence and control of sediment; clarification of the pond's enlargement; and, possibility of an interpretation or amending the plat and special permit to reflect changes.

Vice Chairman Hammack assumed the Chair, and called for speakers in support.

Dr. Robert Marshall, 7323 (Street address unintelligible), Fairfax Station, Virginia; Dr. James Earls, 5553 Rockpointe Drive, Clifton, Virginia; and Julie White, 42473 Lennox Court, South Riding, Virginia, came forward to speak in support.

In response to Vice Chairman Hammack's question, Ms. White said the school was ready to operate.

Vice Chairman Hammack called for speakers in opposition.

Robert Richard, 5933 Doyle Road, Clifton, Virginia; Deborah Rood, 5728 Doyle Road, Clifton, Virginia; Carol Koehne, 13135 Phelfrey Lane, Fairfax, Virginia; came forward to speak in opposition. Their main concerns were one of the property's pond suffered severe damage from silt from the church's runoff; that the third property from the church ended up with all the runoff which had passed through the other two properties; and that even one inch of rain impacted and flooded the neighbors; and that the school would be cutting down more trees, which would make them even further impacted.

Chairman Ribble resumed the Chair.

In rebuttal, Ms. Mariska said the applicant suggested a circulation plan to address the neighbors' concerns, however, although the plan was not supported by staff and VDOT. She said they would not cut down any additional trees from the play area, and the nursery school and childcare uses had always been approved to operate in both Phase I and II. Ms. Mariska clarified that the application proposed no exterior or interior modifications, no impervious surfaces would be added, and no trees removed. The school simply proposed to go into an existing building with an existing occupancy permit for Phase I only. She concurred that there were some construction issues which were in the process of resolution, and the school had no impact on those issues.

Eugene Heck, 4227 Mayport Lane, Fairfax, Virginia, came forward to speak. He said the terrible flooding spoken of was called a 300-year flood and that most of the damaging runoff came from the golf course to the west of the church's property. He said he was the project manager of the property, and saw firsthand all that was happening, and that he oversaw the contractors to assure they did the work they were supposed to do.

Mr. Byers stated there was culpability with this case.

Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SPA 2002-SP-051 to July 14, 2009, at 9:30 a.m., for the reasons stated below.

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The meeting recessed at 11:22 a.m. and reconvened at 11:29 a.m.

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~ ~ ~ June 23, 2009, Scheduled case of:

9:30 A.M. HARMAN AND MANFUL, INC., A 2008-MV-021 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without an approved Special Permit or a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hy. and 6117 North Kings Hwy. on approx. 2.85 ac. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Concurrent with A 2008-MV-022) (*Admin. moved from 7/29/08 and 12/16/08 at appl. req.*)

Chairman Ribble noted that A 2008-MV-021 had been withdrawn.

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~ ~ ~ June 23, 2009, Scheduled case of:

9:30 A.M. RICHMOND HIGHWAY, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, A 2008-MV-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without a valid Non-Residential Use Permit or an approved Special Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hy. and 6117 North Kings Hwy. on approx. 2.85 ac.

of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D.  
(Concurrent with A 2008-MV-021) (*Admin. moved from 7/29/08 and 12/16/08 at appl. req.*)

Chairman Ribble noted that A 2008-MV-022 had been withdrawn.

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~ ~ ~ June 23, 2009, Scheduled case of:

9:30 A.M. HANH DUONG AND NGOC PHAM, A 2009-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 12812 Middleton La. on approx. 10,830 sq. ft. of land zoned R-3 (Cluster) and Pt. HC. Springfield District. Tax Map 45-2 ((3)) (30) 3.

Chairman Ribble noted that A 2009-SP-013 had been administratively moved to September 22, 2009, at 9:30 a.m., at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff was working with the appellant to clear the violation.

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Chairman Ribble noted that it was usual to hear the following two cases together, but there was a request to hear them separately.

~ ~ ~ June 23, 2009, Scheduled case of:

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

Chairman Ribble noted that this appeal was for decision only.

Mr. Hart made a disclosure, and indicated that he would recuse himself from each of these public hearings.

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

Doug W. Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in his staff memorandum dated June 16, 2009.

In response to Mr. Beard's question concerning staff withholding legal action, Chuck Cohenour, Senior Zoning Inspector, Zoning Enforcement Branch, explained staff's procedure, noting a schedule and time-frame would be set up by the appellant to be approved by staff during which items would be completed.

J. Charles Curran, Kidwell, Kent & Curran, 9695-C, Main Street, Fairfax, Virginia, agent for Cronan Family, LLC, presented the arguments forming the basis for the appeal. He wanted to dispel the suggestion that the appellant had not acted in good faith. He noted the road waiver was immediately acted upon on April 17<sup>th</sup>, and they entered into the second phase of their contract for preparation of the site plan. He said the property's cleanup was proceeding in earnest, and at this point it was satisfactory with the County. Mr. Curran submitted that it was a massive undertaking, as the property had accumulated assorted junk and materials for over 20 years. He said he was asking the Board for another short additional period of time to complete the process.

In response to Mr. Beard's comment regarding staff's satisfaction with the progress made, Mr. Hansen clarified that staff was not happy with the amount of time it has taken for the site plan to be submitted. He said staff was not asking for a deferral of the decision, and that staff believed more progress could have been made prior to the April 21<sup>st</sup> meeting. Staff was trying to offer the appellants a way to bring the situation to a timely completion with an agreed upon deadline when the site plan would be submitted for review by DPWES. Mr. Hansen said that staff preferred the Zoning Administrator's decision be upheld that day, and if the Board thought that could only be done by forcing legal action, that would be okay; however, staff was trying to offer time for the appellants to submit the site plan, but did not want another deferral.

Chairman Ribble called for speakers.

Pete Rigby, Paciulli, Simmons & Associates, LTD, 11212 Waples Mill Road, Suite 100, Fairfax, Virginia, said he was involved with the project for some time. He explained that until the matter of the road frontage improvement was resolved, because it was exceedingly expensive for the appellant, the site plan was not pursued. When aerial photographs were to be taken, the spring foliage made that impossible. Due to the weather conditions in April and May, they were unable to survey the site. He noted that an engineer must delineate the property lines, as it cannot be done by the plat. Mr. Rigby asked that August 3<sup>rd</sup> be the date to submit the site plan, and because of numerous factors involved in a survey, wetlands, boundaries, and topography, Mr. Rigby submitted it could take four to six months.

Frank McDermott, Esquire, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, attorney for Danella Construction Co. of Virginia, Inc., also pointed out that a site plan, particularly with the RPA delineation issue, would be an enormous cost. He said the appellant hoped to get a determination as to whether it would be required to build the frontage improvements. If it was required, they could not afford it, and would have to vacate the premises. He believed there was no bad faith evidenced, and it concerned him that was even suggested. The situation's progression was due to the enormous cost of the frontage improvement, which they hoped to avoid.

Ann Jones, McCandlish & Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, said she, along with John Farrell, represented Fairfax Hydrocrane. She stated there was an effort toward good faith; that they were working directly with Mr. Rigby; that Mr. Farrell was providing information to try and expedite matters; and they were hopeful the Board would defer action one more time, as the site plan's submission appeared to be eminent, and all parties were working together to get things done. Ms. Jones said they just needed additional time to assure the approval process was built into the deferral.

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

Ms. Gibb moved to defer the decision on A 2008-SU-008 and A 2008-SU-037. She considered the fact that the companies had been in business for a long time, and they assumed they were in compliance all those years. Ms. Gibb said she thought they had made a good faith effort; that a good deal of progress was accomplished; that there were questions concerning the flood plain, which was to be resolved, and then learned there actually was no encroachment. She said it was extremely expensive to hire an engineering firm, and that filing a waiver would possibly save a great deal of money. Ms. Gibb noted that delineating an RPA was time consuming, and incumbent weather had hampered the process.

Mr. Gibb said she would move that the appellants submit their site plan before the Board recessed in the middle of August, and six months of addition time be allowed for its approval.

Mr. Hammack seconded the motion for purposes of discussion stating he agreed, to a large extent, with all Ms. Gibb said. He said previously he was prepared to uphold the Zoning Administrator's determination, but after hearing how complex an engineering study was, a deferral for additional time was warranted. He said he would make a friendly amendment to defer decision to August 4<sup>th</sup>.

Mr. Beard commented that he too had been prepared to uphold the Zoning Administrator, but after Mr. Curran's testimony about preserving his right to appeal to protect himself, and realizing that the process was, albeit slowly, moving along, and he did see a good faith effort, he would support a further deferral of the decision one more time.

Mr. Byers questioned staff on whether their position had changed or, based on its last inspection, did they continue to believe the appellants had not made a good faith effort to bring the property into compliance.

Mr. Hansen said staff still wanted the Board to uphold the Zoning Administrator, because they were dissatisfied with the time it was taking for a site plan. He conceded that the process was involved and time consuming; however, he then proceeded to refer to the recorded dates of correspondence, memorandums, and activities to support staff's position. Mr. Hansen said staff was satisfied with the property's cleanup, but were dissatisfied with the lack of a site plan. Mr. Hansen stated there was a definite encroachment into the RPA.

Mr. Hammack noted that the County's initial process took three months; that there was progress made; that the business was there for years; that it did not appear there was any harm to the RPA; and he thought the appellants deserved some consideration, as they were acting in good faith.

Chairman Ribble called for a vote.

The motion to defer decision to August 4, 2009, at 9:30 a.m., carried by a vote of 6-0. Mr. Hart recused himself from the public hearing.

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~ ~ ~ June 23, 2009, Scheduled case of:

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) *(Decision deferred from 12/16/08 and 4/21/09.)*

Chairman Ribble asked the appellant's agent if he had anything to add.

Frank McDermott said he would appreciate the same consideration afforded to the Cronan application. That they were the tenant, and did not control the site plan or building permit submission process. He noted that, as staff had indicated, their site was clean and organized, and they had not ever been in the RPA.

Chairman Ribble called for a motion.

Ms. Gibb moved to defer decision on A 2008-SU-037 to August 4, 2009, at 9:30 a.m.


Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the public hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Paula A. McFarland

Approved on: May 10, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 30, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 30, 2009, Scheduled case of:

9:00 A.M. MICHALE SPONAUGLE, SP 2009-SP-021 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7752 Shootingstar Dr. on approx. 2,676 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((13)) 65.

Chairman Ribble called the applicant to the podium.

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

Michale Sponaugle, 7752 Shootingstar Drive, Springfield, Virginia, reaffirmed the affidavit.

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

Mr. Sponaugle presented the special permit request as outlined in the statement of justification submitted with the application. In response to a question from Mr. Hammack, Mr. Sponaugle said that although he had rescued dogs for years, he would discontinue his rescue efforts if allowed to keep a third dog permanently at his home.

Chairman Ribble called for speakers.

Mike Moun, 7730 Gromwell Court, Springfield, Virginia; William Coleman, 7713 Shootingstar Drive, Springfield, Virginia; and Kathryn Paschall, 7730 Gromwell Court, Springfield, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-SP-021 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

MICHALE SPONAUGLE, SP 2009-SP-021 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 7752 Shootingstar Dr. on approx. 2,676 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-2 ((13)) 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 June 30, 2009; and

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

1. The applicant is the owner of the property.

2. The applicant has support from the neighbors.
3. There have been no complaints.
4. There are reservations given the size of the lot and the dogs, but the applicant said he would not be fostering other dogs over the three that he has.
5. He can work in finding homes for dogs.
6. Given the facts of the case, it is nice to have a homeowner who comes in and seeks approval before a notice of violation is issued.

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. 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, Michale Sponaule, and is not transferable without further action of this Board, and is for the location indicated on the application, 7752 Shootingstar Drive, (2,676 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 three (3) dogs as shown in the attached photos. If any of these specific animals pass away 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 area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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

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

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~ ~ ~ June 30, 2009, Scheduled case of:

9:00 A.M.           MICHAEL D. SUNDSTED / LORI J. SUNDSTED, SP 2009-MV-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 open deck to remain 2.1 ft. and addition to remain 8.3 ft. from side lot line. Located at 1805 MacAdams Pl. on approx. 13,257 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 28.

Chairman Ribble called the applicants to the podium.

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

Schuyler Ahrens, 4871 Benecia Lane, Dumfries, Virginia, the applicants' agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He pointed out that a Notice of Violation had not been issued on the property. The applicants had discovered the discrepancy while going through the permit process for an addition at the rear of the property. Mr. Ahrens stated that the screened porch was in place when the applicants purchased the property in 2004. He said that when the applicants subsequently contracted to have the open deck built and the screened porch enclosed by two other contractors, the applicants were informed that no permits were required. Mr. Ahrens showed photographs of other similar additions in the neighborhood to the Board.

In response to a question from Mr. Hart, Mr. Ahrens stated that the screened porch was 20 to 30 feet from the house on Lot 29 and stated that he had a letter of support from that neighbor. Mr. Hart said the Board had also received several letters in opposition to the application. Mr. Ahrens said he was confused by the letters since these neighbors live the furthest from the subject property, down below a hill and are not even visible from the property.

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

Mr. Byers moved to approve SP 2009-MV-023 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MICHAEL D. SUNDSTED / LORI J. SUNDSTED, SP 2009-MV-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 open deck to remain 2.1 ft. and addition to remain 8.3 ft. from side lot line. Located at 1805 MacAdams Pl. on approx. 13,257 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 28. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 30, 2009; 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 the applicants are in compliance with Items A through G.
3. One item was constructed prior to the ownership by the applicant.
4. The documentation was looked at from the standpoint of the quality of the work that was done.
5. Taken into account was that the next-door neighbor evidences no disapproval.
6. This was brought to the Board's attention not by a notice of violation, but it was voluntarily brought in from the standpoint of actually looking at an addition to the house.
7. The complaints received by the Board were from individuals that are relatively far away from the subject property.
8. The Board has been consistent with regard to granting variances in this area.

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 open deck and addition as shown on the plat prepared by Alexandria Surveys International, LLC, dated February 6, 2009, as revised through April 28, 2009, as submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits and final inspections shall be obtained for the addition and open porch.
3. Within 120 days of approval of this application, the shed shall be removed, moved or reduced in size to meet Zoning Ordinance requirements.

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

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

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~ ~ ~ June 30, 2009, Scheduled case of:

9:00 A.M. KEVIN CAMPBELL, SP 2009-SU-022 (50% reduction)

Chairman Ribble noted that SP 2009-SU-022 had been administratively moved to July 7, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ June 30, 2009, Scheduled case of:

9:00 A.M. KEVIN L. MURRAY, SP 2009-MV-025 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 2.3 ft. from the side lot line and 3.2 ft. from the rear lot line. Located at 2216 Dartmouth Dr. on approx. 3,600 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 19B.

Chairman Ribble called the applicant to the podium.

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

Kevin Lee Murray, 2216 Dartmouth Drive, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation as contained in the staff report. In response to a question from Mr. Hart, Ms. Johnson stated that the 30 percent rear yard coverage requirement was not applicable to the site.

Mr. Murray presented the special permit request as outlined in the statement of justification submitted with the application. He stated he previously had a 12-by-12-foot shed on the property, but he elongated it by moving the gables to the ends and placed a garage door on it, leaving two of the walls in place. Mr. Murray said he had done that to lock his motorcycles up because there were numerous children in the area, including his grandchildren, and parking them in front had proven to be unsafe.

In response to Mr. Hammack's question, Mr. Murray said there was currently no electricity in the building, but he had been told by the inspector that he would have to add it because it was considered to be a garage.

Chairman Ribble called for speakers.

Shelly Thomas, 6910 University Drive, Alexandria, Virginia, came forward to speak in support of the application, stating that she lived across from the school and had watched children climb on the motorcycles when they were parked out front, noting it was a safety concern.

Mr. Hammack noted that the Notice of Violation had been issued for a storage structure. Ms. Johnson said she had discussed the difference between a garage and a storage structure with the Zoning Enforcement Branch and was told that the door in this instance made it a garage.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-MV-025 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

KEVIN L. MURRAY, SP 2009-MV-025 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 2.3 ft. from the side lot line and 3.2 ft. from the rear lot line. Located at 2216 Dartmouth Dr. on approx. 3,600 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 19B. 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 30, 2009; and

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

1. The applicant is the owner of the property.
2. The Board has determined that the standards in the resolution have been satisfied.
3. Taking these one at a time and looking at the photographs and context, it is a big structure compared to the size of the backyard, but the character of the neighborhood seems to be that structures like this, sheds or storage structures, are fairly common in the backyard.
4. Other structures in the neighborhood seem to be a comparable height to the subject structure.
5. This will not have a significant negative impact on anyone.
6. With the fencing and landscaping shown in the photographs and the pattern of development in the

backyard with storage structures, this is not anything significantly different from what is around it.

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 as shown on the plat prepared by Larry N. Scartz, LTD., dated October 16, 2008, as submitted with this application and is not transferable to other land.
- 2. Within 120 days of approval of this application, building permits and final inspections for the accessory structure (motorcycle garage) and any applicable additions shall be diligently pursued and obtained or the structure shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

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

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~ ~ ~ June 30, 2009, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map

40-4 ((1)) 44A. (Admin. moved from 6/3/08 and 8/5/08 at appl. req.) (Decision deferred from 9/9/08 and 10/28/08 at appl. req.)

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Decision deferred from 9/9/08 and 10/28/08 at appl. req.)

Chairman Ribble noted that the appellants had requested a deferral.

Susan Langdon, Chief, Special Permit and Variance Branch, said the appellants wished to defer decision on the appeals because a related variance amendment application would be heard by the Board the following week, and she suggested a date of September 22, 2009.

Ms. Gibb moved to defer the decisions on A 2008-DR-009 and A 2008-DR-026 to September 22, 2009, at 9:30 a.m. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 30, 2009, Scheduled case of:

APOLONIA FUENTES, A 2008-PR-055 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating a child care center in compliance with the conditions of Special Permit SP 99-P-050, has established a second dwelling unit on property in the R-1 District, and has made construction modifications to the building without Building Permit approval, all in violation of Zoning Ordinance provisions. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (Admin. moved from 12/9/08, 1/27/09, and 3/31/09 at appl. req.)

Chairman Ribble noted that A 2008-PR-055 had been withdrawn.

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~ ~ ~ June 30, 2009, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, 6/3/08, 9/9/08, and 12/9/08 at appl. req.) (Continued from 3/24/09.)

Chairman Ribble noted that the appellant had requested a continuance.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had submitted the required information to resolve the acceptance issues, but was still going through the special permit process.

Mr. Beard moved to continue A 2007-MV-030 to September 22, 2009, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ June 30, 2009, Scheduled case of:

9:30 A.M. MATTHEW D. FERGUSON, A 2008-PR-049 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has conducted land disturbing activities by installing a brick and slate walkway in the side yard and has altered the pre-existing drainage swell without an approved grading plan in violation of Zoning Ordinance provisions. Located at 1907 Gables La. on approx. 11,102 sq. ft. of land zoned R-3 and H-C. Providence District. Tax Map 39-1 ((32)) 40. (Admin. moved from 10/28/08, 1/27/09, and 4/21/09 at appl. req.)

Chairman Ribble noted that A 2008-PR-049 had been administratively moved to October 20, 2009, at 9:30 a.m., at the appellant's request.

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Mr. Hart directed the Board's attention to the Zoning Ordinance handout and noted that the Planning Commission would be holding a public hearing in three weeks on proposed amendments, including how height is measured for residential structures and proposed new language for variances.

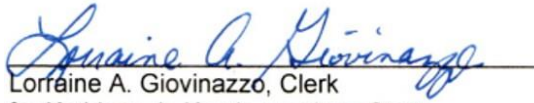
At Mr. Beard's suggestion, Mr. Hart provided the Board with a briefing on the changes being enacted tomorrow as a result of actions taken by the General Assembly concerning the Cochran case. Mr. Hart also mentioned the increase in filing fees for special permits which would become active tomorrow.

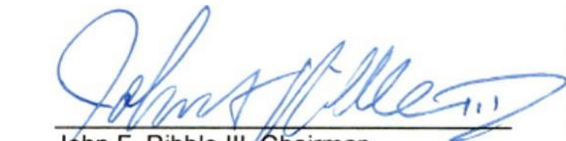
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As there was no other business to come before the Board, the meeting was adjourned at 9:55 a.m.

Minutes by: Suzanne L. Frazier

Approved on: October 1, 2014

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 7, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

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

~ ~ ~ July 7, 2009, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, SP 2009-SP-024 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 19.2 ft. with eave 16.8 ft. from side lot line and to permit accessory dwelling unit. Located at 10613 Daysailer Dr. on approx. 5.02 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((7)) 4.

Chairman Ribble called the applicant to the podium.

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

Jolanda N. Janczewski, 10613 Daysailer Drive, Fairfax Station, Virginia, came forward and reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommends approval of SP 2009-SP-024 for the accessory dwelling unit.

Ms. Janczewski presented the special permit request as outlined in the statement of justification submitted with the application. She said she built the addition, a mother-in-law suite, for her elderly mother, and it was approved without a special permit until she requested to install a kitchen. She said the accessory unit had an attached two-car garage, and would have its own entrance for her mother. She said the plans for the three-car garage on the other side of the house was submitted by her builder to be 20 feet from the property line, and was approved for the 20 feet. She said the foundation was poured at the 20 feet; that it was inspected and approved by the County; and only later had she learned that the garage's 16-foot overhang caused the error in building in error.

Ms. Janczewski said the addition was in harmony with the neighborhood, her neighbors supported it, and submitted a letter for the record.

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

Mr. Hammack moved to approve SP 2009-SP-024 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOLANDA N. JANCZEWSKI, SP 2009-SP-024 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 19.2 ft. with eave 16.8 ft. from side lot line and to permit accessory dwelling unit. Located at 10613 Daysailer Dr. on approx. 5.02 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((7)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 2009; and

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

1. The applicant is the owner of the land.
2. The error in the building location appears not to be the fault of the applicant.
3. There is an approved plan of 20 feet.
4. There is a favorable staff report.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

1. This approval for the accessory dwelling unit is granted to the applicant only, Jolanda N. Janczewski, and is not transferable without further action of this Board, and is for the location indicated on the application, 10613 Daysailer Drive (5.02 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 house location survey plat prepared by H. David Zigler dated November 21, 2008, revised through March 11, 2009, as qualified by these development conditions.
3. This special permit is approved for the location of an existing addition (garage) as shown on the plat prepared by H. David Zigler dated November 21, 2008, revised through March 11, 2009, submitted with this application and is not transferable to other land.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
6. The accessory dwelling unit shall contain a maximum of 936 square feet, including a maximum of one bedroom as shown on Attachment 1.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit.
11. Parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ July 7, 2009, Scheduled case of:

9:00 A.M.           MICHAEL D. BURRIS, SP 2009-PR-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from front lot line, second story addition 8.7 ft., two story addition 5.0 ft., one story addition 5.4 ft., and open deck 5.2 ft. from side lot line. Located at 2909 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 38.

Chairman Ribble called the applicant to the podium.

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

Michael Burris, 2909 Meadow Lane, Falls Church, Virginia, came forward and reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval-in-part for the application. Staff believed that the requests for the roofed deck, the second floor addition, and the one-story addition were in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions, with the adoption of the proposed Development Conditions.

Staff recommended denial for the proposed two-story addition 5 feet from the side lot line and for the open deck proposed at 5.2 feet from the side lot line.

Mr. Burris presented the special permit request as outlined in the statement of justification submitted with the application. He said he was trying to remain flexible, and wished to work with staff to achieve a fair but buildable result. He summarized his justification as follows. They lived in a small but great neighborhood. They strove to keep up with the neighbors, the majority of whom have remodeled and put on additions to their homes and yards. There have been several similar permits approved in his neighborhood, and his plans



were like his neighbors, with the exception that he had a large garage. He sought his design plan to flow with the lot, having proposed the extension a little over five feet from the northern lot line. The neighbors most effected registered their support with written statements.

Mr. Burris responded to Mr. Hart's question concerning shifting the addition or reducing it slightly in width. He said the proposed addition would continue from the existing bay window straight back and no wider.

Ms. Caffee clarified that the existing structure was classified as a bay window in that it had no structural support going to the ground, but the proposal would change the definition to a bump-out, which required a special permit. She said staff would recommend approval if the addition were pulled back to match the plane of the existing dwelling.

In response to Mr. Hammack's question concerning the reason why Mr. Burris wanted to continue with his proposed design, he said it was for aesthetics.

Discussion ensued regarding the original plan and subsequent remodeling.

Chairman Ribble called for speakers.

Evan Lippincott, 9428 Garden Court, Potomac, Maryland, architect for the applicant, came forward to speak. He explained the aesthetic and practical reasons to keep the proposed structure away from the garage. He submitted that 3 feet was critical, especially for the interior's usability and effectiveness.

Mr. Byers moved to continue SP 2009-PR-027 to August 11, 2009, 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.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:00 A.M. MARK J. STADSKLEV AND SUSAN M.K. STADSKLEV, VCA 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-DR-139 previously approved for waiver of the minimum lot width to permit modification of development conditions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (*Admin. moved from 5/12/09 at appl. req.*)

Chairman Ribble called the applicants to the podium.

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

Susan R. Earman, Esq., Friedlander, Friedlander & Earman, P.C., 1364 Beverly Road, Suite 201, McLean, Virginia, the applicant's agent, came forward and reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting a variance amendment to modify the development conditions approved in conjunction with VC 2002-DR-139. The previously approved variance indicated specific limits of clearing and grading.

Discussion ensued regarding Mr. Hart's questions of staff concerning recordation of the certified conditions into the land records; additional plantings; follow-up site inspections by the Urban Forester; consideration of language addressing additional plantings added to the development conditions; the easement matter; an obligation to provide right-of-way; and, the conservation easement, its recordation, and a development condition to address it.

Ms. Hedrick and Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, responded to Mr. Hammack's questions concerning the maintenance of the applicant's open space; the use of certain pieces of mowing equipment; monitoring the use of motorized mowing equipment; an assurance to leave certain areas undisturbed; and, the applicant's demonstration of a good faith effort for his property's maintenance.

Ms. Earman presented the variance amendment request as outlined in the statement of justification submitted with the application. As suggested by the Board when the Stadsklevs were appealing their violation, they had submitted their variance request. She noted that substantial plantings were made, and the Urban Forester saw no errors or omissions during their site inspection. Ms. Earman said the applicants assumed they were always meeting the variance requirements, assuring the lawn's upkeep would be as directed, and would not require monitoring. She said the applicants acquired the property in good faith, and they always intended to have a garage. Ms. Earman explained the current structures and the proposed renovations. She noted that the garage was the issue. She pointed out that the trees/plantings were in conformance, and that the applicant did a commendable job preserving the natural habitat. Ms. Earman informed the Board that several of the mature trees were lost due to decay. She assured that staff's conditions were accepted and would be implemented, and noted that there were letters in support of the application.

Addressing Mr. Hammack's question, Mark Stadskev proceeded to explain the facts of the conservation easement and subsequent recordation. Discussion ensued regarding the environmental sensitivity of the conservation easement area; the importance of keeping the development condition requirements and restrictions; and, legal notification and recordation of such easements and waivers.

Ms. Earman addressed Mr. Smith's comments concerning the installation of tree protection fences, the removal of a shed, and his suggestion to change the word should to shall, which was accepted by the applicant.

Chairman Ribble called for speakers.

The following people came forward in opposition to the application: Adrienne Whyte, 6704 West Fall Way, Falls Church, Virginia, President of the McLean Land Conservancy; Deborah Schule, 2312 Westmoreland Street, Falls Church, Virginia; and, Mark, last name and street address unintelligible, Falls Church, Virginia. Their main concerns and suggestions were the fact that the parcel was determined an unbuildable lot; the RPA stream protection of Four Mile Run creek; a requirement to preserve the lot's natural vegetation; the property's purchase by the applicants with their total awareness of the constraints; how and why additional structures could now be permitted; and that the applicant be required to file a restoration plan with the County for the violation of the conservation easement.

In rebuttal, Ms. Earman said she did not believe her clients were in violation of the easement; that the issue was that of clearing and grading; and, there did not seem to be a County record of the Urban Forester's documentation of the property's erosion as alleged by those in opposition. She said there was no indication with the current plan that her client would discontinue protecting the RPA. She noted that the application was an amendment to an existing variance; that the confiscation language was recently removed; and that by modifying the restrictions, they could come up with a good plan.

Mr. Stadskev responded to Mr. Beard's questions of when he purchased the property and that he was aware of the variance stipulations. He explained researching the property and consulting the County for clarification of the development conditions. He maintained that he always abided by the conservation rules and limits. After receiving his Non-Residential Use Permit, the limits of clearing and grading went away, and he maintained the yard outside the conservation easement. He applied for his garage permit in good faith. He submitted he violated only one of the five Non-RUP conditions, that of the limits of clearing and grading, of which he was unaware.

Chairman Ribble closed the public hearing.

Before making his motion, Mr. Hart commented that it was a difficult case; that it was he who made the original motion to grant the variance, and what resulted from the granting of the variance was not what the Board had intended.

Mr. Hart then moved to defer decision on VCA 2002-DR-139 to September 22, 2009. Mr. Smith seconded the motion.

Discussion ensued regarding potential environmental damage allowing the concrete pad to remain, and specifics in the language of the conservation easement and development conditions.

Mr. Beard pointed out that this case was an amendment to a variance not a variance, and the criteria was virtually the same.

Chairman Ribble called for a vote.

The motion to defer decision on VCA 2002-DR-139 to September 22, 2009, at 9:00 a.m., carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:00 A.M. MEDHAT YOUSSEF, SP 2009-SP-026 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11815 Robertson Farm Ci. on approx. 6,941 sq. ft. of land zoned PDH-2 and WS. Springfield District. Tax Map 56-3 ((15)) 27.

Chairman Ribble called the applicant to the podium.

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

Medhat Youssef, 11815 Robertson Farm Circle, Fairfax, Virginia, came forward and reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-SP-026 for the reasons as outlined in the staff report and with adoption of the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Mohamed Youssef, 11815 Robertson Farm Circle, Fairfax, Virginia, son of Medhat and co-applicant, presented the special permit request as outlined in the statement of justification submitted with the application. In response to Vice Chairman Hammack's question, he acknowledged he saw a letter in opposition. He confirmed that there were two nurses living in the basement; they did not pay rent; and, the number of residents and vehicles would not change. Mohamed Youssef submitted that the neighbor in opposition had made statements that were untrue. He explained the singular occasion when a vehicle was driven off the pavement to unload deck material.

In response to Mr. Smith's question, Ms. Hedrick explained the kitchen facilities, and the two nurses' work schedules. She said Mohamed would care for his father in the nurses' absence.

Chairman Ribble resumed the Chair.

In response to questions from the Board members, Mr. Youssef concurred that the living arrangement could be by-right. He listed the kitchen's appliances currently in use, and acknowledged that it was the basement kitchen that required a special permit approval. Mr. Youssef clarified that there were two basement bedrooms being used by two nurses, and explained who occupied the downstairs and upstairs rooms and the times they are there. He agreed with all the development conditions.

Discussion ensued regarding the floor plan submitted with the application; a room specified as a bedroom and it having proper emergency ingress and egress; the information given to staff regarding utilization of different rooms; the occupants as understood by staff; clarification of the nurses' shifts, living, and sleeping arrangements; potential Zoning Ordinance violations; and, the fact that staff must re-evaluate the application, because of the many discrepancies between the application as submitted and the testimony that day.

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

Ms. Hedrick said staff would be doing a site visit with Zoning Enforcement staff to look at the interior bedroom which was briefly discussed, and change development conditions accordingly.

Mr. Smith moved to continue SP 2009-SP-026 to September 29, 2009, 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.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:00 A.M. KEVIN CAMPBELL, SP 2009-SU-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.3 ft. from rear lot line. Located at 5501 Village Center Dr. on approx. 8,190 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 54-1 ((17)) (6) 40A. (*Admin. moved from 6/30/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Kevin Campbell, 5501 Village Center Drive, Centreville, Virginia, came forward, and reaffirmed the affidavit.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-SU-022, subject to the proposed development conditions.

Mr. Campbell presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to put a porch where he had an existing back deck, and to push it out a few feet to make it a useable space. He referred to the development conditions regarding plantings. He spoke of a large maple tree in the back yard, and explained the plantings he proposed.

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

Mr. Beard moved to approve SP 2009-SU-022 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

KEVIN CAMPBELL, SP 2009-SU-022 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.3 ft. from rear lot line. Located at 5501 Village Center Dr. on approx. 8,190 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 54-1 ((17)) (6) 40A. (*Admin. moved from 6/30/09 at appl. req.*) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 2009; and

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

1. The applicant is the owner of the land.
2. Staff recommends approval.
3. It is only an 18.8 percent or 4.7 feet situation
4. It is virtually the footprint of the existing deck, which protrudes just a couple of 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. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 240 square feet) of the proposed addition, as shown on the plat prepared by Holmes Smith, Certified Land Surveyor, dated December 22, 2008, as revised through March 18, 2009, submitted with this application and is not transferable to other land.
3. All applicable permits shall be obtained prior to construction of the addition.
4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,053 square feet existing + 4,579 (150%) = 7,632 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. A minimum of four (4) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the northern foundation of the screened-in porch addition.

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

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

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

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. JOHN DENNIS HALL JR., CYNTHIA R. BAUSO, A 2008-LE-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining outdoor storage, have erected a fence in excess of four feet and an accessory storage structure all in the front yard, and are allowing the parking of a vehicle on the unpaved surface of the front yard on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62. (Deferred from 7/1/08, 8/5/08, 10/7/08, and 1/6/09 at appl. req.) (Continued from 4/14/09 at appl. req.)

Chairman Ribble noted that there was a request to continue A 2008-LE-011 to September 29, 2009 at 9:30 a.m.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the appellants' special permit, which would resolve the zoning violation, would be heard August 4, 2009, by the Board of Zoning Appeals.

Chairman Ribble then called for a motion.

Mr. Beard moved to continue A 2008-LE-011 to September 29, 2009, at 9:30 a.m., at the appellant's request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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The meeting recessed at 11:45 a.m., and reconvened at 11:54 a.m.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. FLEET PROPERTIES, INC., A 2008-PR-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Storage Yard, a Junk Yard, and a Contractor's Offices and Shops on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit and is allowing overflow parking from Columbia College, Inc. on the property without an approved shared parking agreement, all in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. *(Deferred from 9/23/08 and 1/13/09 at appl. req.) (Continued from 4/14/09 at appl. req.)*

Chairman Ribble called the appellant to the podium.

Mr. Hart recused himself from the public hearing.

Mark Jenkins, 2071 Chain Bridge Road #400, Vienna, Virginia, counsel to Fleet Properties, requested a further continuance. He briefly explained the circumstances and matters necessitating a redefinition and resubmittal of a minor site plan.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, suggested an alternative that would satisfy the goals of the appellant and better serve the interests of Fairfax County, which would be for the Board to uphold the determination of the Zoning Administrator. This would allow subsequent enforcement action in the form of a consent decree, which clearly would set out the commitments and time lines as just stated by Mr. Jenkins, rather than having these perpetual deferrals.

In response to Mr. Beard's question concerning particulars of a consent decree, Susan Epstein, Property Maintenance and Zoning Enforcement Inspector, explained the typical scenario of going forward with litigation on the property. That is, the County would enter into an agreed order with the property owner at which time an arrangement would be worked out with the property owner and County Attorney for the specifics.

Ms. Stanfield added that her understanding of a recent agreement such as this allowed ample time for all processes to occur, and procedures were built into the agreement to address potential roadblocks along the way.

Mr. Jenkins said he would pledge to the Board that he would immediately engage in a discussion with staff concerning the consent decree, to make it an element of their minor site plan.

Mr. Hammack commented that he shared staff's concern with the on-going violation for two years.

Discussion ensued regarding waivers; what could or would be resolved concerning the violations; and, possible scenarios if there was no agreement with the consent decree.

Chairman Ribble called for a motion.

Mr. Hammack moved to continue A 2008-PR-035 to August 11, 2009, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself. Mr. Byers was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Contractor's Office and Shop on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. *(Deferred from 9/23/08 and 1/13/09 at appl. req.) (Continued from 4/14/09 at appl. req.)*

Chairman Ribble called the appellant to the podium.

Mr. Hammack moved to continue A 2008-PR-036 to August 11, 2009, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself. Mr. Byers was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. SUSAN M. CONRATH, A 2009-MA-015

Chairman Ribble noted that A 2009-MA-015 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the violations had been cleared.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. ALI ASGHAR AWAN, A 2009-MV-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-4 and H-C Districts in violation of Zoning Ordinance provisions. Located at 2505 Belleview Av. on approx. 6,890 sq. ft. of land zoned R-4 and H-C. Mount Vernon District. Tax Map 83-3 ((9)) (2) 10.

Chairman Ribble noted that A 2009-MV-017 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct. She said the violations had been cleared.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. ASGHAR AND SONS, INC., A 2009-MA-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a Fast Food Restaurant to operate on property in the C-5 and H-C Districts without site plan approval or a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 6519

Arlington Bv. on approx. 30,155 sq. ft. of land zoned C-5 and H-C. Mason District. Tax Map 50-4 ((1)) 21A.

Chair Ribble called the appellants to the podium.

Cathy Belgin, staff coordinator, Zoning Administration made staff's presentation as outlined in the staff report. This was an appeal of a determination that the appellant, Asghar and Sons, Incorporated, was allowing a fast-food restaurant, a mobile food vendor, to operate on the property in the C-5 and H-C Districts without site plan approval or a valid Non-RUP. The service station was originally established by a special permit and a variance, which were approved by the Board in 1961. A special exception was later granted by the Board of Supervisors in 1978 to permit building additions and site modifications.

On November 2nd, 2008, an inspection of the property was conducted pursuant to a complaint, and it was documented that a mobile food vendor was operating on the property. A notice of violation was issued on November 7, 2008, for operation of a mobile food truck parked on the service station property and selling prepared food to customers, which was noted to be a fast-food restaurant, without site plan or Non-RUP approval, in violation of the Zoning Ordinance. This notice was returned to the Zoning Enforcement Branch unclaimed. Another inspection was conducted on February 1, 2009, and again revealed a mobile food vendor operating on the property in violation of the Zoning Ordinance. A subsequent notice of violation was issued on February 2, 2009, which was rescinded and reissued on March 23rd, 2009, for corrections.

Location of the mobile food vendor on the property was a violation of the existing special exception conditions. The appellant had stated to staff that mobile food units were regulated by state and county code and were not subject to the provisions of the Zoning Ordinance; however, Section 2-510 of the Zoning Ordinance stated that sales from vehicles are a commercial use and are subject to all regulations of the zoning districts in which they are conducted.

Staff recommended that the Zoning Administrator's determination be upheld as set forth in the notice of violation, dated December 2, 2008.

With questions from Board members, staff said that this was not a permanent fixture. It came and went, and was only an occasional use. It was noted the difference between this and an ice cream truck was that the ice cream truck was never stopped in any one place long enough the zoning of whatever property it was stopped near, and it would be in the road right-of-way. If they pulled this truck in the right-of-way, it would not be legal, as their peddler's license specifically prohibited sales from within the VDOT right-of-way. The business needed to be conducted on private property, but in this case, both the zoning district, the underlying zoning district, and the special exception did not permit the use without a special exception specifically allowing it.

Staff explained that the definition of a service station, which was the use that the special exception was for on the property, allowed for some minimal sales of food and beverages, but not in the context of prepared, ready-to-eat, heated foods. There can be heated drinks. There can be baked foods like doughnuts.

Discussion ensued regarding the definitions of a service station and fast-food restaurant, what is allowed as a temporary special permit, and what is an accessory use.

Richard Nguyen, Asghar and Sons Corporation, the appellant's agent came forward. He brought different documents to clarify some of the questions of the Board. He said there was a definition for an eating establishment. He said it intends a building, a fixed structure, and it mentioned cafeteria seating spaces, serving food with menus, and things that did not capture the nature of the mobile food unit as we had in this case.

Mr. Nguyen said they did not dispute the facts of the case, and showed evidence of the times the truck is on the property, the ownership, licensing, and the vendor there. He said the dispute was the interpretation of the statutes relative to the situation, and there seemed to be a conflict between the health code regulations and zoning.

Mr. Nguyen reasoned that if this use was not allowed in the public right-of-way, then what else was there except private property. He said that fast-food restaurants can be had in certain places, but the definition as a matter of right where fast-food restaurants can be operated, intends buildings.



M. Asghar Butt, the owner of the property and business, 7206 Oriole Avenue, Springfield, came forward to speak. His business was previously on land that was determined to be on the Freeman Cemetery. He had to close that business, and open this one, which was closest that he could get to where he was previously. Since many of his clients had left due to the designation of the Cemetery, he had the food truck come to his property to help drum up his business. Sometimes the food truck operator would give them some money, and sometimes not, depending on the business they did on a daily basis, but mainly it brought him a lot of business.

Discussion ensued with Board members and Mr. Nguyen regarding the development conditions. Development Condition 10, which stated all food and beverage dispensers be kept inside the structure, seemed to make the food truck activity in conflict with that condition. Mr. Nguyen believed the conditions applied to the establishment of the service station and the owner of that station, and that the food truck was a separate entity. Mr. Hart believed that the food truck would be like a tenant, and therefore subject to the development conditions. They spoke of Development Condition 2, which said this permit was granted for the buildings and uses indicated on the plat submitted with the application only. There was discussion of the number of parking space, and where people would stand while on line. Staff said that when they looked at temporary uses, they always checked to see what it did to the parking requirements to ensure that the required parking was adequately addressed.

Staff read Section 2-510 of the Zoning Ordinance regarding sales from vehicles, since there appeared to be confusion on the subject. It said the sale or offering for sale of goods or services from any vehicle shall be deemed to be a commercial use and shall be subject to all the regulations prescribed for the zoning district in which the same is conducted, but this regulation shall not be deemed to prohibit any vending from vehicles on public streets that is not otherwise prohibited by law.

Mr. Beard stated that he was yet to determine where this truck could operate at all. Ms. Belgin said the zoning districts where fast-food restaurants were permitted were somewhat limited, but they can be located in the PRC, PRM, or PDC Districts if they were represented on an approved development plan. They could also be located in the C-5 through C-9 Districts by right if they were part of the shopping center, which obviously could not be the case for a mobile structure, and then in the C-5 through C-9 Districts with a special exception. And then also with a special exception, fast-food could be located in the PDH, the I-5, or the I-6.

Chairman Ribble closed the public hearing is closed.

Mr. Hart made a motion to uphold the Zoning Administrator in Appeal Application A 2009-MA-018 for the following findings of fact and conclusions of law. He said he did not think this topic may have been something that was squarely contemplated exactly at the time of the writing of the Ordinance. It was not exactly clear where these kinds of vehicles fit in. Mr. Hart was not sure that a vendor in a little vehicle was going to ever pay the application fee for a special exception in one particular place where, by their nature, the vehicle seemed to roll around from one construction site to the next.

Mr. Hart continued that dealing with this particular situation, the record before the Board, the facts, and the photos, he concluded that whatever this was, it was some sort of commercial retail. It was a use that was not part of the special exception approval in 1981, and it was not shown on the site plan that corresponded to the 1981 approval. It would be in violation of Development Conditions 2 and 10, which limit the approval to the buildings and uses shown on the plat, and required that the food and beverage dispensers be kept inside the structure. I would see that as being inside the filling station. Even though it was not permanent or not semi-permanent, it was there on a regular basis, it was taking up parking spaces, and it was something that should have been depicted on the plat or it was subject to the approval requirements.

Mr. Hart said that as far as the temporariness or the permanency of it, that was a difficult issue, and one that had come up on other violations as well. As on other similar cases, it was determined that this is there on a regular basis, even if it were not overnight, every day, or seven days a week.

Mr. Hart said that he adopted the rationale in the staff report. The question before the Board was whether the Zoning Administrator was correct that this use was being operated without site plan approval and a Non-RUP, and the Board has determined that the Zoning Administrator was correct.

Mr. Beard said he was not going to support the motion. He believed there were so many angles to approach this problem. I mean, I don't think it's permanent at all, and I think the violation is really to the wrong person. I think it should be going to the vendor, if anything. I mean, I see these vendors at car dealerships, and I see them all over. Again, this to me is -- as Mr. Hart said, this is something the work program definitely should look at because we're stifling small business people here in Fairfax County, which we don't need to be doing, so I can't support the motion. Thank you, Mr. Chairman.

Mr. Smith said he was going to support the motion. He said it was tough because it seemed a somewhat innocuous use. People wanted to eat, it got used, and it provided an income. As Mr. Beard said, it was a small business. Mr. Smith said that on the other hand, this was what zoning was about. You had to draw lines on a case going by the provisions of the Ordinance.

Chairman Ribble called for the vote, which passed on a vote of 4-1 to uphold the determination of the Zoning Administrator. Mr. Beard voted against the motion, Mr. Byers was not present for the vote, and Ms. Gibb was absent from the meeting.

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~ ~ ~ July 7, 2009, Scheduled case of:

9:30 A.M. EXXON MOBIL CORPORATION, A 2009-SU-019

Chairman Ribble noted that A 2009-SU-019 had been administratively moved to December 15, 2009, at 9:30 a.m., at the appellant's request.


Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said the appellant was filing a special exception amendment to address their violation.

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As there was no other business to come before the Board, the meeting was adjourned at 1:00 p.m.

Minutes by: Paula A. McFarland

Approved on: May 17, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, July 14, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. He then asked if there were any Board Matters to bring before the Board. Chairman Ribble wished his wife a happy birthday. He then discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. MICHAEL D. BURRIS, SP 2009-PR-027 (50% reduction)

Chairman Ribble noted this case had been moved up, so it had been heard at the July 7, 2009 meeting.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. CARROL MCCARREN & MICHAEL STERNAD, SP 2009-MA-028 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 12.6 ft. and 14.5 ft. from side lot lines and 12.5 ft. and 13.1 ft. from rear lot line. Located at 6319 Lakeview Dr. on approx. 10,686 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 22.

Chairman Ribble called the applicants to the podium.

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

Maire Burque, the applicants' agent, 6300 North 19<sup>th</sup> Street, Arlington, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-MA-028, subject to the proposed development conditions.

Ms. Burque presented the special permit request as outlined in the statement of justification submitted with the application. She explained the requested location of the addition is the best place for functionality and appearance. She also stated the rain garden and grass pavers were to be added per the request of the applicant's Homeowner's Association and neighbor.

Mr. Hart expressed concern with the shallow depth of the garage and the ability of a car to maneuver in the limited driveway dimensions. Ms. Burque explained the size had been a concern, but there was a study done with the proposed dimensions. She stated it was usually only one car in the garage, and the garage was large enough as long as the applicants took care in the size of any new vehicles they may purchase.

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

Chairman Ribble noted there were letters of support received.

Mr. Hammack moved to approve SP 2009-MA-028 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CARROL MCCARREN & MICHAEL STERNAD, SP 2009-MA-028 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of additions 12.6 ft. and 14.5 ft. from side lot lines and 12.5 ft. and 13.1 ft. from rear lot line. Located at 6319 Lakeview Dr. on approx.

10,686 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 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 July 14, 2009; and

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

1. The applicants are the owners of the property.
2. The Board has determined that the applicants have met the six required standards set forth in the Ordinance.
3. The Board has a favorable staff recommendation.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, and LLC, dated December 29, 2008, signed through March 19, 2009 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,700 square feet existing + 2,550 (150%) = 4,250 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. Prior to approval of the building permit for the proposed additions, the applicant shall consult with a private ISA certified arborist and obtain written recommendations on measures needed to minimize construction impacts to trees on the adjacent properties, including the 200-year-old oak on the property owned by Glowa [Tax Map 61-3 ((14)) 21A]. A copy of the recommendations shall be included with the building permit application. All recommended measures shall be implemented prior to commencement of construction and shall remain in place until construction is concluded and final grading and seeding occurs.

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

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

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M.       GEOFFREY S. DEAS AND EDNA C. ROSARIO-MUNOZ, SP 2008-MV-086 (keeping of animals/error in bldg location)

Chairman Ribble noted that this had been previously heard by the Board.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M.       THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 (church w/private school of general education)

Chairman Ribble noted this had been administratively moved to August 11, 2009, at the applicant's request.

Susan Langdon, Chief, Special Permit and Variance Branch, noted the case had been subsequently moved to September 29, 2009.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M.       THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. RAYMOND CHURCH), SPA 00-S-011 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-S-011 previously approved for church to permit modification of development conditions. Located at 8750 Pohick Rd. on approx. 9.91 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 13A.

Chairman Ribble called the applicant to the podium.

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

There was discussion regarding the property now being in the Mount Vernon District following the redistricting which occurred after the original application was filed for the Springfield District.

Mr. Hart made a disclosure that his law firm was currently engaged in two cases where the attorneys for the adverse party were from the applicant's agent's law firm, but indicated he did not believe his ability to participate in the case would be affected.

Lynne Strobel, the applicant's agent, no address given, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 00-S-011, subject to the proposed development conditions.

Discussion ensued regarding the applicant's acceptance of the most recent changes to the proposed development conditions, the need for changes due to the Virginia Department of Transportation (VDOT) not approving the no parking signs which specified the church use, Fairfax City maintaining their own streets, the

direct coordination of the applicant with VDOT, and the option of specifying times of no parking in order to allow residents of the area to still park there.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She discussed the issues with the no parking signs, and explained what VDOT would and would not permit. The chosen solution was a striping plan which would designate allowed parking areas with different color striping.

There was discussion regarding the location of an out lot, the impact of striping versus no-parking signs, the adding of a parking coordinator for parking enforcement, the initial compliance of the applicant in putting up the no-parking signs, the specifics of the striping plan, alternative parking plan options, and action taken to notify the community of plans.

Chairman Ribble called for speakers.

John Davies, 8629 Groveland Drive, Springfield, Virginia, came forward to speak in support of the application. He noted he was previously the president, now the secretary, of the Homeowner's Association. His main points were the issue of illegal parking, the need for a plan to address the illegal parking, the inclusion of the homeowners' preferences through a polling process, and the community not meeting the requirements for a residential parking district.

Mr. Hart questioned if the proposed development conditions would work, rather than adding additional services, if the church was already overflowing the present parking lot.

There was discussion regarding the possibility of additional church services. Mr. Davies stated there were additional services added for at least the Christmas and Easter Holiday.

Mr. Byers moved to approve SPA 00-S-011 for the reasons stated in the Resolution.

There was discussion regarding the requirement and enforcement that all parking be on-site, the addition of a development condition which required the church to report back after 12 months regarding the parking measures implemented and their effectiveness, the efforts of the applicant to work with the community, and the common occurrence of overflow with churches during peak periods.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON VIRGINIA AND HIS SUCCESSORS IN OFFICE (ST. RAYMOND CHURCH), SPA 00-S-011 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 00-S-011 previously approved for a place of worship to permit modification of development conditions. Located at 8750 Pohick Rd. on approx. 9.91 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 13A. 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 14, 2009; and

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

1. The applicants are the owners of the property.
2. The present zoning is R-1.
3. The area of the lot is 9.91 acres.
4. The staff recommends approval.
5. The church has reached agreement with the applicable HOA.
6. The Board had testimony from an officer of the HOA.

7. A police officer hired by the church during church services is also on site during high volume times.
8. The church will have a traffic coordinator.

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

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

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

1. This approval is granted to the applicant only, and is not transferable without further action of this Board, and is for the location indicated on the application, 8750 Pohick Road, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Dewberry & Davis, dated June 5, 2000, 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 maximum number of seats in the church shall be 850.
6. Notwithstanding Note 20 on the special permit plat, two hundred and eighty-five (285) parking spaces shall be provided. All parking for the use shall be on site as shown on the Special Permit plat.
7. All areas indicated on the plat as "tree save" areas shall be preserved. In addition, a tree preservation plan shall be provided to the County Urban Forester for review and approval at the time of site plan review. The tree preservation plan shall include revised limits of clearing and grading adjacent to the proposed stormwater management pond in order to reduce the clearing limits and achieve maximum preservation of existing trees on the site. If other SWM designs are provided as outlined in condition #10, the vegetation within the proposed SWM pond shall be preserved. Additionally, the limits of clearing and grading adjacent to the Afton Glen Subdivision at the southeast corner of the parking lot shall be reduced to save to the maximum extent possible existing vegetation, which shall be supplemented with landscape material as shown on the plat and outlined below.
8. In order to soften the impact of the non-residential buildings on the adjacent residential subdivision, a landscape plan shall be submitted for review and approval by the County Urban Forester at the time of site plan review and shall depict a combination of flowering and evergreen trees and shrubs along the perimeters of all parking areas, and building foundation landscaping plantings to the satisfaction and approval of the County's Urban Forester.
9. Transitional Screening 1 shall be modified along all lot lines to allow the existing vegetation tree save areas and additional landscaping as outlined in conditions #7 and #8 to satisfy screening requirements. The areas between the parking lot and building adjacent to Groveland Drive and the Afton Glen Subdivision shall be further supplemented with evergreen trees and shrubs to the satisfaction of the Urban Forester to provide screening from the parking lot and vehicular lights for the residents along Groveland Drive and in the Afton Glen Subdivision. All screening shall be placed on the Afton Glen side of the proposed six foot high board on board fence. Additionally, evergreen trees and shrubs shall be planted along the outside perimeter of the western parking area along Hooes Road.

The barrier requirements shall be waived except along the southern and southeastern lot line adjacent to the Afton Glen Subdivision. In addition to the fence shown on the special permit plat, a six foot high board on board fence shall be provided adjacent to the parking lot from the Groveland Road entrance east to the corner of the parking lot and north to the parish hall.

10. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required to the satisfaction of the Department of Public Works and Environmental (DPWES). Subject to the approval of DPWES, final stormwater management design shall provide for bioretention mechanisms and/or embankment-only facilities within the site, or other such innovative SWM measures, where practical to preserve existing vegetation, the stream valley and associated wetlands. Locations of any bioretention areas may be adjusted within the site to the satisfaction of DPWES. If the SWM/BMP structure is waived or other alternatives are allowed, the areas shown on the plat between the proposed tree save area and the rectory shall be preserved.
11. Lighting of the church property shall be focused onto the subject property. Parking lot lighting fixtures on the site shall be limited in height to twelve (12) feet. All lighting fixtures shall be full cut-off lights and shall be fully shielded in such a manner to prevent light from projecting off-site. No up-lighting of buildings or signs shall be permitted on the site.
12. The Non-Residential Use Permits (Non-RUP) for the parish hall or rectory shall not be issued until the Virginia Department of Transportation (VDOT) Pohick Road project is opened to traffic.
13. Except as noted herein, the application property shall not have access to Pohick Road until the Pohick Road improvements are constructed in accordance with the design plans prepared by VDOT. However, if the above referenced road improvements have not been bid for construction within 30 months from the final date of approval of this special permit, the applicant shall have the option to access Pohick Road subject to the construction of interim access improvements as deemed appropriate by VDOT.
14. Access to the site from Pohick Road shall be a right-in, right-out only and a permanent right turn lane shall be provided into the proposed site entrance on Pohick Road. The permanent right turn lane shall either be constructed at such time as access is provided, or the funds escrowed for construction concurrent with the VDOT Pohick Road project, as deemed appropriate at the time of site plan review. The escrow amount shall be determined by DPWES.
15. Construction traffic shall use Pohick Road as the sole means of ingress/egress to the site, if permitted by VDOT.
16. All right-of-way and easements associated with the Pohick Road project (# R000-029-249, PE 105, C527, B684) shall be provided in fee simple at the time of site plan review or upon demand by the Board of Supervisors.
17. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
18. The curbs at the intersections of Groveland Drive and Pohick Road; Blue Jasmine Court and Groveland Drive; Groveland Drive and Green Garland Drive will be painted yellow to prohibit parking in proximity to these intersections. A striping plan shall be coordinated with VDOT and the District Supervisor prior to the striping.
19. The curbs in proximity to fire hydrants shall be painted yellow to ensure that parking is not permitted in these areas.
20. The applicant shall appoint a parking coordinator to ensure that the parking lot adequately provides for necessary parking and that the church parking does not take place 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 applicant shall post the parking restrictions in their church bulletin each week to inform the congregation of these requirements.
21. Within 12 months of this special permit approval, the applicant shall provide a written report to staff outlining what measures have been implemented in accordance with Development Condition No. 20.
  22. A minimum of forty-five (45) minutes shall be provided between the completion of one service and the commencement of the next service.
  23. No bells (or recorded bells) shall be rung except for between the hours of 9:00 am and 6:00 pm. The ringing of the bells shall not exceed the duration of thirty (30) seconds.
  24. The applicant shall coordinate with VDOT and the Fairfax County Department of Transportation to facilitate the timely completion of improvements to Pohick Road.
  25. A police officer shall be employed by the applicant to direct traffic in and out of the application property on Sundays at the intersection of Groveland Drive and Pohick Road.
  26. The applicant, upon approval and authorization by Fairfax County and VDOT, shall notify parishioners of a commuter park-n-ride lot located north along Hooes Road in proximity to the application property. The applicant shall encourage the use of the parking lot by parishioners on Saturdays and Sundays, and carpooling by parishioners to the application property. This obligation is limited to negotiating appropriate arrangements with Fairfax County and VDOT, providing notice of availability, and encouraging use, but shall not be construed as a commitment to provide shuttle bus service.
  27. At the time of site plan approval, the applicant shall record a deed of Public Ingress and Egress to Groveland Drive. The applicant further agrees that the existing improvements, including a gazebo, constructed on the adjacent parcel, shall not be removed by the applicant. The applicant will require execution of a hold harmless agreement related to the gazebo from the adjacent Afton Glen Homeowners Association.
  28. The applicant shall maintain the adjacent outlot, Tax Map 98-1 ((15)) A1, in common ownership with Parcel 13A.

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. Smith seconded the motion, which carried by a vote of 5-1. Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. THE KING'S CHAPEL, SPA 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2002-SP-051 previously approved for church with child care center and nursery school to add a private school of general education. Located at 12925 Braddock Rd. on approx. 10.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2A.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm was currently engaged in two cases where the attorneys for the adverse party were from appellant's agent's law firm, and in one case with Odin, Feldman, & Pittleman who was listed as an owner on the affidavit, but indicated he did not believe his ability to participate in the case would be affected by either of those matters.

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

Sara Mariska, the applicant's agent, no address given, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, noted the case had been heard on June 23, 2009, and had been deferred for decision in order to allow staff to address issues presented by the Board, which were addressed in a memorandum which had been distributed earlier to the Board.

Discussion ensued regarding U-turns and left turns, the report received from the applicant's transportation consultant, the applicant's revised plan violating the development condition which required 50 percent open space, the staff having been unable to review the revised plan due to it being submitted the evening before, and the clarification of the starting time of the school.

Mr. Hart moved to defer decision on SPA 2002-SP-051 to July 28, 2009, leaving the record open till July 17, 2009. Mr. Beard seconded the motion, which passed by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-03 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 previously approved for billiard hall with an eating establishment to permit dance hall and modification of development conditions. Located at 14100, 14114 - 14116 Lee Hwy. on approx. 9.3 ac. of land zoned C-7, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman Ribble noted this case had been administratively moved to September 29, 2009, at the applicant's request.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-03 Appl. under Sect(s). 3-C03 of the Zoning Ordinance amend SP 87-S-012 previously approved for church to permit increase in land area, change in development conditions and site modifications. Located at 4525 Pleasant Valley Rd. on approx. 7.41 ac. of land zoned R-C and WS. Sully District. Tax Map 33-3 ((1)) 5 and 6.

Chairman Ribble called the applicant to the podium.

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

Hamid Matin, the applicant's agent, no address given, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. She proposed revised development conditions. Staff recommended approval of SPA 87-S-012-03, subject to the revised proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Discussion ensued regarding directional entrance and exiting of vehicles, methods of ensuring drivers are aware of where turning is allowed, disagreement over whether pavers were allowed or not, the proposed use of porous pavement, and the applicant's need for more parking than the Zoning Ordinance designates.

Mr. Matin presented the special permit request as outlined in the statement of justification submitted with the application. He offered striping and addition of an island as an alternative solution to not permitting right-turn access at the first entrance, and explained the excess parking was needed for the overlap between incoming and outgoing services.

Chairman Ribble resumed the Chair.

There was discussion regarding the applicant's plan for cars entering and exiting the property, staff's stance on the need to restrict how traffic flows in and out, and the applicant presently having over twice the required length for the left-turn entrance.

Chairman Ribble called for speakers.

Regid Conna, 22782 Mountville Woods Drive, Ashburn, Virginia, and Joe Mara, 4605 Pinecrest Office Park Drive, Alexandria, Virginia, came forward to speak. Their main concerns included the need for additional parking, the efforts to not be in violation with any off-site parking, the continuous ingress and egress of parishioners, the additional right turn entrance being helpful in alleviating traffic flow issues, and specifics of the applicant's proposed plan for the additional entrance.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SPA 87-S-012-03 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

BOARD OF TRUSTEES OF RAJDHANI MANDIR, SPA 87-S-012-03 Appl. under Sect(s). 3-C03 of the Zoning Ordinance amend SP 87-S-012 previously approved for church to permit increase in land area, change in development conditions and site modifications. Located at 4525 Pleasant Valley Rd. on approx. 7.41 ac. of land zoned R-C and WS. Sully District. Tax Map 33-3 ((1)) 5 and 6. (Admin. moved from 6/9/09 at app. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 14, 2009; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-C and WS.
3. The area of the lot is 7.41 acres.

4. It was noted that in the previous amendment from one year prior there was a temporary solution to a problem that was unfortunately not unusual, and the church has done a nice job going out and working to find a real solid solution, has clearly done that, and spent a lot of time, money, and effort in working on a solution and is to be commended for finding one that would work with the additional property.
5. As a consequence, with 250 seats, there are now 302 parking spaces which help to solve a problem and are needed.

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

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

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

1. This approval is granted to the applicant only, Board of Trustees of Rajdhani Mandir and is not transferable without further action of this Board, and is for the location indicated on the application, 4525 Pleasant Valley Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment (SPA) plat prepared by Hamid Matin, Professional Design Group, Inc., June 2008, as revised through June 12, 2009.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be 250.
6. Parking shall be provided as depicted on the SPA Plat. All parking for this use shall be on site.
7. The floor area ratio (FAR) shall be limited to 0.02.
8. The maximum building height shall be 40 feet to the top of the domes.
9. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
10. Transitional Screening 1 (TS 1) shall be provided along the northern, eastern and western lot lines. Existing vegetation may be used to partially satisfy this requirement, but supplementation shall be provided to the satisfaction of Urban Forest Management Division (UFMD), Department of Public Works and Environmental Services (DPWES).
11. The barrier requirements shall be waived.
12. The applicant shall conform strictly to the limits of clearing and grading as shown on the SPA Plat, subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SPA Plat, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

13. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.
14. All trees shown to be preserved adjacent to proposed on-site construction areas shall be protected by tree protection fence. Tree protection fencing in the form of four (4)-foot high, fourteen (14) gauge welded wire attached to six (6)-foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on SPA Plat. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.
15. A minimum of 50% of the site shall be preserved as undisturbed open space as depicted on the SPA Plat.
16. There shall be no organized outdoor activity associated with this special permit use.
17. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
18. Stormwater Management (SWM) and Best Management Practices (BMP) measures shall be provided at site plan review as shown on the SPA Plat and as approved by DPWES. SWM/BMP facilities shall be provided in substantial conformance with the SPA Plat. Any modifications to the facilities shall not impact undisturbed open space or tree save areas.
19. The applicant shall construct an entrance to align with Herndon Avenue as depicted on the SPA Plat.
20. Prior to the issuance of an entrance permit by the Virginia Department of Transportation (VDOT), the applicant shall construct all road improvements to include a northbound right turn taper and a southbound left turn lane with taper along Pleasant Valley Road, in consultation with the Fairfax County Department of Transportation (FCDOT), and as approved by VDOT.
21. Notwithstanding what is depicted on the SPA Plat, the existing entrance located at the northern end of the property shall be modified. The modification shall be constructed as a right-out only access upon issuance of an entrance permit for the new southern entrance.
22. Prior to site plan approval, adequate sight distance shall be provided from any entrance(s) along Pleasant Valley Road onto the application property as determined by VDOT.
23. The applicant shall construct an 8-foot wide paved trail along the site's Pleasant Valley Road frontage. All trails not accepted by VDOT shall be maintained by the applicant. At the time of site plan approval, public access easements and maintenance agreements shall be provided in a form approved by the County Attorney, for the purpose of providing access to and maintenance of the trails along Pleasant Valley Road frontage, in the approximate location shown on the SPA plat. The public access easements shall extend to the property line, and shall allow for construction easements and other public purposes necessary to the functioning of the roads, such as signage.
24. At the time of site plan approval, the applicant shall escrow funds with Fairfax County to be used for

a future traffic signal at the intersection of Herndon Avenue and Pleasant Valley Road in the amount of \$5,000.00.

25. Any proposed lighting of the parking areas shall be in accordance with the following:
  - a. The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - b. The lights shall focus directly onto the subject property.
  - c. Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
  - d. There shall be no uplighting of the landscaping, signage or building.
26. If signs are provided, they shall not be lit. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
27. There shall be no noise generated off-site by the temple, in accordance with County Noise Ordinances.
28. There shall be no more than two (2) priests, or one (1) priest with his family, residing on the site.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit 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 commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2008-SP-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a Riding/Boarding Stable on property in the R-C and WS Districts without an approved special permit nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble noted there was a deferral request. Staff supported the deferral, as the applicant's special permit application had been accepted and was waiting to be heard by the Board.

Jolanda Janczewski, 10613 Daysailer Drive, Fairfax Station, Virginia, came forward. She explained she wanted a deferral in order to pursue her special permit application, and assured the Board that nothing had changed in the operations on her property since the violation, and no dangerous activities or situations were present. She also expressed the possible impact of having to shut down the present operations on the property.

Chairman Ribble called for speakers.

The following speakers came forward to speak in support of the deferral: Marsha House, 2320 Freetown Court, #2-B, Reston, Virginia; Brad Watkins, 10804 Henderson Road, Fairfax Station, Virginia; Jennifer Lescalett, 11724 Amkin Drive, Clifton, Virginia; Martha Gramlich, 5210 Burke Drive, Alexandria, Virginia; Jean Perra, 9102 Desoto Court, Burke, Virginia; Courtney Sebastian, 5684 General Johnson Place, Centreville, Virginia; Ann Pearson, 7662 Clifton Road, Fairfax Station, Virginia; Allison Larkins, 5684 General Johnson Place, Centreville, Virginia; and Jeff Macino, 6505 Summertown Way, Springfield, Virginia.

Paulette Smithgull, 10806 Henderson Road, Fairfax Station, Virginia, came forward to speak in opposition to the deferral. She stated there were others in opposition who were unable to attend the hearing.

Mr. Beard moved to continue A 2008-SP-046 to December 1, 2009. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13.

Chairman Ribble noted this case had been administratively moved to a date to a date to be determined in January 2010.

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~ ~ ~ July 14, 2009, Scheduled case of:

9:00 A.M. HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall without a Special Permit and has expanded the use limitations and conditions of Non-Residential Use Permit #A-2004-1013 and Special Permit Amendment SPA 95-Y-069-2 in violation of Zoning Ordinance provisions. Located at 14114 Lee Hwy. on approx. 9.32 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman Ribble noted this case had been administratively moved to November 3, 2009, at the applicant's request.


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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Kathleen A. Knoth/Emily J. Armstrong

Approved on: June 14, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 28, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Norman P. Byers; Nancy E. Gibb; Paul W. Hammack, Jr., James R. Hart; and Thomas Smith.

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

~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. VILLAGE WEST, INC./WASHINGTON D.C. SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, SPA 67-S-519-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-519 previously approved for community swimming pool to permit a telecommunications facility. Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A.

Chairman Ribble called the applicants to the podium.

Mr. Hammack gave a disclosure (ownership of Verizon stock), and indicated that he would recuse himself from the public hearing.

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

Frank Stearns, the applicant's agent, 8010 Towers Crescent Drive, Vienna, Virginia, reaffirmed the affidavit.

Tracy Strunk, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions. Ms. Strunk noted that the Planning Commission had also recommended approval at its public hearing on July 23, 2009.

Mr. Stearns presented the special permit amendment request as outlined in the statement of justification submitted with the application. He had met with the West Springfield Village community, noting that they sent an e-mail in support of the application to Supervisor Herrity.

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

Mr. Byers moved to approve SPA 67-S-519-03 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

VILLAGE WEST, INC./WASHINGTON D.C. SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, SPA 67-S-519-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 67-S-519 previously approved for community swimming pool to permit a telecommunications facility. Located at 7008 Elkton Dr. on approx. 2.59 ac. of land zoned R-2. Springfield District. Tax Map 89-4 ((5)) A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. The owner of the property is the applicant.



2. The present zoning is R-2.
3. The area of the lot is 2.59 acres.
4. Staff recommends approval, and the Board adopts the staff's rationale.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in appropriate sections 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, Village West, Inc. / Washington D.C. SMSA Limited Partnership d/b/a Verizon Wireless, and is not transferable without further action of this Board, and is for the location indicated on the application, 7008 Elkton Drive (2.59 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Morris & Ritchie Associates, Inc., dated October 10, 2007 as revised through July 24, 2009.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans, 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 and the approved Special Permit Plat. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be fifty-one parking spaces provided on-site.
6. The barrier requirement shall be modified, provided the existing fences are retained.
7. The transitional screening requirement may be modified provided that the existing vegetation is retained.
8. All lighting shall be directed on-site.
9. The maximum hours of operation shall be 11:30 am to 9:00 pm daily.
10. After hours parties for the swimming pool shall be governed by the following:
  - Limited to six per season.
  - Limited to Friday, Saturday and pre-holiday evenings.
  - Shall not extend beyond 12:00 midnight.
  - Shall request at least ten days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
  - Request shall be approved for only one such party at a time, and such requests shall be approved only after the successful conclusion of a previous after hours party.

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

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

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack recused himself from the hearing.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS' OWN MOTION, SP 2008-MA-079 (In association with RZ 2008-MA-013) (*Admin. moved from 10/7/08 at appl. req.*) (*Indefinitely deferred from 11/4/08 at appl. req.*) (*Reactivated on 5/19/09.*)

Chairman Ribble noted that SP 2008-MA-079 had been administratively moved to September 29, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107). (*Decision deferred from 2/24/09*) (*Moved from 3/3/09, inclement weather*) (*Admin. moved from 4/14/09 at appl. req.*) (*Decision deferred from 4/21/09 at appl. req.*)

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble noted that this case was for decision only.

Mr. Hart made a disclosure, that more than a year ago, but less than two, his law firm had a case where they used the agent as a consultant, and also had used her as an expert witness. That matter had been concluded, had nothing to do with this application, and he did not believe his ability to participate in the case would be affected.

Mr. Hart moved to approve VC 2008-MV-008 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107). (*Decision deferred from 2/24/09*) (*Moved from 3/3/09, inclement weather*) (*Admin. moved from 4/14/09 at appl. req.*) (*Decision deferred from 4/21/09 at appl. req.*) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. The applicants are the owners of the property.
2. The applicant has presented testimony showing compliance with the required standards for a variance, consistent with the amendment to the State Code, July 1, 2009.
3. The swimming pool and surrounding concrete deck is an existing condition that would be a significant hardship to modify.
4. It has been there for many years without complaint and seems to have come up only in conjunction with the other application.
5. A modification of the 30 percent requirement through a variance would be appropriate in that they cannot really easily take the pool out or remove the deck to get down below the 30 percent.
6. There have been other cases like this, but none after the amendment.
7. The applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship as opposed to a convenience for the applicant, consistent with the new State Code provision.
8. It meets the standards consistent with the new State Code provision.

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

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

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

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

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

1. This variance is approved for greater than 30 percent rear yard coverage for the structures as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated November 28, 2001, revised by Christine Leonard through September 20, 2008 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 including requirements for building permits.

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

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. ISRAEL LOPEZ, SP 2009-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.5. ft. from side lot line. Located at 6205 Doncaster Ct. on approx. 8,927 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((3)) (78) 10.

Chairman Ribble called the applicant to the podium.

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

Kenia Israel Lopez, 300 North Old Dominion Lane, Purcellville, Virginia, told the Board he spoke little English, therefore, his wife reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. She passed out a memorandum listing the Notices of Violations which existed on the subject property, stating that two of the Notices referenced the carport enclosure being done without building permits. She noted that members of the Code Enforcement Strike Team were present to answer questions about the Notices.

In response to questions from Mr. Hart, Jack Blair, from the Strike Team, stated that all of the violations had been cleared with the exception of the carport enclosure. Mr. Blair said that as of the last inspection, it appeared that no one lived at the residence.

Ms. Lopez presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said that she and her husband had come from Puerto Rico, and did not know they needed a building permit to enclose the garage. She said it would be difficult for them to remove the garage.

Ms. Gibb and Mr. Blair went over the three Notices of Violation, with Mr. Blair stating that the only requirement left was for the applicant to obtain a building permit for the garage and have it inspected.

Ms. Gibb noted that the Board had received letters from adjacent property owners stating that more than one family lived at the property. Ms. Lopez replied they had rented the house to one family.

Concerning the outstanding violation, Ms. Lopez said they cannot get the garage inspected until they are granted a special permit.

Ms. Gibb and Mr. Blair discussed the multi-family issue, with Mr. Blair noting that it became a Strike Force matter when they received a complaint that one family resided upstairs, with numerous individuals living in the basement. He stated that there was no kitchen in the basement.

In response to a question from Ms. Gibb, Ms. Lopez said that her husband periodically went over to the house to check it and make repairs. Mr. Blair said that there was only one family in residence on May 5,

2009, when he was last at the house. He felt the Lopez's had done everything required of them by the County.

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

Ms. Gibb moved to approve SP 2009-LE-038 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ISRAEL LOPEZ, SP 2009-LE-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.5. ft. from side lot line. Located at 6205 Doncaster Ct. on approx. 8,927 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((3)) (78) 10. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. The applicant is the owner of the property.
2. It is kind of a close case. It is a pretty big error, 45 percent, but it is a corner of the garage, not the entire garage, that is encroaching.
3. Substantial work would be necessary to put it back like it was and would not accomplish much.
4. There does not seem to be an impact on the neighbors as far as this corner.
5. Any objections that the neighbors may have would be with respect to maybe multiple families in the house, and it appears the applicant has addressed that issue.
6. The Strike Team inspectors and staff have said that the applicant has quickly addressed all the violations that they were cited for.
7. It appears that some of the work was done prior to the time the applicant bought the house.
8. The applicant cannot get a building permit until a special permit is gotten for the garage.
9. The applicant acted in good faith and is trying to do what he is supposed to do now.

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 David R. Hall, DRH Design Group, Inc. dated March 10, 2009, signed through March 11, 2009, submitted with this application and is not transferable to other land.
2. Within 6 months of approval of this application, building permits and final inspections for the garage addition shall be obtained or the garage shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

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

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. LYNN HARVEY TJEERDSMA AND MARY ELLEN TJEERDSMA, SP 2008-MV-085 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 and eave to remain 3.9 ft. from side lot line. Located at 2106 and 2108 Yale Dr. on approx. 26,441 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 71B and 93-1 ((28)) (3) 15. (*Decision deferred from 11/18/08, 1/27/09, and 4/14/09.*)

LYNN HARVEY TJEERDSMA, VC 2008-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15. (Concurrent with SP 2008-MV-085). (*Decision deferred from 11/18/08, 1/27/09, and 4/14/09.*)

Chairman Ribble called the applicants to the podium. He asked that staff refresh the memories of the Board members on this case.

Shannon Caffee, Staff Coordinator, updated the Board on the reasons for the decision deferral, and noted that the variance had been withdrawn.

Mr. Smith moved to approve SP 2008-MV-085 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LYNN HARVEY TJEERDSMA AND MARY ELLEN TJEERDSMA, SP 2008-MV-085 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 and eave to remain 3.9 ft. from side lot line. Located at 2106 and 2108 Yale Dr. on approx. 26,441 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((1)) 71B and 93-1 ((28)) (3) 15. (Decision deferred from 11/18/08, 1/27/09, and 4/14/09) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. The applicants are the owners of the property.
2. The applicants owned the adjoining lot and were able to bring that in and designate the two lots together as one lot for purposes of this application, thus eliminating the need for the 30 percent reduction.
3. The addition was put on in good faith based on the applicants' testimony that they were from a farming area in South Dakota.
4. There were no concerns from neighbors.
5. There were no concerns about impacts on adjoining 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 and size of an existing addition as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, LLC, dated June 27, 2006,

revised through April 16, 2008 and signed through April 20, 2009 submitted with this application and is not transferable to other land.

2. Building permits and final inspections for the addition shall be diligently pursued and obtained within 6 months of final approval of this application or the addition shall be removed or brought into compliance with Zoning Ordinance Requirements.
3. Prior to the issuance of a building permit for the addition, the applicant shall apply for and gain approval for an RPA exception and/or waiver for any applicable structures on site if determined necessary by DPWES.

Mr. Gibb seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hart voted against the motion.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. CHARLES AND CATHY WRAY, SP 2009-SP-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8605 Etta Dr. on approx. 13,046 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-1 ((9)) 137.

Chairman Ribble called the applicants to the podium.

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

Charles Wray, 8605 Etta Drive, Springfield, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-SP-032, subject to the proposed development conditions.

Mr. Wray presented the special permit request as outlined in the statement of justification submitted with the application. He was asking to keep an accessory unit in his basement so that his deaf son and son's deaf fiancé could stay at his home with their child. Mr. Wray said it was their desire to provide a healthy stable environment for their grandchild.

In response to a question from Mr. Hammack, Ms. Hedrick stated that as long as the grandchild does not live in the basement, the living arrangements satisfy the Ordinance.

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

Mr. Beard moved to approve SP 2009-SP-032 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

CHARLES AND CATHY WRAY, SP 2009-SP-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 8605 Etta Dr. on approx. 13,046 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-1 ((9)) 137. 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 28, 2009; and



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

1. The owners of the property are the applicants.
2. The present zoning is R-3.
3. The area of the lot is 13,046 square feet.
4. The application meets, in every stipulation, the requirements pursuant to an accessory dwelling.
5. Given the testimony of the applicants, the Board is completely satisfied with the situation.
6. There were several letters in support of the application and only one in opposition.
7. The applicants thoroughly acted in good faith throughout this process.
8. Staff recommends approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the appropriate sections 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, Charles and Catherine Wray, and is not transferable without further action of this Board, and is for the location indicated on the application, 8605 Etta Drive (13,046 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat prepared by Coldwell & Associates, dated June 18, 1973, revised and signed by Catherine Wray on April 20, 2009 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain a maximum of 768 square feet, as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided as shown on the special permit plat.

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

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

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

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. MICHAEL HALE, SP 2009-MA-036 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 24.0 feet from one front lot line and 27.0 feet from other front lot line of a corner lot. Located at 7120 Noland Rd. on approx. 10,226 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 178.

Chairman Ribble called the applicant to the podium.

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

Michael Hale, 7120 Noland Road, Falls Church, Virginia, reaffirmed the affidavit.

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

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

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

Mr. Hammack moved to approve SP 2009-MA-036 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

MICHAEL HALE, SP 2009-MA-036 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 24.0 feet from one front lot line and 27.0 feet from other front lot line of a corner lot. Located at 7120 Noland Rd. on approx. 10,226 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 178. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009;

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

1. The applicant is the owner of the property.
2. The Board has determined the applicant has satisfied the six specified standards set forth in Section 8-922 of the Zoning Ordinance.
3. The Board has a favorable staff report.

4. The application is for improvements in an old, but stable existing neighborhood that are justified under 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). 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and maximum size of the one-story addition (876 square feet), as shown on the plat prepared by School & Townsend, P.C., dated February 18, 2009, as revised through July 6, 2009, as submitted with this application and is not transferable to other land. The area depicted on the plat as a one-story addition shall be the maximum buildable area permitted under this special permit, to include eaves, overhangs, stairs, stoops, etc.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (832 square feet existing + 1,248 square feet (150%) = 2,080 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The one-story addition shall be in general conformance with the architectural renderings and materials as shown on Attachment 1 to these conditions except as qualified under Condition 2, eaves, stairs, stoops, bay windows may be added as long as the total square footage of the addition does not exceed 876 square feet in size and all structures are located within the footprint as depicted on the special permit plat
5. An infill grading plan shall be submitted to the Department of Public Works and Environmental Services (DPWES) prior to approval of a building permit
6. The applicant shall obtain a private ISA Certified Arborist to prepare a tree preservation plan for the 36" diameter red oak. If it is determined that the tree is a high risk and could cause a potential threat to the dwelling and/or the proposed addition, and should be removed, the applicant shall plant a minimum of four (4), two (2) inch to four (4) inch red oak trees in the front yards along Westmoreland Street and Noland Road. Documentation of the tree removal based on its risk evaluation shall be retained by the applicant and provided to the County upon request.

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

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

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

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. KARINA MOSCOSO, SP 2009-MA-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6708 Edsall Rd. on approx. 15,222 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (18) 7.

Chairman Ribble called the applicant to the podium.

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

Karina Moscoso, 6708 Edsall Road, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. She stated that due to the limited size and configuration of the existing driveway, vehicles exiting the site must back up onto Edsall Road, which was a heavily-traveled, arterial road, and could present a traffic safety issue. Therefore, staff proposed a development condition for construction of a second driveway, which would be accessed via Cather Road to provide onsite parking for the full-time employee and for parent parking. Ms. Johnson said that staff recommended approval of the application subject to adoption of the revised proposed development conditions.

In response to a question from Mr. Byers, Ms. Johnson said that the staff would not recommend approval of the application without that development condition, since it was a significant concern for the Department of Transportation (DOT).

Mr. Hart asked if the Virginia Department of Transportation (VDOT) and DOT were in agreement with the dimensions and configuration of the second driveway. Ms. Johnson responded that the applicant needed to work with VDOT to obtain approval for a second driveway, but that DOT supported it.

Ms. Gibb, Mr. Hammack, and Ms. Johnson discussed a single driveway versus second driveway, with Ms. Johnson stating that one would be residential and one commercial.

Ms. Gibb and Ms. Moscoso conferred about the number of cars currently using the single driveway, which was five, and the frequency of two parents being on the property at the same time. Ms. Moscoso noted that she had never had three parents present at one time.

Ms. Gibb asked staff if they would support a development condition, which stated that three of the children had to walk to the day care center. Ms. Johnson replied that staff would not, but noted that staff would support staggered times for drop-off and pick-up.

Chairman Ribble, Mr. Smith, and Ms. Johnson discussed the parking situation. Ms. Johnson noted that the Zoning Ordinance required parking be on site.

Mr. Smith read from Section 8-305-2 of the Zoning Ordinance. Ms. Johnson pointed out that it referenced off-site parking, not parking on the street.

Chairman Ribble called for speakers.

Pam Fitzgerald, currently residing in Prince William County, but was an eight-year resident of Edsall Park, Nicole Jones, 5227 Cather Road, Alexandria, Virginia, Timothy Atkins, 831 N. Van Dorn Street, Alexandria, Virginia, and Lisa Nicaragua, 6715 Edsall Road, Alexandria, Virginia, came forward. They all spoke in support of the application. They all had children in Ms. Moscoso's day care center, and noted their positive experiences with dropping off and picking up their children there.

Raymond Gingrich, 6610 Independence Avenue, Springfield, Virginia, who represented the Edsall Park Civic Association, Vellie Detrich-Hall, 6746 Anders Terrace, Springfield, Virginia, who represented the Sequoia Homeowners Association, and Calvin Robinson, 6607 Independent Avenue, Springfield, Virginia, who

represented the Edsall Park subdivision, all spoke against the application. Their main concerns were the potential traffic impact on the area and safety of the children.

In rebuttal, Ms. Moscoso stated that she mainly watched neighborhood children, some of which walk to her home. She said she wanted to bring her home child care facility into compliance.

Mr. Hammack noted that there were currently four parking spaces on the property, and asked why the issue of a second driveway had been raised. Ms. Johnson stated that the Transportation Department felt it was a safety concern.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-MA-029 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

KARINA MOSCOSO, SP 2009-MA-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit home child care facility. Located at 6708 Edsall Rd. on approx. 15,222 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (18) 7. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the lot is 15,222 square feet.
4. Testimony indicated that the County Attorney did reaffirm the affidavit from the standpoint of the applicant, so it is known that the applicant is the owner of the property.
5. This applicant, by right, can have seven (7) children on site.
6. The permit is for ten (10) children.
7. The applicant is licensed by the state for twelve (12) children.
8. Each case stands and falls on its own merits; it is not a precedent. If there are other issues in the neighborhood, then those need to be addressed individually. It is not fair to any applicant to put other issues on any applicant's application. It has to stand or fall by itself.
9. 8-006, 4, states that the proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
10. Testimony indicated that there has not been an accident in twelve (12) years. There is a stop light, so people can safely back out.
11. The proposed driveway on Cather Road would be more dangerous, for example, for individuals to back their cars out, particularly if there is no traffic light in that area.
12. The applicant has the required number of parking spaces to conduct the child care facility.
13. Under 8-305, the BZA shall review all existing and/or proposed parking to determine if such parking is sufficient. In the judgment of the Board, it is and complies with the County Ordinance.
14. Under 8-305, the BZA 'may' require, not 'shall' require, the provision of additional off-street parking spaces based on the maximum number of vehicles expected to be on site at any one time, and such parking shall be in addition to the requirement of the dwelling unit. There will be drop-offs that are either one or, perhaps, two at a time. There is plenty of parking on site right now to do that, without going to the expense and the problematic outcome from the standpoint of having actually a second driveway built.

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 appropriate sections 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, Karina Moscoso, only and is not transferable without further action of the Board, and is for the location indicated on the application, 6708 Edsall 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 (SP) Plat prepared by William E. Ramsey, William E. Ramsey, P.C., April 2, 2009, 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 maximum number of children permitted at the home child care facility at any one time shall not exceed ten (10) children, excluding the provider's own children.
5. The maximum hours of operation of the home child care facility shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to one (1) on-site at any one time in addition to the applicant.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
8. A minimum of four (4) parking spaces shall be provided on site.
9. There shall be no signage associated with the home child care facility.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The number of children shall not be increased above seven (7) until all conditions are met. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ July 28, 2009, Scheduled case of:

9:00 A.M. THE KING'S CHAPEL, SPA 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2002-SP-051 previously approved for church with child care center and nursery school to add a private school of general education. Located at 12925 Braddock Rd. on approx. 10.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2A. (Decision deferred from 6/23/09 and 7/14/09.)

Chairman Ribble called the applicants to the podium. He reminded the Board that this case was for decision only.

Shelby Johnson, Senior Staff Coordinator, updated the Board on the reasons for the decision deferral, noting that it was specifically to give staff time to review and respond to traffic information submitted by the applicant's traffic engineer, and also to review submissions by citizens. She noted that staff from the Department of Transportation (DOT) and the Department of Public Works and Environmental Services were present to answer any questions the Board might have.

Mr. Hart referenced a memorandum from Mr. Kessler from DOT, wherein he disagreed with a start time of 6:45 a.m., and was requesting instead a 9:00 a.m. start time. Ms. Johnson confirmed that the start time in Development Condition Number 13 should have been changed to 9:00 a.m.

Sara Mariska, the applicant's agent, stated that DOT wanted to change the start time due to traffic concerns, however, the applicant needed an earlier start time. She said that in lieu of changing the start time, the applicant was willing to decrease the number of students or possibly an 8:00 a.m. opening.

Alan Kessler from DOT stated that an 8:00 a.m. start time would not work due to increased left-hand turns.

In response to a question from Mr. Byers, Mr. Kessler stated that the eastbound traffic count from approximately 7:15 to 8:15 a.m. was 2,500 cars.

Absent a stop light, Mr. Hart asked how someone could safely turn left to go back west on Braddock Road, and what effect reducing the number of students would have. Mr. Kessler replied that the solution was to reduce the number of left turns. He said reducing student numbers would not significantly reduce the number of people making a left turn.

Mr. Hart moved to deny SPA 2002-SP-051 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

THE KING'S CHAPEL, SPA 2002-SP-051 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 2002-SP-051 previously approved for church with child care center and nursery school to add a private school of general education. Located at 12925 Braddock Rd. on approx. 10.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 2A. (Decision deferred from 6/23/09 and 7/14/09) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 2009; and

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

1. This has been a very difficult case. It was a controversial case several years ago for other reasons, primarily stormwater.
2. While there has been a stormwater undercurrent to this application as well, what the current application is requesting does not really affect the stormwater. It does not increase the impervious surface. It does not result in any more clearing of trees.
3. To the extent there might be unresolved issues with the revision that was submitted for the violation they have from the state, the applicant will have to comply with the Development Conditions or come back through.
4. The 50 percent limitation is going to be carried forward.
5. If the BZA approves the application, the applicant will have to satisfy the state with respect to the other violation anyway.

6. Between the two issues, the transportation issue was the one that was the problem right now.
7. The stormwater will have to be corrected no matter what the BZA does.
8. The case was a close call.
9. The Board was skeptical of someone's ability to make a left turn from Doyle Road onto Braddock Road westbound in the morning. It is unsure if it would be safe to go two lanes and then stop, sort of at an angle in the median, and then go two more lanes when things opened up.
10. The light at Clifton Road is so far away that it is not really helping protect that left turn movement.
11. The BZA did not like the idea of someone turning right out of the site and then trying to make a U-turn at Doyle or turning right at Doyle and making a U-turn down at Colchester.
12. The Board was unsure if there was still unanimity between staff, the Office of Transportation, and the applicant about what works.
13. This application was a near miss because under the General Standards, 8-006, subsection 4 is not satisfied because the left turn movement may be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
14. If the morning peak hour is 2500 or even numbers significantly lower than that, there is still not enough of a break to allow someone to turn left across a divided four-lane road without protection.
15. If there were a stop light, this would work, but the BZA has deferred this, struggled with this issue, and keeps asking the same questions. The BZA does not believe that the condition has been satisfied, and the Board has to conclude that all of the conditions have been met.
16. The Board was not comfortable approving an intensification that would be adding that left turn movement in the morning.
17. The Board did not agree with the staff's original recommendation.

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

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

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

Mr. Beard seconded the motion, which carried by a vote of 7-0. Mr. Hart moved to waive the twelve (12) month year waiting period for refiling an application. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that, according to the conditions specified in Special Permit Amendment SPA 81-A-022-8, the expiration date for the mausoleums and columbariums approved with SPA 81-A-022-4 and extended by SPA 81-A-022-5 shall continue to remain in effect. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. (*Admin. moved from 10/7/08, 1/13/09, 3/24/09, 5/19/09, and 5/12/09 at appl. req.*)

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to November 3, 2009, at 9:30 a.m., at the applicant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellant had filed a special permit application to address the violation.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:30 A.M. KENNETH AND MARIA CLINE, A 2008-SP-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are exceeding the number of dogs that may be kept on property in the R-3 Cluster District in violation of Zoning Ordinance provisions. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 Cluster and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15. (*Admin. moved from 1/27/09 and 3/24/09 at appl. req.*)

Chairman Ribble noted that A 2008-SP-061 had been administratively moved to September 29, 2009, at 9:30 a.m., at the applicant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellant had filed a special permit application.

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~ ~ ~ July 28, 2009, Scheduled case of:

9:30 A.M. EP COMPANY L.C. (A/K/A E. P. MOWING AND LANDSCAPING INC.), A 2009-MV-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a storage yard, a use not permitted in the zoning district(s), has expanded the nonconforming use of a contractor's offices and shops and has constructed concrete bins in the floodplain and Resource Protection Area without special exception approval and without site plan or building permit approval, all on property in the C-6, C-8, H-C, CRD and Pt. HD Districts in violation of Zoning Ordinance provisions. Located at 8801 Richmond Hwy. on approx. 2.85 ac. of land zoned C-6, C-8, HC, CRD and pt. HD. Mt. Vernon District. Tax Map 109-2 ((2)) 9.

Chairman Ribble called the appellants to the podium. He disclosed that he had a mutual friend with the owner of EP Company, but indicated he did not believe his ability to participate in the case would be affected.

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

Charles Fitzhugh, staff coordinator, made staff's presentation as contained in the staff report. He explained that the appellant had been issued a Notice of Violation (NOV) for expanding a nonconforming use, specifically a contractor's office and shop. Further, the appellant had constructed concrete bins in a floodplain and RPA district without special exception approval and without a site plan or building permit. He noted that the appeal also included the operation of a storage yard, a use not permitted in the C-8 or C-6 zoning districts. Mr. Fitzhugh went over the background of the appeal, giving a chronological history of the numerous NOVs that had been issued over the years, the inspections previously made by the Fairfax County Strike Team, and current Zoning Ordinance provisions under which the business was operated. He pointed out a written determination made by William Shoup, Deputy Zoning Administrator, on December 26, 2002, regarding nonconforming rights on the property. Mr. Fitzhugh stated the determination clearly noted that the nonconforming right to operate a business was strictly limited to the extent that it existed at the time the use became nonconforming. He emphasized that this determination was never appealed. Mr. Fitzhugh stated that based on the enlargement of structures and introduction of a storage yard, the appellant had expanded the use of the contractor's office and shop. He asked that the Board uphold the determination of the Zoning Administrator.

A discussion ensued between Ms. Gibb, Mr. Beard, Mr. Hart, Susan Epstein, Senior Zoning Inspector, and Mr. Fitzhugh concerning a site inspection on May 20, 2009, the size of the buildings on the property in 2002, 2005, and 2008 compared to the 1963 drawings, and the uses permitted in the C-6 and C-8 zoning categories.

In response to a question from Mr. Byers, Mr. Fitzhugh stated that if one of the 1963 nonconforming buildings deteriorated, it could be repaired, but not replaced.

Jane Kelsey, the appellant's agent, presented the arguments forming the basis for the appeal. She felt the underlying issue was the approval of the nonconforming use in 2002 by former Zoning Administrator, William Shoup. Ms. Kelsey stated that the fundamental use and character of the use had not changed since that time. She said the fact that the property was located in a floodplain and an RPA was not germane, since the use was an approved nonconforming use. Ms. Kelsey noted that dump trucks, scoop loaders, lawnmowers, and wheel barrels were onsite, but did not constitute a storage yard, since they were used in the landscaping business which operated there.

In response to a question from Mr. Smith, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the size of the buildings were discussed in 2002, and that there had been a commitment to stay within the parameters on the plat when the non-RUP was issued. She said any structure beyond that would have to comply with the Chesapeake Bay Ordinance. They also discussed the concrete blocks which had been erected on the site, with Ms. Stanfield noting that site plan approval had been required, but not obtained.

Mr. Hart, Mr. Fitzhugh, Ms. Epstein, and Ms. Stanfield discussed the dimensions of the buildings in 1963 and on the 1999 plat presented by Ms. Kelsey, with Ms. Epstein pointing out that in a meeting in late 2002 between Mr. Shoup, Mr. Turner, and herself, they had agreed that the 1963 plat would be the basis to determine the size of the structures. Mr. Fitzhugh noted that the appellant never appealed or disputed the 1963 building dimensions.

Mr. Hart and Mr. Fitzhugh discussed the violation concerning the two caretakers' residences. Mr. Fitzhugh said staff maintained that the Shoup letter of 2002 only allowed one residence for a night watchman. He explained that a residence was not allowed in that zoning district, but one had been given to the appellant, because it had been a tourist camp in the past.

Chairman Ribble called for speakers. There were none.

In closing, Mr. Fitzhugh reiterated that the approved use for the site was a contractor's office and shop. He said the appellant was operating a storage yard, had illegal signage, had constructed concrete bins without prior approval, and had enlarged existing buildings. He asked that the Board uphold the decision of the Zoning Administrator.

Ms. Gibb and Mr. Fitzhugh discussed the GIS photos included in the staff report, comparing the building sizes in 1963 with the most recent photos of the site.

In response to Mr. Hammack's question regarding the correctness of the measurement on the 1963 plat, Mr. Fitzhugh stated that the appellant should have raised that issue in 2002.

Mr. Hart and Mr. Fitzhugh discussed the size of the building foundation in photo 14, Attachment 16. Mr. Fitzhugh said recent measurements show it to be larger than that shown on the 1963 plat.

In response to a question from Mr. Hart, Ms. Kelsey stated that the shiny, white building on the left in photos 14 and 15 had been replaced, but not with a larger footprint, because a structural engineer deemed it unstable.

Mr. Fitzhugh, responding to Mr. Hart's question, stated that Attachment 15 showed two photos depicting the same building. One was from 2002, and the other one was recent. He said the size of the 2002 building was approximately 539 square feet, whereas the recent measurements show it to be 1,180 square feet. Ms. Kelsey stated that the appellant "squared it up" by putting up new walls and a roof, but it was still the same building.

Mr. Hart and Mr. Fitzhugh discussed having someone from GIS come testify before the Board regarding the photographs taken of the site.

Ms. Gibb and Mr. Fitzhugh discussed the storage yard violation, with Mr. Fitzhugh noting that Attachment 12, photo 18, showed approximately eighteen (18) inoperable vehicles on the property. Ms. Kelsey stated that the appellant did own a vehicle repair shop, and sometimes he was awaiting car parts.

Responding to a question from Ms. Gibb, Ms. Stanfield stated that the County position is that the appellant lost its nonconforming-use permit when he expanded the existing use on the property.

Mr. Hammack and Ms. Stanfield discussed the concrete block structures, with Ms. Stanfield noting that if the structures were removed and left just piles of mulch, it would be allowable.

In rebuttal, Ms. Kelsey stated that she did not believe Mr. Shoup's letter limited the appellant to one cabin for the night watchman. She said the appellant did not remember a discussion with the County regarding removal of the sign on his property. Regarding the inoperable vehicles, Ms. Kelsey stated that the appellant knew he had to get rid of them.

Responding to a question from Mr. Hammack, Ms. Kelsey said the appellant had only replaced walls and a roof periodically, but not a building foundation.

In closing, Ms. Kelsey asked that the Board defer decision on the appeal to allow her time to find someone to review the aerial photos with the County's GIS person.

Chairman Ribble closed the public hearing.

Ms. Gibb discussed whether the use had been enlarged because there was a nonconforming use. It was noted that it was all spelled out in Mr. Shoup's letter of December 2002. The problem was that it referred to a plat, and was sort of based on a plat, from 1963, and that it may be that when that letter was written, that the focus was not so much on the dimensions of those buildings at the time, but maybe the number of the buildings. Ms. Gibb thought that might be why people did not pay attention too closely to whether they were a little bit larger. She said that maybe they were larger in 2002 and maybe they were not. Ms. Gibb said it was important to the Board now. She stated that it may be that everyone proceeded under a mistake at that time, thinking they were the same size in 2002 as they were in 1963, but perhaps they were not. It seemed to her they did adopt that plat, and that the Board was left with that unless the Board receives some other information that would persuade them otherwise. Ms. Gibb did not think the Board had anything that was clear. She said she was open to deferring the appeal. She said the Board had testimony from the appellant that he did not enlarge the structures, but that it did look like that at least Building 8 was squared off. Ms. Gibb said that, although she could understand how that could happen, it certainly looked like it was larger.

Ms. Gibb noted that in Mr. Shoup's letter, the appellant asked for an additional 250 square feet of gross floor area, but then it said that they were using that 250 square feet with two newer sheds. Ms. Gibb thought that at least one structure was enlarged. She said the testimony of the County was that several buildings were enlarged a total of 1,600 square feet, and because of that, the nonconforming use was lost, leaving a storage yard.

Ms. Gibb stated that the only way the appellant could comply would be to get a special use permit and obtain a site plan. She thought that use of the second tourist cabin was not a problem, as she did not read Mr. Shoup's letter the same way the County did.

As far as the free-standing sign, Ms. Gibb noted the County testimony was that the sign had existed previously, and the appellant had been told to move it. However, she said there was nothing in writing to that effect, and found that it was part of the nonconforming use.

Concerning the concrete storage bins, she could not decide whether they constituted a structure or not. She asked for something in writing from the County on that, which would show her how that had been treated in the past. Ms. Gibb felt it defied common sense that it would be a structure. For this purpose, she said, they were not a structure.

Ms. Gibb moved to uphold the Zoning Administrator in part and overturn the Zoning Administrator in part.

Mr. Hart seconded the motion for discussion. He agreed that the use was not a storage yard, and that the buildings had been slightly expanded. He said that if the 1963 holds, and no one appealed the 2002 letter, then the appellant was stuck with the 1963 dimensions. Mr. Hart stated his agreement with Ms. Gibb regarding a second tourist cabin being used for the watchman, noting that Mr. Shoup's letter contemplated that use. Finally, Mr. Hart stated his disagreement with Ms. Gibb's position that the concrete storage bins were not structures. He felt they constituted structures and were consistent with previous determinations.

Mr. Hammack moved to amend the motion to include the concrete bins as structures and uphold the Zoning Administrator on that determination.

Mr. Beard stated he had hoped to defer the decision. He said he would like the former inspector to be invited to testify about the sign and various other salient features that are germane to this property. Mr. Beard felt there were bigger issues here. He said he would not support the motion if the Board does not defer the decision.

Mr. Smith also stated his desire to defer the decision. He said he was confused on the expansion issue, noting that he would like a better handle on a comparison of the photos. He offered a substitute motion to defer decision on this appeal.

Mr. Beard seconded the motion.

Chairman Ribble, Mr. Hammack, Ms. Kelsey, and Ms. Stanfield discussed an appropriate deferral date. Ms. Stanfield suggested October 20, 2009, at 9:30 a.m.

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

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~ ~ ~ July 28, 2009, After Agenda Item:

Request for Out-of-Turn hearing for  
TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068-02.

Responding to a question from Mr. Hart, Shelby Johnson, Senior Staff Coordinator, stated that staff had just received the request for an out-of-turn hearing, and had not had an opportunity to review it.

Ms. Gibb and Ms. Johnson discussed the need for a traffic study on the application, with Ms. Johnson noting that a trip generation had been provided but had not yet been reviewed.

Mr. Hart pointed out that the Virginia Department of Transportation had not been able to comment on the application.

Chairman Ribble stated that, absent a motion, SPA 80-D-068-02 would remain on the agenda for October 6, 2009.

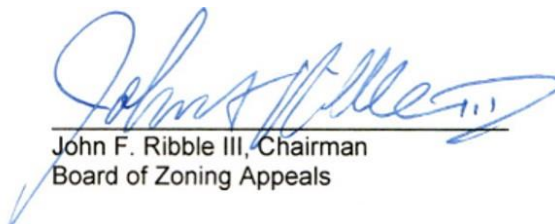
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As there was no other business to come before the Board, the meeting was adjourned at 2:08 p.m.

Minutes by: Suzanne L. Frazier

Approved on: June 15, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 4, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas Smith was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m.

Chairman Ribble noted that the Board members needed to discuss the BZA meeting schedule for 2010 and what day to pick for the Board of Zoning Appeals to meet, since the Board of Supervisors was going to start meeting on Tuesdays. They decided to address it as an after agenda item.

Mr. Hammack requested a copy of the new schedule for the Variance and Special Permit application fees, and Chairman Ribble said that staff could provide one.

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

~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. MR. ELWOOD T. HODNETT, SP 2009-MV-040 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23.0 ft. from rear lot line. Located at 7805 Roundabout Way on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-1 ((9)) (5) 26.

Chairman Ribble called the applicant to the podium.

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

Ryan Cople, 9109 Rural Cross Drive, Mechanicsville, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-MV-040, subject to the proposed development conditions.

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

In response to Chairman Ribble's question, Mr. Cople clarified that this was a glassed-in room.

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

Mr. Hammack moved to approve SPS 2009-MV-040 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

MR. ELWOOD T. HODNETT, SP 2009-MV-040 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23.0 ft. from rear lot line. Located at 7805 Roundabout Way on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-1 ((9)) (5) 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 August 4, 2009; and

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

1. The applicant is the owner of the land.
2. The applicant has met the six required criteria set forth in Sect. 8-922.
3. The Board has a favorable staff report.
4. The addition is for the enclosure of the existing deck, which already encroaches slightly; as a practical matter, there is no additional encroachment to the setback line.
5. The rear yard is adjacent to County park land so it won't have any impact on any other neighbor.

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. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by Phillip A. Blevins, Urban, Ltd. Dated May 2008, signed through April 4, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,696 square feet existing + 5,544 (150%) = 9,240 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

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

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

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

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. DOUGLAS AND ALISON DUENKEL, SP 2009-DR-035 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 16.2 ft. from side lot line, addition 35.4 feet from front lot line and open deck 4.1 feet from the side lot line and 17.6 feet from the front lot line of a corner lot and fence greater than 4.0 feet in height to remain in

front yard. Located at 1143 Kettle Pond La. on approx. 36,000 sq.ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((13)) 17 (Concurrent with VC 2009-DR-002).

9:00 A.M. DOUGLAS AND ALISON DUENKEL, VC 2009-DR-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing 36,000 sq. feet or less. Located at 1143 Kettle Pond La. on approx. 36,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((13)) 17 (Concurrent with SP 2009-DR-035).

Chairman Ribble called the applicants to the podium.

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

Charles Owen, 9315 Georgetown Pike, Great Falls, Virginia, the applicants' agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Mr. Hart and Ms. Caffee discussed the notice of violation (NOV) for the fence; that there was an approved building permit for the pool; the permit for the pool was issued in error, since the lot was exactly 36,000 square feet, and it must be over 36,000 square feet; how the square footage of the lot was calculated; and permit requirements for decking surrounding the pool.

Susan C. Langdon, Chief, Special Permit and Variance Branch, noted that the county did not determine the square footage of the lot. The applicant's surveyor did the measurements, and gave the county the square footage. In response to Mr. Hart's statement that if the lot was a square inch bigger, the pool would no longer be an issue, Ms. Langdon agreed, but said that it would be up to the applicant to discuss with his surveyor.

Mr. Owen presented the special permit request as outlined in the statement of justification submitted with the application. He said they received the homeowners association's approval. He explained how the errors had come about. Mr. Owen noted they had done significant screening and buffering plantings, and they had letters of support from the immediate and surrounding neighbors.

In response to Ms. Gibb's questions, Mr. Owen said it would be approximately \$12,000 to remedy the fence; the applicants had their lot surveyed for the application; and the surveyor said the lot was 36,000 square-feet, plus or minus.

In response to Mr. Beard's question of how the application came before the Board, Ms. Caffee said the NOV was issued March 18, 2008 as a result of a complaint about the fence and a barbecue pit area, but it was determined that the barbecue area met the zoning setbacks. As a result of the Special Permit application for the fence, the County had discovered the other structures were in error.

Chairman Ribble called for speakers.

Doug Duenkel, the applicant, came forward to speak. He said they had gotten the homeowners' approval and obtained the permits. Some mistakes were made, but were not intended. He had gotten 13 signatures of support, and had the support of the owners' of the five adjoining properties.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-DR-035 for the reasons stated in the Resolution

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## COUNTY OF FAIRFAX, VIRGINIA

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

DOUGLAS AND ALISON DUENKEL, SP 2009-DR-035 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 16.2 ft. from side lot line, addition 35.4 feet from front lot line and open deck

4.1 feet from the side lot line and 17.6 feet from the front lot line of a corner lot and fence greater than 4.0 feet in height to remain in front yard. Located at 1143 Kettle Pond La. on approx. 36,000 sq.ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((13)) 17 (Concurrent with VC 2009-DR-002). 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 August 4, 2009; and

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

1. The applicants are the owners of the land.
2. It is determined that Items A through G have been complied with.
3. This is a unique property; it is surrounded on three sides by roads.
4. The property has one rear yard, one side yard, two front yards, and this does considerably limit the space where these items could be.
5. It is exactly, or plus or minus, 36,000 square feet, and the Board would not be addressing some of these issues if it was in excess, by any stretch of the imagination, beyond that 36,000 square feet.
6. All the letters have been noted; it is also noted that there have been neighbors who have signed petitions supporting the application as well as there are some in opposition to this.
7. The property is well landscaped and screened.
8. The fence is used for safety, concerning the pool.
9. There are no sight distance impacts or limitations.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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



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

1. This special permit is approved for the location and size of an existing fence, accessory structure, addition and deck as shown on the plat prepared by Paul B. Johnson, Charles P. Johnson & Associates, Inc. dated March 2009, revised and signed through June 5, 2009 submitted with this application and is not transferable to other land.

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

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

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Mr. Byers moved to approve VC 2009-DR-002 for the reasons stated in the Resolution

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS AND ALISON DUENKEL, VC 2009-DR-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing 36,000 sq. feet or less. Located at 1143 Kettle Pond La. on approx. 36,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((13)) 17 (Concurrent with SP 2009-DR-035). 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 August 4, 2009; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 36,000 square feet.
4. This is an exceptional piece of property.
5. The property meets all the requirements, including the new requirement, under Item 6B, which takes out approaching confiscation.
6. The applicant has satisfied the Board the physical conditions as listed above exist under which 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 or buildings involved.
7. The letters have been read and reviewed, those letters in opposition as well as those that are in support of this; it is noted that in one of the documents in opposition, the homeowners association did, in fact, approve this.
8. The record contains an e-mail from Dennis Morgan, who has served on an architectural review committee, and he indicates that this is done very nicely.
9. There is approval from the Great Falls Citizen Association Land Use and Zoning Committee.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;

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

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

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

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

- 1. This variance is approved for accessory structure (pool) to remain in the front yard as shown on the plat prepared by Paul B. Johnson, Charles P. Johnson & Associates, Inc. dated March 2009, revised and signed through June 5, 2009 submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M.        RAFAEL CHAVARRIA, SP 2009-MA-030 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 2.2 ft. from side lot line and 3.1 ft. from rear lot line. Located at 7218 Carol La. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((20)) 89.

Chairman Ribble called the applicant to the podium.

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

Jaime Mirando, 3105 Fox Mill Road, Oakton, Virginia, the applicant's agent, reaffirmed the affidavit.

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

Mr. Miranda presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had purchased a shed from Home Depot, and was informed that no permit was necessary. Mr. Chavarria placed the shed in a logical location in good faith, unaware he had done anything wrong.

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

Mr. Hart move to approve SP 2009-MA-030 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

RAFAEL CHAVARRIA, SP 2009-MA-030 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 2.2 ft. from side lot line and 3.1 ft. from rear lot line. Located at 7218 Carol La. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((20)) 89. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 2009; and

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

1. The applicant is the owner of the land.
2. There is no problem with the good faith of the owner.
3. There is a conflict sometimes between the sheds that are sold by Home Depot, Lowes or other vendors where the homeowner purchases it thinking they do not a building permit, and they put it on their lot, and it violates the Zoning Ordinance, which appears to have happened in the subject case.
4. The placement of the shed appears to be the logical location for the lot, which is not large.
5. The house is pushed to the back side of the lot, so there is not much room for any storage structure in the rear yard.
6. The shed is in approximately the same location as the shed on the adjoining property, and although it is a little taller, it is not thought that there would be a significant negative impact in that corner of the property.
7. From the photographs provided to the Board, the structure appears to be well maintained and attractive in appearance.
8. The shed will not have a significant negative impact on anybody.
9. It is noted that the applicant will have to get a building permit for the existing deck, which would solve that problem, as well as an inspection for the shed because of the electrical fixture that is included within it, so both things will be addressed.

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 Sam Whitson Land Surveying, Inc., dated June 16, 2004, as signed by Nader R. Elhadj on April 27, 2009, as submitted with this application and is not transferable to other land.
- 2. The applicant shall obtain a building permit and final inspection for the existing deck, within 120 days of approval of this special permit, in accordance with the provisions set forth in Part 6, of Article 18, Building Permits, of the Zoning Ordinance.
- 3. Electrical permits shall be obtained for the accessory storage structure within 120 days of approval 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.

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

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. WAYNE M. TESTERMAN, SP 2009-SP-033 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 13.1 ft. and 8.2 ft. from side lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 7640 Clifton Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((14)) 14.

Chairman Ribble noted that SP 2009-SP-033 had been administratively moved to October 20, 2009, at 9:00 a.m.

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. JAMES P. AND KATHRYN M. DRINKARD, SP 2009-LE-041 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition and deck 8.8 ft. from side lot line. Located at 6814 Darby Ln. on approx. 12,000

sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 240. (Admin. moved from 8/4/09 at appl. req.)

Chairman Ribble noted that SP 2009-LE-041 had been administratively moved to September 15, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. SUSAN J. LUCAS, SP 2009-SP-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 6915 Heathstone Ct. on approx. 1.16 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((5)) 30A.

Chairman Ribble called the applicant to the podium.

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

Susan J. Lucas, 6915 Heathstone Court, Fairfax Station, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-SP-042, subject to the proposed development conditions.

Ms. Lucas presented the special permit request as outlined in the statement of justification submitted with the application. She said they sought permission to reduce their side yard property line by 50 percent to build a two-car garage adjacent to their house. The storm water easement on the other side of the lot and the septic tank field in the rear prevented them from using those areas of their lot. The design and materials were compatible with their dwelling, harmonious with the neighborhood, and would not create an adverse impact on their neighbors.

Chairman Ribble called for speakers.

Kimberly Ford, 6917 Heath Stone Court, Fairfax Station, Virginia came forward to speak in support.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2009-SP-042 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SUSAN J. LUCAS, SP 2009-SP-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 6915 Heathstone Ct. on approx. 1.16 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-1 ((5)) 30A. 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 4, 2009; 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 and the written statement of justification, the applicant has met the required standards.
3. There is a staff recommendation of approval.
4. The Board has determined that the applicant has met Standards 1 through 6; specifically that the proposed addition will be harmonious with the neighborhood.
5. The proposed addition does not adversely impact the neighbors.
6. The neighbor most impacted has testified that the addition will not be detrimental.

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. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a two-car garage (540 square feet), as shown on the plat prepared by B.W. Smith and Associates, Inc., as signed by Frank L. Deichmeister, on May 27, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,310 square feet existing + 4,965 square feet (150%) = 8,275 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. JOHN DENNIS HALL, JR. AND CYNTHIA R. BAUSO, SP 2009-LE-039 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62.

Chairman Ribble called the applicants to the podium.

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

Ms. Gibb stated that she would recuse herself from the public hearing.

William B. Lawson, Jr., Lawson, Tarter & Charvet, P.C., 6045 Wilson Boulevard, Suite 100, Arlington Virginia, agent for the applicants, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation.

Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Beard's question concerning staff's development condition requiring a building permit for the deck.

Mr. Lawson presented the special permit request as outlined in the statement of justification submitted with the application. He said the matter arose out of a violation; that all issues except the fence, constructed in 1979, were corrected; and, because the applicants technically had two front yards, it was discovered the fence height was in violation. Mr. Lawson said there was significant and mature vegetation which obscured it from view. He submitted three letters in support from Mr. Hall's neighbors.

Mr. Lawson requested Development Condition 2 concerning the deck be deleted, as he thought it unfair to his clients. He referenced the deck's contract which stipulated a wood deck and stairs, 6.0 feet by 10.0 feet, but which was significantly larger when erected; Mr. Hall believed all was done in accordance with the laws at the time.

Discussion ensued regarding the documentation for the deck's construction, building permit, and inspection requirements.

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

Mr. Beard moved to approve SP 2009-LE-039 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

JOHN DENNIS HALL, JR. AND CYNTHIA R. BAUSO, SP 2009-LE-039 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62. 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 4, 2009; and

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

1. The present zoning is R-4.
2. The lot area is 11,612 square feet.
3. Although staff does not make recommendations of these issues, there was a special permit granted in the proximity, perhaps May 2007, to permit an existing fence greater than 4 feet in a front yard.
4. You are allowed to apply for up to six feet in height, and this is only six inches in this case.
5. You are allowed to apply for up to six feet in height; the Ordinance allows up to six feet in height, and this is only six inches in this case.

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. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Larry N. Scartz, Larry N. Scartz, LTD., dated January, 7, 2009, as submitted with this application and is not transferable to other land.
2. The applicant shall obtain a building permit and final inspection for the existing deck within 120 days of approval of this special permit, in accordance with the provisions set forth in Part 6 of Article 18, Building Permits, of the Zoning Ordinance.

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

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

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. RAYMOND KARL STRIDE, JR., SP 2009-DR-043 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.1 ft. from side lot line and reduction of certain yard requirements to permit construction of roofed deck and addition 28.7 ft. from front lot line and addition 6.8 ft. from side lot line. Located at 2015 Maynard Dr. on approx. 10,500 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((4)) 11.

Chairman Ribble noted that SP 2009-DR-043 had been administratively moved to September 15, 2009, at 9:00 a.m., for Notices.

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~ ~ ~ August 4, 2009, Scheduled case of:

9:00 A.M. RICHARD LORD, SP 2009-SP-037 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9.

Chairman Ribble called the applicant to the podium.

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

Richard Lord, 6616 Saddlehorn Court, Burke, Virginia, 22015, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-SP-037, subject to the proposed development conditions.

In response to Mr. Hammack's question as to whether staff had a chance to review the talking points that had just been passed out, Ms. Johnson replied no. Mr. Hammack referenced Item Number 3, which indicated that the applicants had a shelter situation in the basement. A discussion ensued concerning the definition of an accessory dwelling unit (ADU), and if using the ADU as a shelter with people staying for one night or a week fell within the definition. Ms. Johnson stated that the length of time someone lived in the ADU was not specified in the Zoning Ordinance.



In response to Mr. Hart's question about how many people were living in the basement, James Ciampini, Supervisor, Zoning Enforcement Branch, said there were two at the time of the initial inspection, a mother and a child.

Mr. Hart and Mr. Ciampini discussed the difference between frequency of turnover in an ADU, and a prior case concerning a violation where a man was running a boardinghouse out of his home. Mr. Ciampini stated that by definition a boardinghouse could be five or more unrelated people, and this ADU could only have two.

In response to Ms. Gibbs questions, Ms. Langdon explained that it did not matter if the persons in the ADU paid rent or not.

Mr. Lord presented the special permit request as outlined in the statement of justification submitted with the application. He said that he and his wife had taken in people over the years that had asked them for help. They did not seek out people to shelter, but rather people came to them through word of mouth. No one had lived in the basement for more than two months at the time of the Notice of Violation (NOV). He had appealed the NOV, because they were not in violation at that time. When they appealed the NOV, the County had suggested they get a special permit for an ADU. He wanted to be in compliance with zoning regulations, but also wanted to continue to help people. He gave examples of the situations of people they helped. He then addressed the parking issues that exist in the cul-de-sac.

Mr. Hart verified that Mr. Lord understood they could only have two people living in the ADU at one time.

In response to a question from Chairman Ribble, Mr. Lord explained why the neighborhood had been upset, and why he had received an NOV. The last tenant had a friend staying with her; at one o'clock one morning, a SWAT team visited the property with an interest in the friend; they did not arrest the person; Mr. Lord said he was unhappy with how the raid had been conducted; had contacted Fairfax County Police internal affairs; and filed a complaint. It was his understanding that the NOV was a result of filing the complaint. The person living in the basement moved out in March, and they got the NOV in June.

Mr. Hart and Mr. Ciampini discussed the difference between tenants and temporary guests.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition: Major General Mike Sumrall, 6612 Saddlehorn Court, Burke, Virginia; Laurel Beth Zielinski, 6615 Saddlehorn Court; Paula Sumrall, 6612 Saddlehorn Court; Robert Drake, 6614 Saddlehorn Court; Jane Brown, 6610 Saddlehorn Court. Their main points were that they were concerned with safety in the neighborhood, and parking issues.

In response to Mr. Hammack questions about the occupancy requirements of an accessory dwelling unit, as defined in Section 8-918, Additional Standards for ADUs, paragraph 5, and whether the applicant met the criteria, Ms. Landon replied yes, the owner must live on the property, and one person in one of the units must be 55 or older. The owner could meet both criteria and then the other unit was not restricted. Leslie Johnson, Senior Deputy Zoning Administrator concurred with Ms. Landon's answer, adding if the owner was 55 or older the applicant could rent out the other unit.

Mr. Hart and Ms. Landon discussed the Zoning Ordinance, as it pertained to parking requirements, and the number of parking spaces in the applicants' driveway.

Mr. Lord rebutted the information provided by the speakers in opposition. He said the residents in the ADU were allowed to park in his driveway, and there was a parking problem on the cul-de-sac caused by other neighbors' cars. He said they spent their weekends on a waterfront farm on the Potomac River in southern Maryland, but were at the subject property during the week, as it was their home, and they both worked in the area.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to deny SP 2009-SP-037 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD LORD, SP 2009-SP-037 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 4, 2009; and

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

1. The applicant is the owner of the land.
2. Under the general standards, certain standards have to be met.
3. Under Standard 8-006, Sect. 3, the proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties. This application does not satisfy that requirement in light of the testimony and problems with the application and the previous occupants have caused.
4. Under Standard 8-006, Sect. 4, the proposed use shall be such that the pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood, and without trying to decide who is at fault for parking on a small cul-de-sac or blocking access to the mailboxes, it is clear that this cul-de-sac has a parking problem with or without the additional occupants. Adding additional occupants would simply exacerbate the problem.
5. Under Standard 8-006, Sect. 7, adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Testimony is that former occupants have used the adjoining property owner's driveway as well as the other issues involved.
6. Sect. 8-918, Additional Standards for this sue, such parking is sufficient to meet the needs of the principal and accessory dwelling units, and the application fails in that the ADU (Accessory Dwelling Unit) will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood.
7. Based on the testimony, and notwithstanding the recommendation of staff, the application has not met the required standards.

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. 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. Smith was absent from the meeting.

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The meeting recessed at 11:35 a.m. and reconvened at 11:47 a.m.

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~ ~ ~ August 4, 2009, Scheduled case of:

9:30 A.M. JBG ROCKWOOD SUNRISE VALLEY, LLC, A 2009-HM-014 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an amendment to a Department of Public Works and Environmental Services approved PRC Plan would be subject to approval

by the Board of Supervisors, in accordance with grandfather provisions adopted as part of Zoning Ordinance Amendment ZO-07-397, PRC District Regulations. Located at 11720 Sunrise Valley Dr. on approx. 3.45 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-4 ((14)) (1A) 1.

Chairman Ribble called the case.

Ms. Gibb recused herself from the public hearing.

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

Leslie B. Johnson, Senior Deputy Zoning Administrator, Zoning Administration Division, presented staff's position as outlined in the staff report. The appeal at issue was of the Zoning Administrator's determination that an amendment to the appellant's PRC (Planned Residential Community), which was approved by the Department of Public Works and Environmental Services (DPWES), was subject to approval by the Board of Supervisors (BOS) in accordance with specific grandfather provisions adopted as part of the Zoning Ordinance Amendment ZO-07-397, adopted March 26<sup>th</sup> and effective March 27, 2007, which had changed the process by which PRC plans were to be approved. The appellant believed DPWES should approve amendments to existing PRCs, which were originally approved by DPWES. Ms. Johnson stated that the BOS should approve any amendments to an existing PRC rather than DPWES.

Vice Chairman Hammack assumed the Chair.

The appellant's agent, Benjamin F. Tompkins, Esq., Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, presented the arguments forming the basis for the appeal. He stated that what was at issue was the appropriate reading of the plain and unambiguous language of Paragraph 10, Article 16-203 of the Zoning Ordinance, which stated that once a PRC plan had been approved, any proposed amendment shall be processed in the same manner as the original submission. Under that language, if one had a PRC plan approved administratively, then any amendment to such a plan should also be approved administratively; likewise, if a PRC plan were approved by the BOS, any amendment to that PRC plan should also be approved by the BOS. Concluding his presentation, Mr. Tompkins said they respectfully requested the reversal of the Zoning Administrator, with a determination that an amendment to a PRC plan would be processed in the same manner as the original submission.

Vice Chairman Hammack called for speakers. No speakers came forward.

Mr. Beard asked for staff's position on the appellant's argument that the amendment to the PRC plan should be approved in the same manner by DPWES.

Ms. Johnson said the appellant was reading Paragraph 10 without regard to anything else in the Ordinance. She noted that when the BOS adopted the Zoning Ordinance Amendment, it was clarified that they changed the process by which PRC plans could be approved. It would now be a legislative action with public hearings, and the BOS would make the final decision. She noted that PRC plans pending approval were addressed in the grandfather provision, and now, amendments to PRC plans pending approval and PRC plans already approved by DPWES would go through the new process. Ms. Johnson noted that Paragraph 10 was not changed with the amendment, because when Paragraph 1 was changed to stipulate the new process, Paragraph 10 addressed solely how amendments would be processed.

Ms. Johnson concurred with Mr. Beard's statement that it was staff's contention that the appellant's position nullified, or would nullify, the grandfather clause.

In closing staff comments, Scott Wynn, Senior Assistant County Attorney, addressed Mr. Tompkins' position, that if the BOS wanted to change the rules, it should have amended Section 16-203(10), which was the statute the appellant thought supported his position. Mr. Wynn explained that when there were two statutes which seemed to conflict, then legal affect must be given to both statutes. Mr. Tompkins' interpretation of Paragraph 10 would render the grandfather clause meaningless.

Chairman Ribble resumed the Chair.

Mr. Tompkins rebutted Mr. Wynn's comments explaining his reasoning, interpretation, and determination of the issues and Ordinance language.

Eileen M. McLane, Zoning Administrator, stated that all adopted amendments, grandfather provisions, and effective dates, were set forth in the front of the Zoning Ordinance.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the determination of the Zoning Administrator, stating it was based on his readings of the staff report and all the reasons contained therein. He said he thought it was clear that the BOS did legislatively mandate, by the grandfather provision in the Zoning Ordinance Amendment ZO-07-397, that amendments to DPWES approved plans could only be legislatively approved by the BOS.

Mr. Hammack seconded the motion, which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote. Mr. Smith was absent from the meeting.

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~ ~ ~ August 4, 2009, Scheduled case of:

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

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008) *(Decision deferred from 12/16/08, 4/21/09, and 6/23/09.)*

Chairman Ribble called the appellants to the podium, noting these cases were decision deferred.

Mr. Hart recused himself from the hearings.

In response to Chairman Ribble's question about whether a site plan had been submitted, Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said one had been submitted recently. She said that Staff still requested that the Board uphold their determination, but if the Board chose to defer the applications, staff recommended a date in January, 2010, to allow time for the site plan to be approved.

Chairman Ribble asked if anyone wanted to speak to the matter of deferral.

J. Charles Curran, Kidwell, Kent & Curran, Woodson Square, 9695 C Main Street, Fairfax, Virginia, agent and attorney for the Cronan Family LLC, concurred that his clients wanted to continue the decision deferral.

John McGranahan, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, said he was there representing his partner, Frank McDermott, the registered agent for Danella Construction Company. He said there had been substantial progress made, and with the submission of a site plan, there had been a significant step in resolving the zoning enforcement issues.

In response to Mr. McGranahan's request for a continuation date in February 2010, Chairman Ribble said when the 2010 schedule was confirmed, a date in February would be set.

Chairman Ribble called for a motion.

Mr. Hammack moved to defer decision of A 2008-SU-008 to a date in early February 2010, to be determined after the BZA's 2010 schedule was adopted.

Mr. Hammack next moved to defer decision A 2008-SU-037 to a date in early February 2010, to be determined after the BZA's 2010 schedule was adopted.

Ms. Gibb seconded the motions. The motions carried by a vote of 5-0-1. Mr. Hart recused himself. Mr. Smith was absent from the meeting.

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~ ~ ~ August 4, 2009, Board Matter


Chairman Ribble noted that the Board of Supervisors were moving their meetings to Tuesdays, and therefore, the Board of Zoning Appeals needed to change the day of the week their meetings would be held. He asked the other Board members to email him their preferences so they could pick a day and set up the calendar for 2010.

As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Paula A. McFarland

Approved on: March 29, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 28, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Norman P. Byers; Nancy E. Gibb; Paul W. Hammack, Jr., James R. Hart; and Thomas Smith.

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

~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. EDWARD J. KOZERKA, SP 2009-MV-016 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. from rear lot line and reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from front lot line. Located at 8068 Fairfax Rd. on approx. 12,172 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 51 and 507A. (*Admin. moved from 6/2/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Edward Kozerka, 8068 Fairfax Road, Alexandria, Virginia, through a sign-language interpreter, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. She pointed out that the property was affected by a Resource Protection Area (RPA), a 100-year floodplain, and an Environmental Quality Corridor (EQC), and stated that if the Board approved the shed, the applicant would still have to obtain approval of an RPA exception from the Department of Public Works and Environmental Services to remain in its current location.

Mr. Hart and Ms. Johnson discussed the area of the EQC, with Ms. Johnson noting that it follows the 100-year floodplain. Susan Langdon, Chief, Special Permits and Variance Branch, stated that the entire back of the property was in the RPA.

Mr. Kozerka, through the interpreter, presented the special permit request as outlined in the statement of justification submitted with the application. He explained there was currently no railing or weather protection for the front stoop steps, and since he and his wife were getting older, they now wanted to have them.

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

Mr. Hammack moved to approve SP 2009-MV-016 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

EDWARD J. KOZERKA, SP 2009-MV-016 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.9 ft. from rear lot line and reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from front lot line. Located at 8068 Fairfax Rd. on approx. 12,172 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 51 and 507A. (*Admin. moved from 6/2/09 at appl. req.*) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 2009; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable staff report.
3. The property is burdened by an RPA and EQC.
4. The statement in support by the applicant is useful as well.
5. The applicant has met the seven criteria set forth in Section 8-914 to allow this permit to be granted.
6. The applicant has met the six required standards set forth in Section 8-922.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, 74.4 square feet for the roofed deck (covered front porch), as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated October 8, 2008, as revised through June 25, 2009, as submitted with this application and is not transferable to other land.
3. All applicable permits for the shed shall be obtained prior to the construction of the addition.

4. The addition shall be architecturally compatible with the existing dwelling on site, as depicted on Attachment 1.
5. Prior to the issuance of a building permit for the addition, the applicant shall apply for and gain approval for an RPA exception and/or waiver for any applicable structures on site if determined necessary by DPWES.

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

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

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

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON, D.C., SPA 89-S-013-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 previously approved for church with child care center to permit increase in land area, the addition of a nursery school and private school of general education and site modifications including building additions. Located at 11821, 11829, 11901, 11911, 11919 Braddock Rd. on approx. 16.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 31, 32, 33, 34 and 42.

Chairman Ribble noted that this hearing had been administratively moved to October 6, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. MICHAEL WYGANOWSKI, SP 2009-MA-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.0 ft. from rear lot line. Located at 4612 Deming Ave. on approx. 10,520 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((11)) 16.

Chairman Ribble called the applicant to the podium.

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

Kim Allen Beasley, agent for the applicant, 11 Forrest Street, Alexandria, Virginia, reaffirmed the affidavit.

Suzie Zottl, Staff Coordinator, made staff's presentation. Staff recommended approval of the request as outlined in the staff report with adoption of the proposed development conditions.

Responding to Mr. Hammack's question, Ms. Zottl stated that the addition would not count towards the rear lot coverage.

Mr. Beasley presented the special permit request as outlined in the statement of justification submitted with the application. He said his clients were aging, and wanted a first-floor master bedroom suite.

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



Mr. Byers moved to approve SP 2009-MA-045 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MICHAEL WYGANOWSKI, SP 2009-MA-045 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.0 ft. from rear lot line. Located at 4612 Deming Ave. on approx. 10,520 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((11)) 16. 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 August 11, 2009; and

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

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

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (497 sq. ft.) of a proposed addition as shown on the plat prepared by Timothy J. Farrell, B.W. Smith and Associates, Inc., dated November 12, 2008, as revised through April 24, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,730 square feet existing + 4,095 (150%) = 6,825 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to approval of the final building inspection for the addition, the existing decking areas adjacent to the existing in ground pool (both identified as "AREA TO BE REMOVED" on the SP Plat) shall be removed and the areas scarified and replanted with grass and/or landscaping.

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

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

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

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. NORMA VIDAURRE, SP 2009-LE-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 addition to remain 7.6 ft. from side lot line. Located at 6811 Lois Dr. on approx. 11,154 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 228.

Chairman Ribble called the applicant to the podium.

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

Mary C. Zinsner, Esquire, agent for the applicant, 1100 Collingwood Road, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. She noted that members of the Strike Team were present to answer questions regarding the Notice of Violation on the property.

Responding to a question from Mr. Hart, Melissa Smarr, a member of the Strike Team, provided a brief history of the violations on the property. She said the occupancy/boarding house issue had been resolved and the second kitchen was removed. Ms. Smarr said an enclosed screen porch had not received final approval, so there were a few building code issues still to be addressed. Specifically, she said that the applicant could not get the required building permits until this special permit was resolved.

Mr. Hart and Ms. Caffee discussed the prior violation for a second kitchen. Ms. Caffee pointed out that a second kitchen was not addressed in the development conditions, because it was not the subject of a violation. It was the proximity to the side lot line that was a concern. She said if the applicant put another second kitchen in the home, it would trigger a new Notice of Violation.

Ms. Zinsner presented the special permit request as outlined in the statement of justification submitted with the application. She said her client had purchased the home in May 2005, not knowing there were violations on the property. The house had been purchased for the applicant's daughter and her family. She said her daughter rented out the house in 2006 after experiencing some financial hardship, and moved in with the applicant. The lessees rented it as a boarding house, which was reported to the County. When the applicant received the Notice of Violation, she immediately closed down the operation, and the basement was vacated. After the main lessee moved out in December 2008, the applicant's daughter and her family moved back into the house. Ms. Zinsner said the applicant did not know the second kitchen was illegal, since it was there when she bought the house. She said her client intends to repair and make improvements to the enclosed porch/carport and bring it into compliance.

In response to a question from Mr. Hart, Ms. Zinsner said her client agreed to the proposed development conditions, including an additional one, which addressed the repair and maintenance of the carport exterior.

Chairman Ribble noted that the Board had received approximately ten letters in support of the application.

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

Mr. Hart moved to approve SP 2009-MA-045 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

NORMA VIDAURRE, SP 2009-LE-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 addition to remain 7.6 ft. from side lot line. Located at 6811 Lois Dr. on approx. 11,154 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 228. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant has presented testimony showing compliance with the required standards.
3. The Board is satisfied with the applicant's good faith.
4. The violations appear to have been corrected or shortly will be.
5. Approval of the existing carport enclosure will not significantly impact anyone.
6. The roof of the structure was pretty massive to begin with, and the sides of it would tend to hide things that would otherwise be stored in the open.
7. The other standards in the mistake section resolution have been satisfied.

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 existing addition (enclosed carport) as shown on the plat prepared by Laura N. Campbell, dated April 13, 2005, as revised through April 20, 2009, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits and final inspections for the addition (enclosed carport) shall be diligently pursued and obtained or the addition shall be removed or brought into compliance with the Zoning Ordinance Requirements.
3. The siding on the north side of the addition shall be repaired, and the exterior appearance of the addition shall be maintained in good repair, consistent with the appearance of the dwelling.

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

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

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. EDWARD MORELAND, SP 2009-BR-046 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.2 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 6.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 7620 Erie St. on approx. 10,520 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-2 ((5)) 61.

Chairman Ribble called the applicant to the podium.

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

Edward Moreland, 7620 Erie Street, Annandale, Virginia, reaffirmed the affidavit.

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

Mr. Moreland presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife both drive motorcycles, and installed the shed on their property to house them.

Mr. Beard disclosed that he was a motorcycle owner and rider, but indicated he did not believe his ability to participate in the case would be affected.

In response to a question from Mr. Hammack, Mr. Moreland said he had the shed built and placed on the property, noting that it was approximately 24 feet long.

Mr. Hammack and Ms. Caffee discussed the large size of the shed. Ms. Caffee stated that the Zoning Administrator had determined that if the applicant erects an interior wall separating the spaces, the square footage could be considered separate from each other vs. the entire square footage of the footprint of the structure. As a result, the applicant will satisfy the size restrictions noted in the Zoning Ordinance.

In response to a question from Ms. Gibb, Ms. Caffee said the dividing wall was not made a part of the development conditions because it would be addressed during site plan review.

Chairman Ribble called for speakers.

Thomas O'Brien, 7553 New Castle Drive, Annandale, Virginia, spoke in opposition to the application. He was concerned with the size of the shed and that it might for business purposes.

In rebuttal, Mr. Moreland said he had talked to all his immediate neighbors about the shed, and no one had a problem with it. He said it would not have an adverse effect on the neighbors, noting that his property was among the best kept in the neighborhood.

In response to a question from Ms. Gibb, Mr. Moreland said the garage was built approximately five years ago, noting that his abutting neighbor had also added two sheds, which backed up to his structure. Mr. Moreland also noted that there was a great deal of foliage on the property.

Ms. Gibb and Ms. Langdon discussed the interpretation of the Zoning Administrator, with Ms. Langdon noting that it had been issued in the early 2000s.

Responding to Mr. Hammack's question about the possibility of the shed being moved, Mr. Moreland stated that it had been assembled off site, trucked to his property, and hoisted onto the lot. He said that he had not received any complaints about the shed in its current position.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2009-BR-046 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

EDWARD MORELAND, SP 2009-BR-046 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.2 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 6.0 ft. from side lot line and 15.0 ft. from rear lot line. Located at 7620 Erie St. on approx. 10,520 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-2 ((5)) 61. 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 11, 2009; and

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

1. The applicant is the owner of the property.
2. This was a close call because the Board felt it was a pretty big shed, especially when you have another large garage going on this rather small lot.
3. Under the circumstances, the shed has been there five (5) years; it has some foliage, a tree growing up next to it that sort of reduces the impact.
4. The applicant testified that he can get between the shed and his fence in order to maintain it, which is one of the issues that the Board worries about.
5. There have been no complaints from the neighbors regarding impact, and so it seems to still be appropriate in the neighborhood.
6. The applicant has provided testimony that he has met required Standards A through G for a special permit under the mistake section.

7. Regarding the special permit for the garage, the Board has a positive staff report and staff recommendation of approval.
8. The applicant has met Standards 1 through 6 of Section 8-922, providing testimony that he will use the garage to store motorcycles, so it is not any larger than it would need to be for that purpose.
9. The garage is located where it can be because of a fifteen (15) foot storm drainage easement in the back yard.

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. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed accessory structure and shed as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc. dated December 3, 2009 revised through July 8, 2009 submitted with this application and is not transferable to other land.
3. The accessory structure shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
4. Within 6 months of approval of this application, building permits and final inspections for the shed shall be obtained or the shed shall be removed or brought into compliance with Zoning Ordinance requirements.

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

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. Byers seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M.        MICHAEL D. BURRIS, SP 2009-PR-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from front lot line, second story addition 8.7 ft., two story addition 5.0 ft., one story addition 5.4 ft., and open deck 5.2 ft. from side lot line. Located at 2909 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 38.  
(Continued from 7/7/09.)

Chairman Ribble called the applicant to the podium.

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

Michael Burris, 2909 Meadow Lane, Falls Church, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, provided an update for the Board since they last heard this application on July 7, 2009. Staff had previously indicated it would recommend approval of all structures if they were brought back in line with the plane of the existing dwelling. She said the Board had continued the hearing to allow the applicant to revise the plat and plans, but felt the plans before the Board were the basically the same ones presented earlier.

Mr. Burris said he wanted to clarify some of the issues that were brought up at the hearing in July. He felt the biggest point of confusion resulted from Mr. Hart's question about whether there was a significant reason why the construction could not be shifted from the existing bay window to the existing wall line. Mr. Burris explained that the existing garage minimizes the overall view and feel of the lot, not only for him, but for his neighbors. He said he met with his neighbors after the last hearing, and has letters from them expressing their concerns if he is forced to shift the addition an extra three feet, making it more visually intrusive.

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

Mr. Smith moved to approve SP 2009-PR-027 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MICHAEL D. BURRIS, SP 2009-PR-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 24.8 ft. from front lot line, second story addition 8.7 ft., two story addition 5.0 ft., one story addition 5.4 ft., and open deck 5.2 ft. from side lot line. Located at 2909 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 38.  
(Continued from 7/7/09) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 11, 2009; and

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

1. The applicant is the owner of the property.
2. There is a favorable staff report on items 1, 2, and 4, and the Board adopts the rationale of the staff on that.
3. There was a recommendation for denial on items 3 and 5, which are the five (5) foot setback on the side lot line and the 5.2 foot setback on the side lot line.
4. The Board thought the applicant presented a very compelling argument.
5. The Board thought when you look at the bump-out, aesthetically it makes perfect sense that it be consistent, that the line just continue. It looks better and is cleaner aesthetically and architecturally the Board thought that as you look at the back yard, it was a better use of space.
6. The letters from the property owners on the north and south are very compelling.
7. The applicant had done a lot of homework on this.
8. The fact that there is an identical construction for an addition using the same line across the street is also compelling.
9. The Board thought this addition is going to be an improvement to the neighborhood.
10. It is not inconsistent with the Comprehensive Plan or the development out there.

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. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed roofed deck, second story addition and bay window, as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, LLC dated January 8, 2009, revised through April 8, 2009 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,112 square feet existing + 3,168 (150%) = 5,280 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The additions shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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



additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Hammack voted against the motion.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 (church w/private school of general education) (*Admin. moved from 6/16/09 and 7/14/09 at appl. req.*)

Chairman Ribble noted that this hearing had been administratively moved to September 29, 2009, at 9:00 a.m. at the applicant's request.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:00 A.M. SAINT ANDREW LUTHERAN CHURCH, SPA 79-S-351-06 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 previously approved for church with nursery school and private school of general education to permit addition of a child care center. Located at 14640 Soucy Pl. on approx. 2.56 ac. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((6)) 1A.

Chairman Ribble called the applicant to the podium.

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

Roger B. Glaes, agent for the applicant, 9443 Onion Patch Drive, Burke, Virginia, reaffirmed the affidavit.

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

Mr. Hammack and Ms. Hedrick discussed the traffic situation in the area and availability of on-site parking. Ms. Hedrick stated that the Virginia Department of Transportation had reviewed the proposal and determined that the left-hand turn lane needed to be striped to lessen the impact of traffic on Braddock Road. With regard to the parking availability, she noted that the property currently had a parking reduction agreement through the Department of Public Works and Environmental Services (DPWES) for 96 parking spaces, but were now required to submit a new parking reduction study to DPWES for their review and approval.

Mr. Glaes presented the special permit request as outlined in the statement of justification submitted with the application. He gave a brief history of prior amendments to the special permit, and said that about two years ago, the Church became aware of a growing need for before and after school care, noting that the church had space available for community outreach. After speaking with Fairfax County After School Care representatives and confirming with them the lack of facilities to accommodate the numerous requests for child care, Mr. Glaes said it was proposed to the congregation and approved by them. He addressed the traffic issue, confirming that the private school of general education and the child care center would not run simultaneously. Mr. Glaes asked that the Board approve the special permit amendment.

Chairman Ribble called for speakers.

Dennis Hastrum, 13480 Rostrum Lane, Centreville, Virginia, spoke in favor of the application, noting he was the pastor of St. Andrews Church. He said the church had been providing preschool services to the community for 25 years, and wanted to continue that service to fill the need for before and after school child care.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 79-S-351-06 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SAINT ANDREW LUTHERAN CHURCH, SPA 79-S-351-06 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 previously approved for church with nursery school and private school of general education to permit addition of a child care center. Located at 14640 Soucy Pl. on approx. 2.56 ac. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((6)) 1A. 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 11, 2009; and

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

1. The owner of the property is the applicant.
2. The present zoning is R-3.
3. The area of the property is 2.56 acres.
4. The FAR is 0.23.
5. There is a staff recommendation.
6. It was testified to and asserted that the applicant will not operate concurrently with the private school. The applicant already has space on the third floor.
7. The applicant agreed to the development conditions, particularly stripping the left turn lane prior to the issuance of a Non-RUP.
8. If the left-turn lane requires additional resurfacing, that is something the state or county is going to do.
9. The Board is sensitive to the needs of the County pursuant to child care.

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 appropriate section 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, Saint Andrew Lutheran Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 14640 Soucy Place (2.56 acres), and is not transferable to other land.
2. This special permit amendment is granted only for the church, nursery school, private school of general education or child care center indicated on the special permit plat prepared by Land Design Consultants, dated April 1997, as signed by Paul R. Jeannin, Landscape Architect, dated May 13, 1999, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions. Minor

modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the church shall be 370.
6. The maximum total daily enrollment for the nursery school shall be 95 children.
7. The maximum hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.
8. Upon issuance of the Non-RUP for the private school of general education, the maximum total daily enrollment shall be 99 children.
9. The maximum hours of operation for the private school of general education shall be limited to 8:00 a.m. to 2:45 p.m., Monday through Friday. The private school of general education shall not operate on-site simultaneously with the child care center.
10. Upon issuance of a Non-RUP for the child care center use, the maximum daily enrollment shall not exceed 65 children.
11. The maximum hours of operation for the child care center shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday. The child care center shall not operate on-site simultaneously with the private school of general education.
12. Prior to the issuance of a Non-RUP for the child care center use, the applicant shall restripe westbound Braddock Road to establish a separate left turn lane into Cranoke Street and provide a through transition lane west of Sully Park Drive, subject to VDOT approval. However, if VDOT determines that Braddock Road needs to be resurfaced in order to accommodate the restriping, this condition shall be null and void.
13. The outdoor recreational area of 4,000 square feet shall be provided as shown on the special permit plat. This area shall be enclosed with a six (6)-foot high solid board-on-board fence on the side of the playground facing Braddock Road. This fence shall meet current noise mitigation standards as determined by DPWES. The other sides of the playground shall be enclosed with either a board-on-board or a chain-link fence. The maximum number of children permitted in the outdoor recreational area at any one time shall be forty (40).
14. Transitional Screening 1 shall be provided along the Braddock Road lot line.  
Transitional Screening 1 shall be provided along Cranoke Street lot line.

The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the property lines. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined.

The Transitional Screening requirement shall be modified along the Soucy Place lot line to allow a 10 foot wide yard; the one (1) row of evergreen trees shall be maintained and supplemented as determined by Urban Forest Management Division (UFMD), DPWES, to provide a solid row of trees to screen the parking lot from residential uses. Dead or dying plant material shall be replaced as needed.

15. Barrier H shall be provided along the eastern lot line. Existing vegetation may be used to satisfy this requirement, provided it is supplemented where necessary to meet the barrier requirements as determined by the UFMD.

The barrier requirement shall be waived along the northern, southern and western lot lines.

16. All parking for the uses shall be on-site as shown on the special permit plat. The applicant shall obtain approval of an amended parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to the issuance of a Non-RUP for the child care center use to permit the

shared uses of the church parking lot for the church, nursery school, private school of general education or child care center uses. If approval of an amended parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the nursery school, private school of general education, or child care center shall be reduced to meet the parking requirements as determined by DPWES.

17. The applicant shall appoint a parking coordinator to ensure that the parking lot adequately provides for necessary parking and that the church parking does not take place 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 applicant shall post the parking restrictions in their church bulletin each week to inform the congregation of these requirements.
18. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
19. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by DPWES. If the SWM/BMP structure is waived, all vegetation along the southwestern lot line depicted on the special permit plat to be removed for installation of the pond shall be preserved.

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 as been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ August 11, 2009, Scheduled case of:

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

Chairman Ribble noted that the applicant had requested a continuance of the hearing to October 6, 2009, at 9:00 a.m.

Ms. Gibb and Mr. Byers moved to continue SPA 81-A-022-09 to October 6, 2009 at 9:00 a.m., per the applicant's request. Mr. Smith seconded the motion which carried by a vote of 7-0.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:30 A.M. RICHARD LORD, A 2008-SP-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. (Admin. Moved from 10/21/08, 1/27/09, 2/10/09, and 5/12/09 at appl. req.)

Chairman Ribble noted that this hearing had been administratively moved to the September 29, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hwy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. (Continued from 5/5/09)

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hwy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. (Continued from 5/5/09)

Chairman Ribble called the appellants to the podium.

Ms. Gibb gave a disclosure, regarding having a client that was related to this case, and indicated that she would recuse herself from the public hearing.

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

Charles Fitzhugh, Staff Coordinator, Zoning Administration Division, reminded the Board that the hearing had been continued from May 5, 2009, due to the illness of the appellants, the Thompsons, who wanted to retain counsel or otherwise find representation, or appear on their own behalf regarding the zoning violations on the property. He noted that Mr. Thompson disputes that the property is being used as a junk yard, maintaining that it has always been used for small business activities over the years. Mr. Fitzhugh said Mr. Kelly said that he removed a portion of his equipment from the property and conducted some clean-up, but needed additional time to complete the work.

Mr. Fitzhugh then provided a history of the property, beginning with a citizen complaint in February 1989 and concluding with a Notice of Violation (NOV) issued January 8, 2009, with the two subsequent appeals which are the subject of this public hearing. He said that both appellants' responses seemed to infer that these were continuous uses, and should be grandfathered under the Zoning Ordinance. Mr. Fitzhugh referenced a number of aerial photographs of the property, noting that the photographs do not substantiate these claims. Further, he stated that for the storage and junk yards to be allowable nonconforming uses, they had to have been lawfully established prior to 1941. He said research of County records yielded no information which would support that contention. In conclusion, Mr. Fitzhugh said zoning inspections and aerial photographs clearly demonstrated storage and junk yards were located on the property. He asked that the Board uphold the determination of the Zoning Administrator.

In response to a question from Mr. Hart, Mr. Fitzhugh stated that the appellants would have to remove landscaping equipment, a very large truck, and large storage containers in order to bring the property into compliance. Mr. Miller stated that the County was satisfied that the junk yard use had been addressed, but the issue was now the storage yard.

Walton Thompson, brother of Alfred Thompson, thanked the Board for allowing his family time to try to correct the violations. He noted that he was 88 years old, had been born on the property, and that he and Alfred, who was 94, were the only surviving members of the family. Mr. Thompson said his family had never intended to violate the Zoning Ordinance.

Alfred Thompson, 2756 Marshall Street, Falls Church, Virginia, thanked the Board for continuing the public hearing from May 5, 2009. He provided some history on the property, stating that the property has been used for various small business activities as long as he could remember.

Raymond Thompson, son of Alfred Thompson, stated that he resided in Orem, Utah. He provided the Board with a family history, noting that the Thompsons were 10<sup>th</sup> generation Virginians. Mr. Thompson recalled that building material and trucks were always on the property when he was growing up, and that produce was sold off the property by his grandparents. He said his family would be in good shape if allowed more time to clean up the property.

Responding to a question from Mr. Hammack, Mr. Thompson said the family would like two years to clean up the property.

In response to a question from Mr. Hart, Mr. Thompson said that from 1931 to 1953, his father operated a building business with storage of lumber, building supplies and equipment, along with a small saw mill. From 1938 to 1942, there was a mechanic who worked on cars on the property. In 1942 to 1974, there was another garage, where bodywork was performed.

Chairman Ribble called for speakers.

Jim Wentink, Family Tree Care, 2913 Hideaway Road, Fairfax, Virginia; and Dwight Founders, 1814 Pimmit Drive, Falls Church, Virginia, came forward in support of the Thompsons' appeal.

Brian Kelly, appellant, said he had been helping Mr. Thompson clean up the property, specifically removing debris and trailers, and working on the building that had burnt down. He said there was a lot more work to be done on the property.

Mr. Hart, Mr. Kelly, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, and Mr. Fitzhugh discussed the equipment on the property, with Mr. Kelly noting that an excavator had been removed. Mr. Fitzhugh confirmed that all of the containers would have to be removed from the property to bring it into conformance.

In closing, Mr. Fitzhugh reiterated that both a storage and junk yard were present on the property from 1941 to the present, with vehicle storage evident in the 70s and 80s. He acknowledged that some clean-up had taken place, but that the property was still being used for storage. Mr. Fitzhugh asked that the Board uphold the determination of the Zoning Administrator.

In rebuttal, Mr. Kelly said the photographs show the same amount of area in use, again noting that Mr. Thompson always had small businesses on the property.

In response to a question from Mr. Hart, Mr. Kelly stated that he did not see any equipment on the property in 1937, 1954, and 1964, but assumed it was there.

Chairman Ribble closed the public hearing.

Mr. Hammack stated that this was not an easy case. He said there had been some clean up performed, but noted the extenuating circumstances involving the illness of Mrs. Thompson, which help up a speedy clean up. Mr. Hammack said he had lived in that general area of the County for about four years, and was familiar with the Thompson farm, having driven past it hundreds of times. He had seen some of the activities the appellants testified to, and was somewhat sympathetic to the problems. Mr. Hammack noted that it really did

not look too bad from the Lee Highway side. However, he said the burden was on the appellants to establish uses if they were grandfathered in. Mr. Hammack felt the appellant had made an effort to establish some uses that may have existed before 1941, but they may not necessarily be the same uses on the property, now.

As far as the junkyard use, Mr. Hammack felt it had largely been cleaned up, but items still remained which constitute a junkyard, pointing out some of the photographs. With respect to the storage yard, he referenced the testimony concerning the five dumpsters on site, noting they were also part of the effort to clean up the property. Mr. Hammack said it was difficult to look at the site photographs and determine which dumpsters were storage containers in violation, and which ought to be allowed there for clean up. He believed the County had established that there was a junkyard and storage yard which existed on the property. Mr. Hammack said they were not the worst violations he had ever seen, and hoped the County would work with the appellants, allowing them to clear the violations.

Mr. Hammack moved to uphold the determination of the Zoning Administrator in appeal A 2009-PR-004, and denied the appeal.

Mr. Byers seconded the motion.

Mr. Hart said he would support the motion. He thought the question was if the determination of the Zoning Administrator was correct at the time of the violation. Mr. Hart stated that based on the record before the Board, it was. He felt the junkyard issue was pretty much resolved, and thought staff had conceded that point. Mr. Hart said that based on case law, the burden was on the appellants to show that the use pre-existed 1941. He said the appellants would have to show the intensity and/or area of the use to give the Board some basis for concluding that it had not been expanded or intensified over time. Mr. Hart said he believed the appellants' testimony that there had always been a small business on this property. However, he felt the type of storage of vehicles and/or equipment shown mostly in the 80s and later was somewhat more intense, and took up a larger area than it did in prior years. Mr. Hart stated that when the appellants' evidence falls short, the Board has to presume that the Zoning Administrator's determination was correct.

Mr. Smith stated that he struggled with the non-conforming use question, but came to the conclusion that the evidence was not strong enough on the issue of grandfathering. He said he could not support the junkyard determination. Mr. Smith noted the one photograph with the old shed, old refrigerator, and heat pump unit on it, and felt it was the strongest evidence of a junkyard, but in the context of a ten-acre parcel, it did not rise to the level of a junkyard in his mind. He said he would support the Zoning Administrator's determination on a storage yard violation.

Mr. Byers also stated he struggled with the junkyard issue, but went back to the issue of whether the Zoning Administrator was correct at the time it was issued. In his judgment, the decision was correct. He thought Mr. Hart had brought up a very salient point with regard to established uses before 1941, and referenced photographs going back to 1934 showing that from 1934 to 1970, the property was essentially a working farm or agricultural in context. Mr. Byers said it made much more sense to him that it was a working farm rather than, for example, a storage area. He felt the Zoning Administrator had made a very reasonable decision, although he was sympathetic to the age and the circumstances of the Thompsons.

Mr. Smith noted his struggle with the issue of the date. He recalled a recent incident where the Board had allowed an appellant additional time to complete clean up of the property without relating it back to the date of the NOV. For procedural reasons, Mr. Smith asked which date would be the operative date for the purposes of an appeal. He said in this instance, he was leaning towards giving these appellants additional time to clean up the site, especially given the amount of work already completed, along with the extenuating circumstances.

Mr. Hart said the operative date for the Board's assessment of an NOV would be as of the date of the letter. He said the object was not necessarily to vote on whether the Zoning Administrator was right or wrong in these cases, but the objective of staff was usually to get compliance, often with some back-and-forth and/or deferrals. Mr. Hart said he would also agree to give the appellants more time for clean up.

Mr. Hammack said he had considered a deferral of 90 or 120 days to allow the appellants to continue the clean up, but did not want to revisit the same arguments in a few months' time. He said if it were the consensus of the Board to defer the decision, he would not have a problem with it.

Chairman Ribble said he would advocate deferring the case for a reasonable period of time.

Mr. Hart made a substitute motion to defer the decision for 90 days to allow the appellants time to clear the remaining storage containers and associated debris with a subsequent re-inspection.

Responding to Chairman Ribble's request for a specific date, Ms. Stanfield offered November 17, 2009, at 9:30 a.m.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard was not present for the vote. Ms. Gibb recused herself from the hearing.

Mr. Hammack then moved in appeal A 2009-PR-007, Brian Leo Kelly, to defer the decision until November 17, 2009, at 9:30 a.m.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard was not present for the vote. Ms. Gibb recused herself from the hearing.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:30 A.M. SCI VIRGINIA FUNERAL SERVICES, INC., A 2009-PR-022

Chairman Ribble noted that this appeal had been administratively withdrawn.

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~ ~ ~ August 11, 2009, Scheduled case of:

9:30 A.M. FLEET PROPERTIES, INC., A 2008-PR-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a Storage Yard, a Junk Yard, and a Contractor's Offices and Shops on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit and is allowing overflow parking from Columbia College, Inc. on the property without an approved shared parking agreement, all in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 and 1/13/09 at appl. req.) (Continued from 4/14/09 at appl. req.) (Continued from 7/7/09)

9:30 A.M. K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Contractor's Office and Shop on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5. (Deferred from 9/23/08 and 1/13/09 at appl. req.) (Continued from 4/14/09 at appl. req.) (Continued from 7/7/09)

Chairman Ribble called the appellants to the podium.

Mr. Hart recused himself from the public hearings.

Mark Jenkins, counsel to Fleet Properties, provided an update on the progress of the site plan approval. He reminded the Board that he wanted to resolve the violations during minor site plan approval, focusing ultimately on a transitional use. Mr. Jenkins stated that the appellants' first and second site-plan submissions were denied. However, after developments relayed by Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, this morning, the appellants were going to resubmit their application for minor site-plan approval, and have their waiver requests reconsidered. He asked that the Board grant one more deferral of the appeals.



In response to a question from Chairman Ribble, Mr. Jenkins said he would need a deferral of 30 to 40 days.

Ms. Stanfield said Site Plan Review stated that they would review the waiver requests again. She pointed out that the violations dated back to July 2007, and she would like to see the public hearing go forward today. Ms. Stanfield noted that all the surrounding properties had to go through site-plan approval, and this property should not be any different. She said they have received numerous complaints about the appearance of the property and the way it was operated, noting that there would ultimately have to be improvements to the site before anything could be approved. Therefore, she asked that the Board uphold the determination of the Zoning Administrator.

In response to a question from Chairman Ribble, Ms. Stanfield said that the minor site plan could be reviewed again, but there were a number of other issues related to the minor site plan, which needed to be addressed.

Ms. Gibb and Mr. Jenkins discussed the progress that had been made since he was brought on board last September, noting that there had been a serious, sustained effort to complete the improvements to the site. He estimated that the appellants had already spent \$10,000 to \$15,000.

Mr. Byers stated his concern that the appellants were not as conscientious as they could have been, having only submitted the minor site plan for review one day before the hearing.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the Zoning Administrator's determinations in appeal A 2008-PR-035 and A 2008-PR-036. He thought the County had been very reasonable, pointing out the significant length of time since the violations occurred, and noted the violations were still occurring. Mr. Byers also noted his lack of confidence that the site plan issues would be resolved after 90 days. He thought moving forward today would be one way to compel getting the minor site plan, proposed waivers, and improvement issues taken care of. Mr. Byers stated that the County had already indicated it would work diligently with the appellants, and any punitive actions would be deferred during the course of this process. He felt it was in the best interest of the County to proceed in upholding the Zoning Administrator in this case.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard was not present for the vote. Mr. Hart recused himself from the hearing.

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~ ~ ~ August 11, 2009, After Agenda Item:

Consideration of Acceptance,  
Application for Appeal, filed by Lester H. Smallwood, Jr.

Mr. Hart and Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, discussed the history of the appeal. Mr. Hart noted that despite numerous letters of explanation, Mr. Smallwood had not filed his appeal within 30 days in the correct offices with the right number of copies. Ms. Stanfield confirmed that her last correspondence to the appellant outlined the various components which needed to be addressed, with the possible ways to do so.

Mr. Hart moved that the BZA not accept the appeal on the basis that nothing had been properly filed within the 30-day deadline.

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

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Mr. Hammack moved that the Board enter into Executive Session for consultation with legal counsel and/or briefings by staff members, consultants and attorneys pertaining to actual and probable litigation and other specific legal matters requiring the provision of legal advice by counsel pursuant to Code Sec. 2.1-344 A-7. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

The meeting recessed at 12:55 p.m. and reconvened at 1:15 p.m.

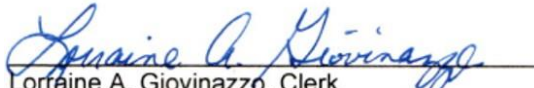
Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that, to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.


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As there was no other business to come before the Board, the meeting was adjourned at 1:17 p.m.

Minutes by: Suzanne L. Frazier

Approved on: June 15, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 15, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. MARY ANN R. DEVINE MATTERN, SP 2009-MV-052 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 7.2 ft. from side lot line such that side yards total 17.9 ft. and accessory storage structure to remain 3.9 ft. from rear lot line. Located at 7920 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((5)) (25) 6.

Chairman Ribble called the applicant to the podium.

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

Mary Ann Devine Mattern, 7920 Grimsley Street, Alexandria, Virginia, reaffirmed the affidavit.

Suzanne Lin, Staff Coordinator, made staff's presentation.

Ms. Mattern presented the request as outlined in the statement of justification submitted with the application. She stated that both structures were built approximately 16 years ago. The garage addition was built too close to the lot lines in error. The shed was built to replace an existing shed and placed on the existing cement slab. There were no buildings behind her property, since it was a park. In order to remove the shed, she would have to cut down a tree, and the shed was obscured in the spring and summer by the tree.

In response to Mr. Hart's question concerning whether the garage had electricity or plumbing, she said there was electricity, but no plumbing.

Chairman Ribble called for speakers.

Henry Wilson, 7922 Grimsley Street, Alexandria, Virginia, came forward to speak. He said he was not opposed to the shed, but he had received a letter from the County stating that his yard could be seen from the applicant's property. He said the applicants had a privacy fence, but it had been removed. If he had to put up a privacy fence, it would have to be 14 feet high, because the applicant's yard was 5 feet higher than his property.

Ms. Mattern and Mr. Hammack discussed the fence and the wall. Ms. Mattern explained that she had recently removed the old fence, replaced an old wood beam wall with a brick wall, and it had been permitted and inspected. They intended to put up a new fence inside the wall.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-MV-052 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARY ANN R. DEVINE MATTERN, SP 2009-MV-052 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 7.2 ft. from side lot line such that side yards total 17.9 ft. and accessory storage structure to remain 3.9 ft. from rear lot line. Located at 7920 Grimsley St. on approx. 9,176 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((5)) (25) 6. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; and

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

1. The applicant is the owner of the land.
2. Given the testimony in this case, that the shed meets the side setback line requirements, there is park/undeveloped property to the read, the applicant's testimony that she will reconstruct the privacy fence inside the wall that has been constructed, and the testimony that the opposition has a number of sheds and things that would preclude him from being impacted by this particular shed, there appears to be no need to require additional screening.
3. The applicant has satisfied the six required standards set forth in the Ordinance, in particular 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 location of building subsequent to the issuance of a building permit.
4. This will not be of detrimental to the use and enjoyment of the other property in the immediate vicinity.

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, 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 existing attached garage and accessory structure (shed) as shown on the plat prepared by Joseph W. Bronder, DiGiulian Associates, PC dated April 24, 2009 and signed through April 30, 2009.
2. Permits and final inspections shall be obtained for the shed and garage addition within 120 days of approval of this special permit or the structures shall be removed or brought into compliance with the Zoning Ordinance.

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

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

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M.        SHERRY BROWN, SP 2008-MV-059 Appl. under Sect(s). 8-918, 8-922 and 8-923 of the Zoning Ordinance to permit accessory dwelling unit and for reduction of certain yard requirements to permit addition 11.6 ft. from side lot line and fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((11)) 11. (*Admin. moved from 9/16/08, 12/2/08, 3/3/09, and 6/2/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Barnes Lawson, Jr., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, agent for the applicant, reaffirmed the affidavit.

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

Shannon Caffee, Staff Coordinator, made staff's presentation, stating that staff believed that the subject applications for the breezeway and the accessory dwelling unit were in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SP 2008-MV-059 for the accessory dwelling unit and the addition.

Mr. Hart and Ms. Caffee discussed the Zoning Ordinance provisions for accessory dwelling units, specifically the requirement that the owner of the property must live in one of the units. Ms. Caffee clarified that the owner, Ms. Brown, would either move back on to the property or convey a portion of the property to her son.

Mr. Lawson presented the request as outlined in the statement of justification submitted with the application. He explained that all the violations had been corrected except the 6-foot fence. There was an issue of some storage on the property, which was brought to staff's attention because of a complaint, and the items had been immediately removed. Mr. Lawson said he thought Ms. Brown had shown good faith throughout the process. He noted that the outbuilding was built 20 years ago, prior to Ms. Brown purchasing the property, that it was well screened, and the fence was constructed to keep their dog in the back yard. He said that Ms. Brown resided at another location and had a child-care facility. In order to resolve certain legal requirements, 50 percent of her property would be conveyed to her son. Mr. Lawson said the outbuilding had been used as an accessory dwelling unit, that it was provided for a family member, and they did not know a permit was required.

There was a letter from the former owner stating the garage was built many years ago, and there were letters from neighbors in support.

A discussion ensued concerning the commercial appearance of the lot.

Chairman Ribble called for speakers.

Michael Lonetto, 4603 Manor Drive, Fairfax, Virginia, came forward to speak in opposition. His issues were evidenced in photographs which showed the dwelling originally was a residential unit, and the accessory dwelling was turned into another residence. He stated that there had been numerous people living there, many times the police been called for domestic disputes, the Brown's property was clearly visible from his bedroom, and there were various pieces of equipment and commercial vehicles kept on the property.

In rebuttal, Mr. Lawson said the commercial vehicles had been removed, and the family member who caused the problems was asked to move out after Ms. Brown became aware of the disturbances. Mr. Lawson also noted that other neighbors had not considered the situation quite as offensive as Mr. Lonetto.

In response to the Board's questions, Brian Brown, son of the applicant, explained the ownership and condition of the vehicles parked on the property, and he assured the Board he would remove those that were not in compliance.

Discussion ensued regarding Mr. Lawson's request for a deferral in order to resolve outstanding issues. Included in the discussion were the front of the property's illumination/lighting; questions regarding a curb cut; the appearance of a commercial instead of a residential property; the large area that was asphalted; and, the fact that in order to make the property in conformance, a substantial remake would be necessary.

There being no further questions or comments, Chairman Ribble closed the public hearing.

Mr. Byers moved to deny deferral of the decision. He said the issues could not be resolved within two weeks.

Mr. Beard seconded the motion. The cost of filing a special permit application was noted.

Chairman Ribble called for a vote.

Mr. Byers' motion to deny a deferral failed by a vote of 3-4. Ms. Gibb, Mr. Smith, Mr. Hart, and Mr. Hammack voted against the motion.

Mr. Hammack moved to defer decision to October 27, 2009. Mr. Smith seconded the motion.

Discussion ensued concerning the basement, restrictions and percentage of paved area, and when it was done; the presence of commercial vehicles; resolution of the Volvo matter; and coordination with police personnel concerning outstanding legal issues.

Chairman Ribble called for a vote. The motion to defer decision to October 27, 2009, at 9:00 a.m., carried by a vote of 5-2. Mr. Byers and Mr. Beard voted against the motion.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M.            CONSTANCE A. BADOWSKI, SP 2009-LE-051 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 23.7 ft. from front lot line and accessory storage structure 1.91 ft. from side lot line and 2.0 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of detached garage 5.0 ft. from side lot line. Located at 3113 Elmwood Dr. on approx. 7,200 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((14)) (B) 40.

Chairman Ribble called the applicant to the podium.

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

Constance A. Badowski, 3113 Elmwood Drive, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval with the adoption of the proposed development conditions dated September 8, 2009 and for the reasons outlined in the staff report.

Ms. Badowski presented the special permit request as outlined in the statement of justification submitted with the application. She said the lots in her neighborhood were rather small, and the required 10-foot setback could not be met due to the close location of the garage to the house. She said the roof's eave extended out over the front stoop when she purchased the house, and that it sheltered the front door entrance. She commented that the shed was in poor condition, and if the garage was approved, the shed would not be necessary for storage, and would be razed.

In response to Mr. Hart's question concerning staff's proposed development conditions, Ms. Badowski said she was in agreement with them.

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

Mr. Hart moved to approve SP 2009-LE-051 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CONSTANCE A. BADOWSKI, SP 2009-LE-051 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 23.7 ft. from front lot line and accessory storage structure 1.91 ft. from side lot line and 2.0 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of detached garage 5.0 ft. from side lot line. Located at 3113 Elmwood Dr. on approx. 7,200 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((14)) (B) 40. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; and

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

1. The applicant is the owner of the land.
2. With respect to the front porch, the request is very modest, the entrance appears to have been there like that for quite some time, and it also appears consistent with other homes in the neighborhood.
3. The front porch will not have any significant negative impact on anybody.
4. With respect to the proposed garage, with the development conditions, the potential impacts have been mitigated.
5. This is a very small lot on a property where there really is not a whole lot of storage except the existing shed.
6. This will be an improvement in appearance over the shed that is there now.
7. It appears from the photographs that there are other sheds and structures both to the rear and to the side which are taller than the old shed.
8. The proposed location is the logical place on the lot.
9. The reduction to five feet on the one side would not have a significant negative impact on anybody; it is consistent with the pattern on these lots in the immediate vicinity.
10. The height of the shed will be less than twelve feet; a structure of that height at that location will not pose a problem for anybody.
11. The application satisfies the standards in both Sections 8-922 and 8-914 motions.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

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

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

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

- 1. This special permit is approved for the location and size of a detached garage and covered stoop as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated February 6, 2008, submitted with this application and is not transferable to other land.
- 2. Notwithstanding what is depicted on the plat, the accessory structure shall be no taller than 12 feet in height and consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
- 3. Within 6 months of approval of this application, building permits and final inspections for the roofed deck (covered stoop) shall be obtained or it shall be removed or brought into compliance with Zoning Ordinance requirements.
- 4. Prior to approval of final inspection of the garage, the frame shed including the foundation/flooring shall be removed.

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

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



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

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. BUDDHIST ASSOCIATION OF AMERICA, SPA 87-V-070-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-V-070 previously approved for place of worship to permit site modifications. Located at 9105, 9111, 9115 and 9117 Backlick Rd. on approx. 1.34 ac. of land zoned R-3. Mt. Vernon District. Tax Map 109-1 ((1)) 26A, 26B, 27 and 27A. *(Admin. moved from 6/9/09 at appl. req.)*

Chairman Ribble noted that SPA 87-V-070-02 had been withdrawn.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. JAMES P. AND KATHRYN M. DRINKARD, SP 2009-LE-041 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition and deck 8.8 ft. from side lot line. Located at 6814 Darby Ln. on approx. 12,000 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 240. *(Admin. moved from 8/4/09 at appl. req.)*

Chairman Ribble called the applicants to the podium.

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

James P. Drinkard, 6814 Darby Lane, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2009-LE-041.

Mr. Drinkard presented the special permit request as outlined in the statement of justification submitted with the application. He said he had lived in the house since 1981, that he liked the area, and had been a member of the civic association for 15 years. The addition would afford his family more living space, it would be a one-story dining addition, and it would replace the existing dining room, which was quite small.

Ms. Hedrick said staff wanted to make a friendly amendment concerning a shed that was only discovered recently on the applicant's property. She said there should be a development condition to address the shed's location on the property.

Discussion ensued regarding accessory structures, permitted locations, and sheds/accessory structures located within an easement.

There being no speakers Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2009-LE-041 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JAMES P. AND KATHRYN M. DRINKARD, SP 2009-LE-041 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition and deck 8.8 ft. from side lot line. Located at 6814 Darby Ln. on approx. 12,000 sq. ft. of land zoned R-3. Lee District. Tax

Map 90-4 ((6)) 240. (Admin. moved from 8/4/09 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 September 15, 2009; and

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

1. The applicants are the owners of the land.
2. There is a favorable staff recommendation.
3. There is testimony by the applicant that the addition is going to be quite modest and will be consistent with one-story homes that are in the neighborhood.
4. The addition and the home will continue to be compatible with the other homes in the neighborhood.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and maximum size of the one-story addition (308 square feet) and deck, as shown on the plat prepared by The Engineering Groupe Inc., dated April 9, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,092 square feet existing + 1,638 square feet (150%) = 2,730 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The one-story addition and deck shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of construction, tree protection fencing shall be installed half-way between the proposed addition and the western lot line to protect the roots and dripline of off-site vegetation. The protection fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the

special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. MARY LAVIOLETTE-ANGE, SP 2009-MA-050 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4607 Exeter St. on approx. 8,430 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17)) (7) 4.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mary Laviolette-Ange, 4607 Exeter Street, Annandale, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. The applicant requested approval of a special permit for an accessory dwelling unit. The applicant was the owner of the property and resided in the existing dwelling. Staff recommended approval of SP 2009-MA-050.

Ms. Laviolette-Ange presented the special permit request as outlined in the statement of justification submitted with the application. She said that her father had recently passed away, and she wanted her 89-year-old mother to come live with her.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2009-MA-050 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY LAVIOLETTE-ANGE, SP 2009-MA-050 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4607 Exeter St. on approx. 8,430 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17)) (7) 4. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,430 square-feet.
4. There is a limited scope, 423 square-foot recommendation from staff for approval.
5. The rationale of the staff in the staff report is adopted.
6. There are a limited number of occupants, a husband and wife, and in the accessory portion of the property will be an 89 year-old mother who will reside on the property.
7. Regarding the several letters of concern in the file from neighbors, their concerns are not justified under the specific facts in this case.

8. It will certainly remain a quiet family-friendly neighborhood.
9. It will not have any impact on traffic, as it was indicated the mother will not be driving, and there is a development condition to protect against that even if circumstances should change.

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. 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, Mary LaViolette-Ange, and is not transferable without further action of this Board, and is for the location indicated on the application, 4607 Exeter Street (8,430 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat prepared by Springfield Surveys dated August 18, 1959, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain a maximum of 423 square feet, as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on-site. In the event the accessory unit is occupied by anyone other than the applicant's mother, prior to occupancy, an additional parking space shall be provided adjacent to the existing driveway to accommodate one (1) additional vehicle. The parking space shall measure approximately 8.5 feet x 18 feet in size. Access to all spaces shall be from the existing driveway entrance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must

specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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The meeting recessed at 10:55 a.m. and reconvened at 11:05 a.m.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M.       KENNETH AND MARIA CLINE, SP 2009-SP-031 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Benjamin T. Danforth, Lawson, Tarter & Charvet, P.C., 6045 Wilson Boulevard, Suite 100, Arlington, Virginia, agent for the applicants, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. The applicant was seeking approval to permit modification to the limitation on the keeping of animals to permit the keeping of up to three adult dogs on the property.

In response to a question by Mr. Hammack, Ms. Johnson concurred that there was a Notice of Violation issued based on a complaint.

Mr. Danforth said the request to permit the Clines to keep three dogs would not be necessary for very long as one of the dogs was 18 years old; that he would not be replaced; and then the Clines would be in compliance with two dogs permitted by-right. He noted that another Notice of Violation, the keeping of commercial vehicles, was issued but did not concern the dog issue. Mr. Danforth stated that the Clines were initially active in fostering dogs, but now were involved in the administration of the foundation.

Mr. Beard had Mr. Danforth clarify that a letter in support from Stefani Joosten pictured her own fostered dogs, and were not owned or kept by the Clines.

Mr. Hart verified that the application sought only to allow the Clines to keep the third dog and not to foster dogs.

Chairman Ribble called for speakers in support of the application.

Will Staub, 12740 Milan Lane, Fairfax, Virginia, came forward. He stated that the Clines no longer fostered dogs, but provided administrative support.

Patricia McIntyre, 12740 Milan Lane, Fairfax, Virginia, came forward. She said she could see into the Clines' backyard, which was well-kept, never had any odor, and was constantly cleaned up.

Chairman Ribble called for speakers in opposition.

Emerson Cale, 4427 Majestic Lane, Fairfax, Virginia, came forward to speak in opposition to the special permit. As President of the Greenbriar Civic Association, he said the matter was brought before their board; that numerous residents were involved in the discussions; and the common consensus was opposition. He noted there were several previous violations.

A discussion ensued concerning the other violations on the property. Ms. Johnson said the Zoning Inspection Branch had determined that the violations had been cleared or were no longer applicable, and the sole outstanding issue was the number of dogs being kept. The approval of this application would not stop other actions from Zoning Enforcement if different matters were to arise.

In rebuttal, Mr. Danforth pointed out that there were several letters of support from neighbors who believed there was no adverse impact with what the Clines were doing. He said the Clines recognized that there were certain things they could do to be better neighbors, even though they were not legally obligated to do so.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2009-SP-031 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH AND MARIA CLINE, SP 2009-SP-031 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3 Cluster and WS.
3. The area of the lot is 11,021 square feet.
4. There are 30 or more letters of support in this matter.
5. It is unfortunate that the applicants fall short of a by-right by approximately 1,500 square feet.
6. The development conditions call for the applicant, if one of the animals should pass away or be sold, it will not be replaced; they will then return to the by-right of two dogs on the property.
7. Mr. Cale at least emotionally expressed his consent to the three or he's leaning that way. He did say he understood that situation notwithstanding the other peripheral issues.

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. 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 applicants only, Kenneth and Maria Cline, and is not transferable without further action of this Board, and is for the location indicated on the application, 13206 Poplar Tree Road (11,021 square feet), and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.

3. This approval shall be for the applicant's existing three dogs. If any of these animals die, are sold or given away, they shall not be replaced, except that two dogs may be kept on the property in accordance with the Zoning Ordinance.
4. The yard area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The motion carried by a vote of 7-0.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. DOUGLAS W. HANSEN, SP 2009-BR-049 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.6 ft. from rear lot line and to permit accessory dwelling unit. Located at 11102 Byrd Dr. on approx. 12,000 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 274.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Douglas W. Hansen, 11102 Byrd Drive, Fairfax, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. The applicant was seeking two special permit approvals. The first request was to permit reduction of minimum yard requirements based on an error in building location to permit an existing shed to remain 4.6 feet from the rear lot line. The second request was to establish an accessory dwelling unit within the basement level of the principal structure. The applicant was the owner of the property, and resided within the principal dwelling. The applicant met the criteria of being 55 years of age. Staff recommended approval.

At Mr. Beard's request, Ms. Johnson clarified the criteria for accessory dwelling units.

Mr. Hansen presented the SP 2009-BR-049 request as outlined in the statement of justification submitted with the application. He said he had several letters in support, and had spoken with other neighbors who also expressed their support.

Discussion ensued regarding the unit's layout; cooking accessories and the facility; necessity for a permit at some future time if a full kitchen would be installed; the entranceway for the tenant; and the matter of a shed on the applicant's property.

Chairman Ribble called for speakers.

Rebecca Mancuso, 11103 Byrd Drive, Fairfax, Virginia, came forward to speak. As Mr. Hansen's immediate neighbor since June 2007, she stated her complete support for his permit request.

Roger Wray, 11117 Byrd Drive, Fairfax, Virginia, came forward to speak. As the representative of an aquatic club to the rear of Mr. Hansen's property, he had been asked to research the project, and there was no opposition to the shed. He said his e-mail opposing the application could be withdrawn, as the questions and

concerns that were noted had been answered during the public hearing, and there was no concern with what Mr. Hansen proposed.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-BR-049 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS W. HANSEN, SP 2009-BR-049 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.6 ft. from rear lot line and to permit accessory dwelling unit. Located at 11102 Byrd Dr. on approx. 12,000 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 274.

Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. With respect to Sect. 8-914, the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, and the Board has determined that the applicant has met the six required criteria set forth in that section for the permit to be granted.
3. There is a favorable staff recommendation.
4. In addition to the testimony, Mr. Hansen is commended for erring on the side of caution since the issue of toaster ovens and microwaves, whether they constitute a kitchen, is still a subject of some debate.
5. The applicant intends to bring the property into compliance.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon
- 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 for the accessory dwelling unit is granted to the applicant only, Douglas W. Hansen, and is not transferable without further action of this Board, and is for the location indicated on the application, 11102 Byrd Drive (12,000 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat, including the shed, prepared by Rice Associates, dated May 12, 2005, signed by Willard Ross Dickerson, Certified Land Surveyor, June 3, 2009, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The 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. Prior to the installation of the second kitchen, the applicant shall obtain all applicable permits and final inspections for the kitchen located within the accessory dwelling unit.
6. The accessory dwelling unit shall contain a maximum of 603 square feet, including a maximum of one (1) bedroom, as shown in Attachment 1.
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. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:00 A.M. RAYMOND KARL STRIDE, JR., SP 2009-DR-043 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.1 ft. from side lot line and reduction of certain yard requirements to permit construction of roofed deck and addition 28.7 ft. from front lot line and addition 6.8 ft. from side lot line. Located at 2015 Maynard Dr. on approx. 10,500 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((4)) 11.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Raymond Karl Stride, Jr., 2015 Maynard Drive, Falls Church, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval.

Mr. Stride presented the special permit request as outlined in the statement of justification submitted with the application. He said he had his neighbor's approval, the shed looked nice, and it would be very difficult to relocate.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-DR-043 for the reasons stated in the Resolution.

Discussion ensued regarding clarification of several development conditions and suggested language to amend Development Condition 2.

Chairman Ribble called for a motion.

Mr. Byers moved to approve SP 2009-DR-043 for the reasons as stated in the resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND KARL STRIDE, JR., SP 2009-DR-043 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.1 ft. from side lot line and reduction of certain yard requirements to permit construction of roofed deck and addition 28.7 ft. from front lot line and addition 6.8 ft. from side lot line. Located at 2015 Maynard Dr. on approx. 10,500 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((4)) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 2009; 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 the application meets Criteria A through G.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This special permit is approved for the location and size of a shed 64 square feet, 341 square feet for the roofed deck (covered front porch) and 553 square feet for the garage addition, as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated November 24, 2008, as revised through May 20, 2009, as submitted with this application and is not transferable to other land.
- 3. The applicant shall obtain building permits for the porch and garage additions prior to construction.
- 4. The additions shall be architecturally compatible with the existing dwelling on site, as depicted on Attachment 1.
- 5. Irrespective of what is shown on the plat, the latter half of the shed shall be removed reducing it in size to no greater than 64 square feet.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been

diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 7-0.

Mr. Beard commented on the height restriction for the shed. Mr. Smith made an amended motion addressing the matter. The amended motion was accepted by the maker, and carried by a vote of 7-0.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:30 A.M. ALEMU K. BEFEKADU, A 2009-MA-023, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 5222 Chowan Av. on approx. 27,678 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((11)) 39.

Chairman Ribble noted that A 2009-MA-023 had been withdrawn.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:30 A.M. LANDSCAPE CONSTRUCTION SERVICES, INC., A 2009-MV-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a storage yard and has erected structures on property in the C-8 District without the approval of a site plan, Building Permits, or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. on approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2.

Chairman Ribble noted that the application was to be administratively moved to a date in January 2010. He asked staff for a date.

Shelby Johnson, Staff Coordinator, said staff could not schedule a date, because the Board of Supervisors had changed their public hearing day to Tuesdays commencing 2010. She requested that the Board make a comment regarding the matter before adjournment.

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~ ~ ~ September 15, 2009, Scheduled case of:

9:30 A.M. MANUEL S. ESPINA, TRUSTEE, A 2009-MV-025, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a storage yard on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 10301 Richmond Hy. On approx. 1.68 ac. of land zoned C-8. Mount Vernon District. Tax Map 113-4 ((1)) 2.

Chairman Ribble noted that A 2009-MV-025 had been administratively moved to January 2010.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that was correct, and Appeals A 2009-MV-024 and A 2009-MV-025 were for the same property.

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In response to Chairman Ribble's question concerning meeting schedules for 2010, Shelby Johnson, Staff Coordinator, said the BZA Clerk was making arrangements for reserving the hearing dates on Wednesdays, and setting up the calendar.

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As there were no after agenda items, Chairman Ribble asked if there were any other matters.

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 cases that had come in during the BZA recess. Chairman Ribble seconded the motion, which carried by a vote of 7-0.

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The meeting recessed at 12:22 p.m. and reconvened at 12:50 p.m.

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Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempt from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Minutes by: Paula A. McFarland/Mary D. Padrutt

Approved on: May 24, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 22, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISOR'S OWN MOTION, SP 2008-MA-079 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 15.5 ft. from the front lot line. Located at 6940 Alpine Dr. on approx. 22,433 sq. ft. of land zoned R-5, HC and SC. Mason District. Tax Map 71-2 ((2)) 29. (In association with RZ 2008-MA-013) (*Admin. moved from 10/7/08, 7/28/09, and 9/29/09 at appl. req.*) (*Indefinitely deferred from 11/4/08 at appl. req.*) (*Reactivated on 5/19/09.*)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kris Abrahamson, Chief, Rezoning/Special Exception Branch, reaffirmed the affidavit as agent for the Board of Supervisors.

Ms. Abrahamson made staff's presentation. Staff recommended approval of the special permit request.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-MA-079 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOARD OF SUPERVISOR'S OWN MOTION, SP 2008-MA-079 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 15.5 ft. from the front lot line. Located at 6940 Alpine Dr. on approx. 22,433 sq. ft. of land zoned R-5, HC and SC. Mason District. Tax Map 71-2 ((2)) 29. (In association with RZ 2009-MA-012) (*Admin. moved from 10/7/08, 7/28/09, and 9/29/09 at appl. req.*) (*Indefinitely deferred from 11/4/08 at appl. req.*) (*Reactivated on 5/19/09*) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses as set forth in with Sect. 8-006, and the additional Standards for this use as contained in the applicable sections 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 application is approved only for the location of the residential structure depicted as "Lot 7" shown on the plat titled "Lots 4 Thru 6 – Section D; Lots 27 Thru 29 – Section B; ALPINE" prepared by Runyon, Dudley, Associates, Inc. dated August 9, 2001 as revised through May 15, 2002, submitted with this application and is not transferable to other land.
- 2. Replacement of the existing structure, accessory structures, extensions and/or additions that conform with the applicable Zoning Ordinance provisions and these development conditions, as determined by the Zoning Administrator, may be permitted without an amendment to this Special Permit.
- 3. Within one year of approval of this application, all applicable building permits and/or inspections for the residence shall be obtained, the driveway shall be relocated, subject to VDOT approval, and a Residential Use Permit shall be obtained, or this special permit approval 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. Byers seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. JEBARAJ JOSHUA DEVAIRAKKAM, SP 2009-MA-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 3.3 ft. from side lot line. Located at 6204 Cheryl Dr. on approx. 10,502 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((17)) 11.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jebaraj Devairakkam, the applicant, 6204 Cheryl Drive, Annandale, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. She said a building permit had been issued for the construction of a carport addition, but that an earlier house location survey had been used in the submission with the building permit application, which did not show the current carport addition. Therefore, after recognizing the error, a Notice of Violation had been issued because the addition had been built within the minimum required side yard.

Mr. Devairakkam presented the special permit request as outlined in the statement of justification submitted with the application. He distributed a copy of the approved plat and building permit, which had been issued in 2008, noting that after receiving approval from the County, he built the carport at a cost of \$35,000. Mr. Devairakkam said that the final inspection and approval of the addition occurred in August, after which he received the letter rescinding the building permit.

In response to a question from Ms. Gibb, Ms. Caffee stated that a copy of the plat, which was submitted with the building permit application, was included in the staff report as Appendix 4.

Chairman Ribble called for speakers.

Daniel Thomas, neighbor of the applicant, spoke in support of the application. He said that the street was narrow and there would be more street parking available with the applicant parking in a carport.

In response to a question from Mr. Hart, Ms. Caffee stated that the paved area in the front yard was in existence prior to the 25 percent coverage rule. She said that, although a portion of the driveway appeared to be new, it still seemed to be within the 25 percent restriction.

There being no further speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-MA-044 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JEBARAJ JOSHUA DEVAIRAKKAM, SP 2009-MA-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 3.3 ft. from side lot line. Located at 6204 Cheryl Dr. on approx. 10,502 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((17)) 11. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. There were four letters of support, plus additional testimony in support of the application.

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 carport addition as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc. dated March 4, 2009, submitted with this application and is not transferable to other land.
- 2. Within 6 months of approval of this application, an amended building permit and final inspections for the carport addition shall be obtained or the carport addition shall be removed or brought into compliance with Zoning Ordinance requirements.
- 3. If required by the Virginia Uniform Statewide Building Code, the carport addition may be further enclosed along the eastern side lot line to comply with fire prevention code requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. RAED (RUDY) Z RIHANI, SP 2009-DR-057 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7419 Tillman Dr. on approx. 23,526 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((1)) 8D.

Chairman Ribble noted that SP 2009-DR-057 had been administratively moved to November 17, 2009, at 9:00 a.m. for notices.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. LEO GRANDINETTI, SP 2009-PR-065 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 4.8 ft. from side lot line and 5.8 ft. from rear lot line. Located at 2509 Buckelew Dr. on approx. 10,190 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((2)) 56.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Barnes Lawson, Jr., 6045 Wilson Boulevard, Arlington, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Ms. Caffee noted that the Board heard the exact same application for this property on June 2, 2009, and the application was denied.

Mr. Lawson presented the special permit request as outlined in the statement of justification submitted with the application. He gave a brief history of the construction of the shed, noting that it was an unintentional building error by the homeowner. Mr. Lawson said the major opposition to the shed was from a neighbor on the other side of the lot. If the application was denied, his client would be forced to relocate the shed, which would result in a worse visual impact on that neighbor.

Mr. Hart and Mr. Lawson discussed the height of the shed and the slope of the property. Mr. Lawson pointed out that the shed became two feet higher when the Zoning Ordinance was amended to require that the shed be measured from the highest point to the lowest point. He thought a couple of well placed trees would mitigate the impact of the shed.

Responding to a question from Mr. Hart, Leo Grandinetti, the applicant, stated that the upper level of the shed served as a playroom for his son. He said since he couldn't build a treehouse in Fairfax County, he put a second floor on the shed. Mr. Grandinetti said the shed had no electricity, nor any other utility.

Chairman Ribble called for speakers.

Misa Hirota Chin, 2511 Buckelew Drive, Falls Church, Virginia, and Barbara Pace, 2510 Buckelew Drive, Falls Church, Virginia, came forward, and spoke in support of the application.

Alice Rooney, 7319 Allan Avenue, Falls Church, and Alisia Yowell, daughter of Alice Rooney, at the same address, came forward, and stated their strong opposition to the application. They both felt they could not enjoy the back of their house, because of the view of the shed.

Ms. Yowell then read into the record a letter from Martha Arnold, 7315 Allan Avenue, Falls Church, Virginia, a 45-year resident of Allan Avenue. The letter stated that the shed exacerbated stormwater drainage onto her property, and it had a negative impact on her property and peace of mind.

In rebuttal, Mr. Lawson pointed out that Mr. Grandinetti could, by right, move the shed further into his yard, making it more visible. He said he sent a letter to Ms. Rooney on September 1, 2009, to see if something could be done to mitigate the visual impact on her home, but he did not hear from her. Mr. Lawson said that his client had put a lot of effort into improving the property.

Chairman Ribble closed the public hearing.

Mr. Hart moved to defer the decision, to give the applicant an opportunity to address the height issue and mitigate the visual impact on surrounding homes.

Mr. Lawson indicated his agreement to a 30-day deferral. Ms. Langdon suggested a date of October 20, 2009.

Ms. Gibb seconded the motion.

Mr. Smith stated his support for the motion, but asked that a condition be added, which would state that no storage outside of the shed would be allowed.

Mr. Hammack said he would not support the motion. He noted that this was the exact same application that the Board heard three months ago and denied. Mr. Hammack thought the applicant should have come in with something new, rather than with just superficial changes, such as new painting and screening.

Responding to a request from Chairman Ribble, Ms. Langdon said that if the decision was deferred, she would ask Public Works to review the erosion issue on the site.

The motion to defer decision on SP 2009-PR-065 to October 20, 2009, carried by a vote of 6-1.  
Mr. Hammack voted against the motion.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 a.m.            ALEXANDER AND THERESA KUHNS, SP 2009-SP-047 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in a front yard of a corner lot. Located at 4103 Minstrell Ln. on approx. 12,222 sq. ft. of land zoned R-3 (Cluster), HC and WS. Springfield District. Tax Map 45-4 ((3)) (33) 3.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Theresa Kuhns, the applicant, 4103 Minstrell Lane, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. The applicant requested a special permit to allow a fence greater in height than 4.0 feet to remain in a front yard of a corner lot. She noted that the Zoning Ordinance allows a maximum fence height of 4.0 feet, therefore, a modification of 2.0 feet was requested. Ms. Hedrick stated that the current height of the fence was 7.4 feet, but the applicant, upon approval of the application, would reduce the height to 6.0 feet.

Vice Chairman Hammack assumed the Chair.

Ms. Kuhns presented the special permit request as outlined in the statement of justification submitted with the application. She said when she first bought the property, it had an old 5.0 foot fence. However, after her dog ate most of the fence, she replaced it with the current fence. Ms. Kuhns stated she did not know the fence was in the side yard, but thought it was the back yard. She said she needed the fence for her family's safety and to contain her two dogs.

In response to a question from Mr. Hart, Ms. Kuhns said that if the lattice top of the fence was removed, it would be 6.0 feet in height.

Chairman Ribble called for speakers.

Ester Pappalardo, 12742 Milan Lane, Fairfax, Virginia; John Dingus, 12741 Milan Lane, Fairfax, Virginia; Lawrence Kelly, 4210 Mayport Lane, Fairfax, Virginia, an elected representative on the Greenbriar Civic Association Board; and, Emerson Cale, 4427 Majestic Lane, Fairfax, Virginia, president of the Greenbriar Civic Association, came forward in opposition to the application. Their main area of concern was the visual impact on the neighborhood.

For clarification purposes, Ms. Langdon commented that a fence up to 7 feet in height was permitted by right in a side and rear yard.

In rebuttal, Ms. Kuhns said she had counted at least 20 fences like this one on corner lots in her neighborhood. She noted that of the ten notices she mailed out regarding this public hearing, eight people responded to her that they approved of the fence.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to deny SP 2009-SP-047 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALEXANDER AND THERESA KUHNS, SP 2009-SP-047 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in a front yard of a corner lot. Located at 4103 Minstrell Ln. on approx. 12,222 sq. ft. of land zoned R-3 (Cluster), HC and WS. Springfield District. Tax Map 45-4 ((3)) (33) 3. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. This is a hard case.
3. The Board is very sympathetic to the homeowner.
4. It was an entirely innocent mistake.
5. The contractor should have known better.
6. The Board believes the applicants and all of their justifications, including the probably nonconforming fences that they have seen on the way to church, that they need to keep the dog in the front yard and not the side because of their landscaping, that they did not know the neighbors objected, and that the homeowners association did not get in touch with them. The Board is sympathetic in all that.
7. The photo of the neighbor's yard was pretty compelling and is the only reason a motion was made to deny the special permit.
8. The Board can understand why the neighbor would feel boxed in.
9. If there were other photos that could show it was not the case or show it is mistaken, the Board could probably be talked out of it, but that is how it is seen now.
10. There is no sight distance issue for the street.
11. The impact on the neighbor of a six-foot high fence in the front yard was compelling.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hart seconded the motion, which carried by a vote of 4-2. Mr. Beard and Mr. Hammack voted against the motion. Chairman Ribble was not present for the vote.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. BRIAN AND GINA DEAN, SP 2009-DR-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from front lot line of a corner lot. Located at 2106 Grayson Pl. on approx. 15,900 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 89. (*Admin. moved from 9/22/09 and 10/20/09 at appl. req.*)

Chairman Ribble resumed the chair. He noted that this hearing had been administratively moved to October 20, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. MARK J. STADSKLEV AND SUSAN M.K. STADSKLEV, VCA 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-DR-139 previously approved for waiver of the minimum lot width to permit modification of development conditions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (*Admin. moved from 5/12/09 at appl. req.*) (*Decision deferred from 7/7/09.*)

Chairman Ribble called the applicants to the podium. He reminded the Board that this case was for decision only.

Mr. Hart commented on the memo from the Office of Urban Forestry, stating he did not understand staff's position regarding removal of the existing garage slab.

Craig Herwig, Urban Forest Management Division, stated that if the Board were to approve the variance to allow the garage structure to remain, staff recommended that the limits of clearing and grading be adjusted to accommodate the garage, which would reduce the impact to surrounding vegetation. He said if the Board denied the variance, he recommended removal of the slab, but noted that there would be significant disruption to the surrounding vegetation.

Mr. Smith and Deborah Hedrick, staff coordinator, discussed the current variance proposal. Ms. Hedrick noted that the home itself was already a bit larger than what had been originally approved on the plat. She said the applicants now wished to add two decks, to disassemble and remove a shed from outside the limits of clearing and grading to within it, and to build a garage on a slab previously built according to building permits issued and then revoked by the County.

Mr. Smith said he had significant environmental concerns when the original application was approved and the proposal seemed to be a significant departure from that approval.

Ms. Gibb, Ms. Hedrick, and Mr. Herwig discussed the front yard area which had been cleared. In response to a question by Ms. Gibb, Ms. Langdon explained that staff was not talking about the conservation easement, whereby clearing and grading on the original plat was to be preserved, but where the applicants took out trees that were dead and dying, and replaced them with grass. She said if the variance was not granted, the applicants may have to replace some of the trees that were removed.

In response to a question from Mr. Hammack, Susan Earman, agent for the applicants, said that a turnaround on the driveway was necessary, since there was no way to maneuver a car around without it. She stated that the applicants would have to back out of their driveway without the turnaround.

Mr. Hammack and Ms. Earman discussed the proposed garage, with Ms. Earman stating that a garage was not a convenience, and to deny the applicants a garage would be restricting their use of the property. Mr. Hammack said a garage had been granted, but that the current variance request was to enlarge the garage, which was a convenience.

In response to Mr. Smith's question regarding the request for two decks, Ms. Earman said that she did not want to have to come back before the Board again, so she put possible future requests in this application. She noted that there were no current plans to have two decks, but wanted it on the plans for future owners.

Mr. Hart discussed the history of the application, noting that the house had been approved with a conservation easement. He said the house was built within the same footprint, but did not have an integral garage as shown on the plat. Mr. Hart stated his concern about the freestanding garage, and asked how this was not a convenience for the applicants.

In response, Ms. Earman said that most everyone has a garage, and it was not a convenience factor. She stated if there was not a variance overlay, it would be by right. Ms. Earman stated that the limitations did not say one structure. She said the supposition when the applicants purchased the property was that garages are by right, and because of the soil and water table, you could not have an attached garage. Ms. Earman said that there was an engineering report in December 2004, indicating that the subsurface conditions were not suitable for having an attached garage.

In response to a question from Mr. Beard, Ms. Earman stated that the McLean Citizens Association was not in agreement with the applicants' proposal. She felt most of the neighbors were fine with it.

Chairman Ribble asked for a motion.

Mr. Smith moved to approve VCA 2002-DR-139 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK J. STADSKLEV AND SUSAN M.K. STADSKLEV, VCA 2002-DR-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2002-DR-139 previously approved for waiver of the minimum lot width to permit modification of development conditions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. moved from 5/12/09 at appl. req.) (Decision deferred from 7/7/09.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The present zoning is R-4.
3. The area of the lot is 1.63 acres.
4. Not all Board members were present back when the original variance was approved, but it was noted that the Board had approved variances for minimum lot width subsequently.
5. In some prior variance approvals, the Board did not necessarily approve subject to a particular plat and a footprint for a structure.
6. The Board has previously approved variance applications for a minimum lot width variance and it was used consistently with the provisions of the Zoning Ordinance.
7. In this case, the Board approved the variance but subject to conditions.
8. There is a debate about whether the conditions were as specific as the Board intended at the time.
9. At the time, the Board intended to very much protect the environment because this is a very environmentally sensitive property.
10. Protecting the environment was a significant concern of the Board at the time.
11. Although there is some debate about whether the development conditions were quite as tight as the Board would like, the applicant is now asking to modify those conditions of the variance, and it is appropriate to do so.
12. Looking back at the original conditions for a variance, the Board knew that the property was acquired in good faith, had exceptional narrowness at the time of the effective date of the Ordinance,

- exceptional shape, and believed that if it did not approve a variance, it was going to create a substantial hardship and restrict the reasonable use of the property.
13. The Board originally had a lot of concerns and thinks those concerns certainly still apply.
  14. It is a large lot and appropriate for this type of development, subject to strict conditions.
  15. It is the Board's job to figure out what are the appropriate conditions in this case.
  16. The Board needs to modify the proposed development conditions.
  17. Even with what the Board heard from the Urban Forester about the garage, there is a long history to the garage, and there were clearly a number of miscommunications that were made; a building permit that was issued and revoked.
  18. Having put a pad out there already, a garage is consistent with the residential development in the area and is appropriate for a house of this nature.
  19. The Board should tighten up everything else as best as they can and make modifications to the development conditions moving forward.
  20. The decks should be allowed as an appropriate use with the house of this nature.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

Mr. Beard seconded the motion, which **FAILED\*** by a vote of 2-5; **THEREFORE THE APPLICATION WAS DENIED.** Chairman Ribble, Ms. Gibb, Mr. Hart, Mr. Byers, and Mr. Hammack opposed the motion.

\*Par. 3 of Sect. 18-402 of the Zoning Ordinance requires that a concurring vote of four (4) members of the Board of Zoning Appeals is needed to grant a variance.

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The meeting recessed at 11:59 a.m., and reconvened at 12:12 p.m.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. BURT LEVENSON, SP 2009-HM-056 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 2024 Upper Lake Dr. on approx. 12,407 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((4)) (4) 5.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Burt Levenson, 2024 Upper Lake Drive, Reston, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. In response to a question from Mr. Beard, Ms. Johnson said the applicant was not agreeable to a development condition that would prohibit the replacement of a dog, which was given away or deceased. She said the applicant wanted to maintain up to five dogs on the property at any given time. Ms. Johnson also noted that the applicant was only short approximately 100 feet from the minimum requirement for four dogs.

Mr. Levenson presented the special permit request as outlined in the statement of justification submitted with the application. He provided a video presentation to the Board, which showed the dogs, their habitat, the recreation area, and gave a brief history of the breed. He explained the waste management system he had in place on the property, noting his five dogs produced less waste than a single Labrador Retriever. Mr. Levenson did not believe his dogs had an adverse impact on the neighbors, inasmuch as they were exercised off the property whenever possible, and left outside for minimal periods of time.

In response to a question from Mr. Hammack, Mr. Levenson acknowledged the numerous letters in opposition to his application, but stated that the barking dogs the neighbors had complained about had to be from some other dogs. He noted that it was a very dog friendly neighborhood.

Mr. Beard and Mr. Levenson discussed limiting the number of dogs to four when the oldest dog passed away. However, Mr. Levenson was insistent that he be allowed to keep five dogs at all times.

Chairman Ribble called for speakers.

Douglas Harrison, 2026 Upper Lake Drive, Reston, Virginia, came forward, and spoke in support of the application. He said he rarely saw the dogs, and there was no smell associated with them.

Don Higgenbottom and his wife, Jan Higgenbottom, 2022 Upper Lake Drive, Reston, Virginia; Catherine Carland, 2018 Upper Lake Drive, Reston, Virginia; Linda Jones, 2020 Upper Lake Drive, Reston, Virginia; and, Kristin Bovik, 1997 Lake Port Way, Reston, Virginia, came forward and spoke in opposition to the request. Their main objection was the barking that was generated from five dogs.

In rebuttal, Mr. Levenson said he had registered on a decibel reader that the dogs were less noisy than the geese that frequent the lake. He said he tried to contact everyone who had written a letter in opposition to allay their concerns, but had not been able to reach everyone. In closing, Mr. Levenson said his dogs were well behaved and well trained, and asked that his application be approved.

Mr. Hammack asked who looked after the dogs when he was traveling. Mr. Levenson said there were people who lived with him off and on, who cared for the dogs when he was away. He said someone was always there with the dogs.

In response to a question from Mr. Beard, Mr. Levenson said he would not agree to a development condition which would prohibit replacing a dog that was deceased or given away.

Chairman Ribble closed the public hearing.



Mr. Beard Hammack moved to deny SP 2009-HM-056 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

BURT LEVENSON, SP 2009-HM-056 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 2024 Upper Lake Dr. on approx. 12,407 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((4)) (4) 5. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The present zoning is PRC.
2. The area of the lot is 12,407 square feet.
3. When applications like these come before the Board, invariably some members vote with some provisions to allow this and to work out the situation.
4. The applicant has done a disservice to himself and to his animals by insisting that he have the right to have five (5) animals on this property, knowing that to do such, by Code, you need 20,000 square feet.
5. The applicant stated that one of the animals was older.
6. This could have been resolved by a development condition such as alluded to earlier that after one animal passes away, it is not replaced; however, the applicant expressed a desire not to do that.
7. The Board was very sympathetic to the applicant and his love for his pets.
8. Under the circumstances, a recommendation of approval could not be made.

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 appropriate sections 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 5-2. Mr. Hart and Mr. Hammack voted against the motion.

**THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE-REFERENCED APPLICATION ON SEPTEMBER 29, 2009. A NEW PUBLIC HEARING WAS SCHEDULED FOR JANUARY 6, 2010, AT 9:00 A.M.**

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~ ~ ~ September 22, 2009, Scheduled case of:

9:00 A.M. JAVED IQBAL, SP 2009-HM-058 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 29.9 ft. Located at 1835 Satinwood Ct. on approx. 20,438 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 39.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Javed Iqbal, the applicant, 1835 Satinwood Court, Vienna, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval subject to the proposed development conditions.

Mr. Iqbal presented the special permit request as outlined in the statement of justification submitted with the application. He said his family needed more space, noting that the current one-car garage was being used as storage. Mr. Iqbal stated that he had talked with his neighbors about his proposal and received their approval.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009 HM-058 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAVED IQBAL, SP 2009-HM-058 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition such that side yards total 29.9 ft. Located at 1835 Satinwood Ct. on approx. 20,438 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 39. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant has satisfied the six required standards set forth under Section 8-922 of the Ordinance.
3. There is a favorable staff recommendation.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 513 square feet) of the proposed addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated March 3, 2009, signed by Andrew L. Westerman, March 6, 2009, submitted with this application and is not transferable to other land.
3. Building permits for the addition shall be obtained prior to construction of the addition.

4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,145 square feet existing + 3,217 (150%) = 5,362 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit.

Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. The applicant shall plant an American Holly tree between the garage addition and the southeast property boundary to provide screening for the adjacent property owner.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (*Admin. moved from 6/3/08 and 8/5/08 at appl. req.*) (*Decision deferred from 9/9/08, 10/28/08, 3/31/09, and 6/30/09 at appl. req.*)

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (*Decision deferred from 9/9/08, 10/28/08, 3/31/09, and 6/30/09 at appl. req.*)

Chairman Ribble called the appellants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth.

Noting that this matter was for decision only, Chairman Ribble called for a motion.

Susan Earman, 136 Beverly Boulevard, McLean, Virginia, attorney for the appellants, requested to make a statement which contained new information. Chairman Ribble granted Ms. Earman two minutes.

Ms. Earman said the opinion letter, which the appellants had relied upon pursuant to the statute, had not been given by counsel or by the County Attorney, but had been given by Regina Coyle, Division Director of Zoning Evaluation, which indicated that the appellants could certainly have the attached garage.

Mr. Byers moved that in Appeal Applications A 2008-DR-009 and A 2008-DR-026 by Mark and Susan Stadsklev, that the Board of Zoning Appeals uphold the determination of the Zoning Administrator. Mr. Byers stated that anything built on the property which was not approved as part of the original variance would be precluded by VA 15.2-2309 (2) C, unless a new variance for such construction was obtained, because such new construction would constitute an expansion within an area of the site for which the original variance was required, namely the whole property.

Mr. Byers noted that there were subsequent zoning inspections between the 12<sup>th</sup> of February 2008 and the 27<sup>th</sup> of March 2008, which revealed that the appellants had installed footing and foundation for the detached garage, despite the fact that the building permit had been revoked. They were storing construction equipment, including ladders, scaffolding, tools, buckets, rebar, contractor boxes, two unlicensed trailers, a boat, construction materials, including but not limited to doors, windows, siding, bricks, lumber, pipe, and miscellaneous other items. These only would have been allowed had there been an approved building permit, and there was none in evidence.

Mr. Hammack seconded the motion.

Mr. Hart said he was going to support the motion, although he did not think this was a slam dunk, and there was a lot of blame to go around. He said the narrow question before the Board was whether the determinations were correct, and thought the Board had to go by the plain language of the development conditions. He believed the Zoning Administrator's determinations were correct.

Chairman Ribble had a question about whether Mr. Byers had made a motion for both appeals. Mr. Hart said that it was for both, but for the record, they decided to do them again, separately.

Mr. Byers made a motion to uphold the Zoning Administrator's determination on Appeal Application A 2008-DR-009. Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

Mr. Byers made a motion to uphold the Zoning Administrator's determination on Appeal Application A 2008-DR-026. Ms. Gibb seconded the motion, which carried by a vote of 6-1. Mr. Smith voted against the motion.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:30 A.M. CONSTANTINE SARA KINIS, A 2009-MA-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12. (*Admin. moved from 5/19/09*) (*Admin. moved from 6/2/09 at appl. req.*)

Chairman Ribble noted that this hearing had been administratively moved to January of 2010, at the applicant's request.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:30 A.M. MICHAEL PATRICK MCBEE AND JERRYLE-ANN PUALANI MCBEE, A 2009-PR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are exceeding the number of dogs that may be kept on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 3320 Fallowfield Dr. on approx. 11,256 sq. ft. of land zoned R-4. Providence District. Tax Map 60-1 ((16)) 128A.

Chairman Ribble noted that this appeal had been withdrawn.

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~ ~ ~ September 22, 2009, Scheduled case of:

9:30 A.M. HANH DUONG AND NGOC PHAM, A 2009-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 12812 Middleton La. on approx. 10,830 sq. ft. of land zoned R-3 (Cluster) and Pt. HC. Springfield District. Tax Map 45-2 ((3)) (30) 3. (Admin. moved from 6/23/09 at appl. req.)

Chairman Ribble noted that this appeal had been withdrawn.

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9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, 6/3/08, 9/9/08, and 12/9/08 at appl. req.) (Continued from 3/24/09 and 6/30/09.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant had requested a continuance to November 17, 2009.

Mr. Hammack moved to continue the public hearing on A 2007-MV-030 to November 17, 2009, at 9:30 a.m., at the appellant's request.

Mr. Byers seconded the motion which carried by a vote of 7-0.

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~ ~ ~ September 22, 2009, After Agenda Item:

Request for Intent to Defer  
for Sherry Brown, SP 2008-MV-059

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the case was scheduled for October 27, 2009, but the applicant's agent had a conflict with that date and had asked the Board to move it to November 3, 2009.

Mr. Hart moved to approve the request for an intent to defer to November 3, 2009, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 1:40 p.m.

Minutes by: Suzanne L. Frazier/Lorraine A. Giovinazzo

Approved on: June 15, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 29, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS' OWN MOTION, SP 2008-MA-079 (In association with RZ 2008-MA-013) (*Admin. moved from 10/7/08 and 7/28/09 at appl. req.*) (*Indefinitely deferred from 11/4/08 at appl. req.*) (*Reactivated on 5/19/09*)

Chairman Ribble noted that SP 2008-MA-079 had been administratively moved to September 22, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. LARRY & CHERYL MORAN, SP 2009-MA-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5 ft. 4 in. from rear lot line and 0.0 ft. from side lot line such that side yards total 11.4 feet. Located at 6224 Berlee Dr. on approx. 9.09 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 72-2 ((9)) 96.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Larry and Cheryl Moran, 6224 Berlee Drive, Alexandria, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, made staff's presentation. The applicants requested approval of a reduction to minimum yard requirements based on an error in building location to permit an addition, which consisted of a deck with lattice below, a gazebo, and a pool to remain.

Mr. Moran presented the special permit request as outlined in the statement of justification submitted with the application. Addressing Mr. Hart's question concerning a structure that appeared on the plat, he explained that it belonged to the neighbor on the left. He said their situation was an attempt to beautify and add utility to their severely-graded back yard. They had relied on professionals, Palm Pools, to pull the necessary permits. He said the error was done in good faith. The pool, deck, and gazebo added value to his and their neighbor's properties. Mr. Moran said their initial proposal was to add substantial plantings, but the lot's topography prevented the project. It was after that failed attempt to beautify their back yard that they decided upon a pool, a gazebo, and a deck.

In response to Mr. Hammack's questions concerning a ravine and a fence, he explained their location. He also noted that it would be very difficult and expensive to relocate the gazebo, which served to screen vehicular traffic.

In response to Mr. Hart's questions concerning the gazebo, Mr. Moran explained that it sheltered them from mosquitoes, so they could enjoy their back yard; that it was not used for storage; and it was attached to their walkway and deck as a permanent structure.

A discussion ensued between Mr. Hart, Frank Miller, Fairfax County building inspector, and Ms. Langdon concerning the gazebo and possible fire code issues. Ms. Langdon said that if the applicants were unable to obtain their necessary permits due to the fire code restriction, the applicants would have to come into compliance.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack noted that Mr. Hart's issue of the fire code was potentially an important one. At Mr. Hammack's request, Chairman Ribble re-opened the public hearing in order to allow Mr. and Mrs. Moran to answer questions.

Ms. Moran submitted she had difficulty understanding the process after having gone through so many procedures and expending considerable expense to allow the application to go forward. She pointed out that all the fences in the neighborhood were wooden, and that their next-door neighbor's fence was there when the Morans had purchased their property. Ms. Moran said she appreciated Mr. Hart noticing their difficulty, having gone around and around with the process; that they had 90 documents evidencing their efforts to come into compliance; and there was still no resolution.

Discussion ensued regarding the Moran's frustration; the like circumstances of their neighbors with the property line situation and pre-existing fences; possibilities of lessening the impact of the structures; allowing the Morans sufficient time to attain the required permits; and adding a development condition to address the gazebo's structure material because of the fire code concerns.

There being no further questions or comments from the Board, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-MA-064 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

LARRY & CHERYL MORAN, SP 2009-MA-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5 ft. 4 in. from rear lot line and 0.0 ft. from side lot line such that side yards total 11.4 feet. Located at 6224 Berlee Dr. on approx. 9,091 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 72-2 ((9)) 96. 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 29, 2009; 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 seven required standards under that section 914, and in particular B, that the non-compliance was done in good faith.
3. The applicants presented documentary testimony showing that the contractor was supposed to pull the permits and failed to do so, and that actually has been, in some way, reprimanded for that failure by the Virginia Board of Building.
4. Although it is a close call that allowing this to remain would be detrimental to the use and enjoyment of the property in the immediate vicinity, given the testimony indicating that there is no opposition, in particular by the next door neighbor, and the topography of the yard that they were working with.

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/gazebo) as shown on the plat prepared by Alexandria Surveys, Inc., dated November 11, 1996, as revised by Trent R. Van Blaricom, dated June 23, 2009, as submitted with this application and is not transferable to other land.
- 2. Within 180 days of approval of this application, all permits and final inspections shall be obtained for the deck/gazebo addition.
- 3. If required by Virginia Uniformed Statewide Building Code, the gazebo/deck may be further enclosed along the western/northern lot lines to comply with fire prevention code requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. MEGAN B. KENNEY, SP 2009-LE-054 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard. Located at 3400 Sapphire Ct. on approx. 10,359 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 81.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Megan Kenney, 3400 Sapphire Court, Alexandria, Virginia, reaffirmed the affidavit.



Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval to permit an existing fence 5.8 feet in height to remain in the front yard of a through lot.

Ms. Kenney presented the special permit request as outlined in the statement of justification submitted with the application. She said the fence had been on the property for perhaps 30 years; that her title research had not recorded her property as having two front yards; that the matter was brought to the Board's attention by a complaint from a disgruntled neighbor, who was cited for a fence taller than 4.0 feet in his front yard; to raze the fence would destroy the integrity of the area landscape; and the survey conducted had revealed that the fence was placed slightly over the property line.

Several Board members and Susan C. Langdon, Chief, Special Permit and Variance Branch discussed the development conditions and Zoning Ordinance language as they pertained to applications involving a fence located over the property line.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-LE-054 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MEGAN B. KENNEY, SP 2009-LE-054 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in the front yard. Located at 3400 Sapphire Ct. on approx. 10,359 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 81. 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 29, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,359 square-feet.
4. There are two letters of support.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location of an existing 5.8 foot high fence as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, LLC, dated March 27, 2009, signed through April 2, 2009 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. VICKY C. URCUYO AND MARCO V. URCUYO, SP 2009-HM-055 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.2 ft. from side lot line and to permit reduction to certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 14.8 ft. Located at 1843 Abbotsford Dr. on approx. 18,028 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((20)) 3.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Vicky C. Urcuyo, 1843 Abbotsford Drive, Vienna, Virginia, reaffirmed the affidavit, and Marco V. Urcuyo, identified himself for the record.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a reduction to minimum yard requirements based on error in building location to permit an accessory storage structure to remain 3.2 feet from the eastern side lot line; and a reduction of certain yard requirements to permit construction of an addition. Staff believed that the subject application for the addition was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions, and recommended approval.

Vicky Urcuyo presented the special permit request as outlined in the statement of justification submitted with the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-HM-055 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

VICKY C. URCUYO AND MARCO V. URCUYO, SP 2009-HM-055 Appl. under Sect(s) 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.2 ft. from side lot line and to permit reduction to certain yard requirements to permit construction of addition 6.6 ft. from side lot line such that side yards total 14.8 ft. Located at 1843 Abbotsford Dr. on approx. 18,028 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((20)) 3. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

2. With respect to the shed there is no staff recommendation, but from the photographs, the shed is heavily screened by landscaping.
3. There are two sheds; the little one is by-right, the subject shed is taller and tall enough to require a special permit.
4. There are letters in support by both neighbors on either side; the shed is not bothering anybody.
5. The shed appears compatible with everything that is around it.
6. With respect to the addition on the side, we have a favorable staff recommendation.
7. This is a logical place to put in an addition on the house.
8. On the record before the Board this is a 1960s house and it is recognized people would want bigger closets to stay in a house like that.
9. It is compatible based on what is represented is going to be the appearance of the addition and the development conditions requiring the brick is going to match the brick that is on the house already.
10. Staff is supportive.
11. The standards in Sect. 8-922 resolution have been met.
12. Ordinarily we don't have two-story additions as close as 6.6 feet, but under the circumstances, because of the topography, it really is not a two-story addition, but sort of a rambler with what is becoming a walk-out basement on that side of the house.
13. In this situation, it is agreed with staff that it is appropriate.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size of a proposed addition and shed as shown on the plat prepared by Thomas W. Kendall, Kendall Consulting, Inc., dated May 7, 2009, revised and signed through June 9, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,889 square feet existing + 4,334 (150%) = 7,265 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced for the addition and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. JUDITH A. ROBINSON, SP 2009-SU-062 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 5537 Belle Pond Dr. on approx. 8,833 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((15)) 1.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Judith A. Robinson, 5537 Belle Pond Drive, Centreville, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. The applicant requested approval of a special permit for a home child care facility for up to 10 children at any one time. Employees would include the applicant and two full time assistants. Staff recommended denial of SP 2009-SU-062.

Ms. Robinson presented the special permit request as outlined in the statement of justification submitted with the application. She clarified that she had only one employee, who sometimes walked to work. She had six parking spaces, including the garage. She pointed out several letters and a petition in support of her business. Ms. Robinson said she presently had eight children, with six families using six cars; that there were various drop off and pick up times; and there was never the maximum of four cars parked on-site. She explained the reason she applied for 10 children, and also her state license requirements.

Chairman Ribble called for speakers in support of the application.

Susan Edwards, 14372 Quail Pond Court, Centreville, Virginia, and Ross Lemke, 15523 Eagle Tavern Lane, Centreville, Virginia came forward to speak in support of the application.

There being no further speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2009-SU-062 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUDITH A. ROBINSON, SP 2009-SU-062 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 5537 Belle Pond Dr. on approx. 8,833 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 54-1 ((15)) 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 September 29, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant testified that she is only going to have one employee.
3. The photographs and the plat indicate that there seems to be room for at least three cars and probably four in the driveway.
4. There was testimony that there are never more than two families coming at the same time to pick up children.
4. The employee sometimes walks to the house.
5. Based on personal experience as a mother dropping off a child at home child-care facility for four years, where I only saw in four years, one other family dropping off and picking up in all those years, although there were 10 children here in Fairfax County.
6. It is the nature of home child-care that people are dropping off and picking up at different times, and I don't know if whoever is analyzing this for these numbers considers it.
7. This is not like a school stopping and starting where everyone has to be there at a certain time; we are all dropping off at 9:00 a.m. and we are all picking up at 5:00 p.m.
8. People are coming from different directions and going different places; that is the nature of it; everyone wants to get in and out and on to their job.
9. We have a letter from the homeowners' association saying parking is not an issue.
10. This has been going on since January; there has been plenty of time for neighbors to complain if it were.
11. There already are eight children, one family has two children, which is often the case; it is not like you'll have ten different families; you will have some with siblings.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant, Judith A. Robinson, only and is not transferable without further action of the Board, and is for the location indicated on the application, 5537 Belle Pond 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 (SP) plat prepared by Kenneth W. White, Alexandria Surveys, Inc., dated August 18, 1992 and signed by Judith Robinson on May 1, 2009, 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 maximum number of children permitted at the home child care facility at any one time shall not exceed ten (10) children, excluding the provider's own children.
5. The maximum hours of operation of the home child care facility shall be limited to 6:00 a.m. to 5:30 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to one (1) on-site at any one time in addition to the applicant.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
8. A minimum of two (2) parking spaces shall be provided in the driveway and two spaces in the garage. The garage shall not be converted to any other use and the applicants' vehicles shall be parked in the garage during the time of the child care operation.
9. In no instance shall the driveway or parking areas exceed 30% of any front yard.
10. There shall be no signage associated with the home child care facility.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The number of children shall not be increased above seven (7) until all conditions are met. 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.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M.           STEPHEN N. SMITH, SP 2009-MV-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.8 ft. from side lot line. Located at 6927 Duke Dr. on approx. 7,320 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((23)) (9) 24.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Stephen N. Smith and Deborah M. Smith, 6927 Duke Drive, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was seeking special permit approval to permit a reduction of certain yard requirements to construct a screened-in porch addition 20.3 feet from the rear lot line. The addition was proposed to measure 16 feet by

15 feet in area with a maximum height of 14 feet. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommends approval to SP 2009-MV-059, subject to the proposed development conditions.

Mr. and Mrs. Smith presented the special permit request as outlined in the statement of justification submitted with the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2009-MV-058 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN N. SMITH, SP 2009-MV-059 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.8 ft. from side lot line. Located at 6927 Duke Dr. on approx. 7,320 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 93-1 ((23)) (9) 24. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is zoned R-8.
3. The Board has determined that the application meets all the submission requirements of 8-922.
4. Staff has recommended approval in this case.
5. As noted by staff, the request is minimal.
6. The most logical location of the property has been selected for this addition.
7. The addition will be constructed on the southern side of the dwelling, which has the greater width of the two yards.
8. The proposed eave ties in well with the eave line of the existing dwelling.
9. The proposal is in character with the on-site development.
10. This will have minimal impact and is appropriate consistent with the standards of the Zoning Ordinance in Fairfax County.

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. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This special permit is approved for the location and size (approximately 420 square feet) of the proposed addition, as shown on the plat prepared by Kim Robbert, AIA, dated June 25, 2009, submitted with this application and is not transferable to other land.
3. All applicable building permits shall be obtained prior to construction of the addition.
4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,164 square feet existing + 1,746 (150%) = 2,910 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. A minimum of five (5) shrubs, a minimum of 18 inches in height at time of planting, shall be planted along the southern foundation of the addition.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is require

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. HARCO III, INC., T/A FAST EDDIES, SPA 95-Y-069-03 Appl. under Sect(s). 4-703 of the Zoning Ordinance to amend SP 95-Y-069 previously approved for billiard hall with an eating establishment to permit dance hall and modification of development conditions. Located at 14100, 14114 - 14116 Lee Hwy. on approx. 9.3 ac. of land zoned C-7, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 8C. (*Admin. moved from 6/16/09 and 7/14/09 at appl. req.*)

Chairman Ribble noted that SPA 95-Y-069-03 had been administratively moved to November 3, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. MEDHAT YOUSSEF, SP 2009-SP-026 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11815 Robertson Farm Ci. on approx. 6,941 sq. ft. of land zoned PDH-2 and WS. Springfield District. Tax Map 56-3 ((15)) 27. (*Continued from 7/7/09.*)

Chairman Ribble noted that SP 2009-SP-026 had been withdrawn.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. OKSANA ELARINY DDS, SP 2009-MA-063 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5508 Seminary Rd. on approx. 12,659 sq. ft. of land zoned R-3 and SC. Mason District. Tax Map 62-3 ((1)) 7B.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Dr. Oksana Elariny, 2232 Cedar Lane, #302, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. The applicant was requesting approval of a special permit for a home professional office for a dental office. The 12,659-square-foot site was currently under construction to develop a single-family, detached dwelling, two stories in height with a basement, measuring approximately 7,000 square feet in size total.

The dental office use was proposed to be located on the first floor of the dwelling, with a separate handicapped accessible walkway and entrance located at the rear of the dwelling. The proposed use would consist of approximately 1,000 square feet of the total square footage of the dwelling. The proposed hours of operation were from 7:00 a.m. to 6:00 p.m. on Monday, Thursday and Friday and 7:00 a.m. to 2:00 p.m. on Saturday, with occasional emergencies.

Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SP 2009-MA-063, subject to the proposed development conditions.

Dr. Elariny presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Elariny said she agreed with all of staff's development conditions.

Chairman Ribble called for speakers.

Omar Wahed [phonetic], 5502 Seminary Road, Alexandria, Virginia, came forward to speak in opposition. His issue was that due to the narrowness of the street, vehicles usually backed-up into his driveway in order to turn around. He was concerned for the safety of his and the neighbors' children.

Discussion ensued regarding Mr. Wahed's concerns. Mr. Beard clarified that four cars could be parked in the applicant's driveway.

In rebuttal, Dr. Elariny said Mr. Wahed had several cars constantly parked in his driveway, and there was no way anyone could use his driveway to turn around. She explained her proposal for meeting the Ordinance's parking requirement. She said she could see no reason why her business could or would create problems. Dr. Elariny explained the pipe stem drive configuration and the placement of the mailboxes.

To further clarify the pipe stem drive and those who were served by it, Ms. Hedrick referred to a photograph.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2009-MA-063 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OKSANA ELARINY, DDS, SP 2009-MA-063 Appl. under Sect(s). 8-907 of the Zoning Ordinance to permit a home professional office. Located at 5508 Seminary Rd. on approx. 12,659 sq. ft. of land zoned R-3 and SC.

Mason District. Tax Map 62-3 ((1)) 7B. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3 and SC.
3. The area of the lot is 12,659 square feet.
4. Staff has recommended approval of this application.
5. The applicant will be domiciled within the premise, and approximately 1,000 square feet of which will be used for the dental practice.
6. It is noted that the area is very familiar, and it is keeping with the general tenure of the neighborhood.
7. It is directly across from Skyline high-rise apartments, and in close proximity to various commercial ventures in the area right at the Seminary split.
8. Pursuant to the development conditions, once the property is completely developed, the issue that was addressed should be resolved by everyone frequenting the facility being able to turn-around using the subject property's driveway so as not to exacerbate the problem of the neighbors in the proximity.

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. 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, Oksana Elariny, DDS, and is not transferable without further action of this Board, and is for the location indicated on the application, 5508 Seminary Road, and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses, as indicated on the Site Grading Plan prepared by GeoEnv Engineers, dated September 2006, as sealed by Ibrahim A. Chehab, dated August 18, 2009, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of employees shall be three (3) including the applicant. The applicant shall be the only dentist operating from the property.
5. The maximum hours of operation of the home professional office shall be limited to 7:00 am to 6:00 pm Monday, Thursday and Friday and 7:00 am to 2:00 pm on Saturdays, with occasional emergencies.
6. Appointments shall be scheduled so that there is a maximum of one (1) patient on site at any one time, and there shall be a minimum of thirty (30) minutes between the end of one appointment and the commencement of the next. The maximum number of patients shall be limited to ten (10) daily.
7. The home professional office shall occupy no more than 1,000 square feet of the principal dwelling and shall generally be in conformance with the layout as shown in Attachment 1.

8. The dwelling that contains the home professional office shall be the primary residence of the applicant.
9. There shall be no signage associated with the home professional office use.
10. Four (4) parking spaces shall be provided in the asphalt driveway for a maximum of two (2) employees, and one (1) patient. All parking for the use shall be on-site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

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. Byers seconded the motion, which carried by a vote of 7-0.

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The meeting recessed at 10:48 a.m. and reconvened at 10:55 a.m.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (*Admin. moved from 6/16/09, 7/14/09, and 8/11/09 at appl. req.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Amber K. Scharn, Esquire, Odin, Feldman & Pittleman, P.C., 9302 Lee Highway, Suite 1100, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. The applicant was requesting special permit approval to permit the development of a church with a private school of general education in three phases. The first phase of development, Phase 1, proposed renovations to an existing one-story residential dwelling with basement and the addition of four modular trailer buildings. The second phase of development, Phase 2, would consist of the demolition of the existing residential structure, where an additional 67 parking spaces would be constructed, and the construction of a 27,565 square foot, 45 foot high, multipurpose building, which would seat up to 300 worshippers. The third phase of development, Phase 3, would include the construction of an 8,320-square-foot building addition, with an additional 7,200 square feet of cellar space. Two hundred seats would be added in this phase of development for a total of 500 seats. Sunday worship services were to be held at 9:00 a.m., 10:30 a.m., and 1:30 p.m.

Staff believed the majority of the issues had been adequately addressed. However, there continued to be several major outstanding transportation issues related to the proposed application. Some of these were so significant that until they were resolved, it was difficult to compose adequate development conditions. With the outstanding major transportation issues, staff could not recommend approval of the application at that time.

Lou Ann Hutchins, Fairfax County Department of Transportation (FCDOT) addressed Mr. Hart's question concerning a new standard for a left-turn lane.

Chuck Almquist, FCDOT, further explained the considerations, the amount of space needed in the left lane during very high-volume usage, and the amount of deceleration space needed.

Discussion ensued regarding the location of a septic field, and calculations of the 50 percent land area.

Ms. Scharn presented the special permit request as outlined in the statement of justification submitted with the application. She noted that churches were a good thing for the County, yet there was always discussion where they might be located. She said the applicant would contribute several amenities for the community, including a bike and walking trail.

Discussion ensued regarding the inter-parcel connection; FCDOT issues; the 50 percent land area; permits for usage of an existing house on the property; an on-site garage; the construction proposed for Phase I; site plan approvals; an intention of providing security for the site; and, location of high-tension wires to the structure.

Chairman Ribble called for speakers.

Jan Guthrie, President of the Second Gate Posts Estates, clarified they were not against the church, but very concerned about traffic generation and the ensuing safety issues. She noted that there were several more churches planned for their area, which would generate more congestion. Ms. Guthrie suggested the possibility of installing a traffic light at the entrance of their Gate Posts subdivision.

Ms. Hutchins and Ms. Guthrie responded to Chairman Ribble's question concerning the installation of a traffic signal.

Ms. Guthrie and Mr. Hammack discussed HOA's support of the church and school.

Mark (last name and address unintelligible), Centreville, Virginia, came forward to speak in opposition to the application. His issues of concern were that of well contamination; absence of signs or permits for the addition or the garage; inadequacies in the applicant's proposal; the septic field, the on-site house, and suggested errors in the application. He urged that the Board deny the application.

In rebuttal, Ms. Scharn addressed and explained the issues raised by the previous speaker. She conceded there were traffic considerations and issues, and they had applied for several waivers from the Virginia Department of Transportation (VDOT). She noted that providing a deceleration lane was monetarily not feasible, because of the expense to the church.

At Mr. Hart's suggestion, Ms. Hedrick said staff would include a development condition to remove specific structures currently on the property which could pose a safety threat to children when playing.

There was discussion with Ms. Hutchins, Mr. Almquist, and Mr. Byers regarding a proposed median break.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to continue the public hearing. The public hearing had not been reopened, therefore, the motion was to defer decision on SP 2009-SU-018 to November 17, 2009, allow staff time to review the changes proposed by the applicant and issues raised by the Board. Mr. Hammack commented that there were a lot of outstanding issues which needed to be addressed, and he did not want to make a motion to deny.

Discussion ensued regarding the revised development conditions; considerations on moving forward with a deciding motion; the matter of traffic issues; and, the necessity of VDOT's recommendation.

Mr. Byers seconded the motion to defer the decision. He commented why he believed a deferral was a prudent motion at that time.

Mr. Hart gave his reasons for supporting the deferral. He said that there were too many unanswered and unresolved issues, and thought the Board would be more comfortable with more information.

Chairman Ribble requested staff to provide a traffic report on accidents in the area.

The motion carried by a vote of 5-2. Chairman Ribble and Mr. Beard voted against the motion.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:30 A.M. RICHARD LORD, A 2008-SP-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9. *(Admin. Moved from 10/21/08, 1/27/09, 2/10/09, 5/12/09, and 8/11/09 at appl. req.)*

Chairman Ribble noted that A 2008-SP-043 had been withdrawn.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:30 A.M. KENNETH AND MARIA CLINE, A 2008-SP-061 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are exceeding the number of dogs that may be kept on property in the R-3 Cluster District in violation of Zoning Ordinance provisions. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 Cluster and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15. *(Admin. moved from 1/27/09, 3/24/09, and 7/28/09 at appl. req.)*

Chairman Ribble noted that A 2008-SP-061 had been administratively moved to November 3, 2009, at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that since that administrative action was taken, the applicants had withdrawn their appeal application.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:30 A.M. WILLIAM J. HILBERS, A 2009-MA-031 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property is not buildable under Zoning Ordinance provisions. Located on approx. 12,199 sq. ft. of land zoned R-2 and pt. H-C. Mason District. Tax Map 72-1 ((1)) 29A.

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kathy Hilbers, 6123 Princess Garden Parkway, Lanham, Maryland, sister of the applicant, came forward.

Getachew Tadesse, Staff Coordinator, Zoning Administration Division (ZAD), presented staff's position as set forth in the staff report dated September 21, 2009. This was an appeal of a determination that the appellant's property was not buildable under Zoning Ordinance provisions and that the minimum area lot width was not met. The subject property was zoned R-2; located on Merritt Road, north of Little River Turnpike, and east of Green Spring Gardens Park; and partially located in the Highway Corridor Overlay District. The subject property, together with Lot 29, was developed with a two-story, single-family detached dwelling.

A determination was requested from Land Development Services, Department of Public Works and Environmental Services (DPWES) on whether Lots 29 and 29A were legally created, and the Director of Environmental and Facilities Review Division of DPWES determined that the lots were not legally subdivided. Mr. Hilbers' attorney, William M. Baskin, Jr., filed an appeal of the determination concerning the lots being unbuildable. Mr. Baskin was advised by ZAD staff that Lot 29 complied with the Zoning Ordinance provisions in effect at the time of recordation, but that Lot 29A did not. In order for Lot 29A to be buildable from a zoning perspective, it must either meet current Zoning Ordinance requirements, or in accordance with Sect. 2-405, it must have been recorded prior to the effective date of the first Zoning Ordinance on March 1, 1941.

In conclusion, the Board of Zoning Appeals had already taken action concerning Lot 29A in a previous Appeal A 2003-MA-005, and had determined that it was not a buildable lot. Since that determination, the appellant had acquired grading and building permit approvals to combine the two lots and develop the property with a single-family dwelling. Lot 29 and Lot 29A were currently functioning as a single lot, and since Lot 29A did not meet the Zoning Ordinance requirements, was never intended to be a residential building lot, and was not in harmony with the surrounding lots, staff asked the Board of Zoning Appeals uphold the Zoning Administrator's position.

Mr. Tadesse responded to Mr. Hart's questions concerning the lot's creation and Ordinance deficiencies; the fact that in the 1970s at the time of the condemnation proceeding, the lot had not existed; and the present setbacks for each side of the lot.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, responded to Ms. Gibb's question concerning the size of the lot and its buildable area within Lot 29A.

Mr. Tadesse concurred with Mr. Hart's comment that if one were to apply for a special permit for reduction to minimum yard requirements, the subject lot could not be considered, because the special permit was only applicable to modification of an existing structure and not for new construction. It was clarified that there was not a house currently on the lot, nor was there from the 1970s to the present.

In response to Ms. Gibb's question concerning recordation, Mr. Tadesse said the lot was created when Fairfax County Park Authority condemned a portion of the property, Lot 30, in 1976, and instead of taking the 4.8 acres with the consent and agreement of the previous property owner, the County reduced the current lot to be 4.5 acres; that was when the original Lot 30 was divided. It is believed that the lot was not recorded until January 2, 1985.

Ms. Stanfield responded to Mr. Hammack's question concerning the Board's determinations in 2003 and 2009. She noted that there were a number of Ordinance amendments; however, staff did not believe any affected the pertinent facts of the case.

In response to Mr. Hammack's question to Ms. Hilbers regarding her representation of her brother without documentation of such in the record, Ms. Hilbers explained that because her brother was out of town and too ill to travel, he asked her to present his written statement to the Board on his behalf. She submitted that she was not at all familiar with the case.

Mr. Tadesse concurred with Mr. Beard's understanding that there was no issue with the house on Lot 29; that the issue before the Board concerned Lot 29A.

The Board determined that, because the appellant was not present to present his case, his sister, Ms. Hilbers could speak in support of her brother and read his letter.

Chairman Ribble then called for speakers in support.

Kathy Hilbers, 6123 Princess Garden Parkway, Lanham, Maryland, speaking for Bill Hilbers, read his statement. The letter stated that the grounds for the appeal included that the lot was created as a result of a condemnation hearing in 1976, which the property owners were unsuccessful in fighting. The result was that the remnant acreage remaining was Lot 29A. The forthcoming special permit application will demonstrate that the proposed construction would require only a setback variance, and would not violate the spirit of the R-2 Zoning Ordinance. The application would also clearly demonstrate that the proposed construction would improve the value of all property owners in the vicinity, and the neighbors were included in the planning process to ensure any concerns over the proposed construction were addressed. The letter stated how

Mr. Hilbers was an aggrieved person in that since March 2007, the overall value of the property had dropped by over 40 percent; that for several years he has paid taxes on land based on an evaluation reflecting the property was buildable land; and in 2003, the BZA appeal of Lot 29 and 29A as illegally subdivided lots was not argued by his attorney as he had requested. Mr. Hilbers wrote that his attorney withdrew Lot 29 from consideration against his wishes.

As there were no other speakers, Chairman Ribble close the public hearing.

Mr. Byers moved to uphold the determination of the Zoning Administrator. Mr. Smith and Mr. Hart seconded the motion.

Mr. Hart commented that the appellant bore the burden of showing that the Zoning Administrator was plainly wrong even if this was a fresh look at the same thing. He said Ms. Gibb's motion in 2003 was right, and it was still right. He said there was nothing given to the Board to show that the Zoning Administrator was wrong; that it appeared undisputed that the lot from the day it was created never met the width or area requirements in the district. He said the plat showed the intent of providing a driveway to the area in the back to be added to the park. The little strip was given back to the lot owner when it was determined it was not needed. Mr. Hart said whether or not they wanted to put a house on the lot, or whether or not the neighbors would support a house, was not the question. The question was whether the lot ever met the Zoning Ordinance requirements, which it never did; it was an unbuildable lot, and it remained so today. Mr. Hart said perhaps it could be combined with something or reconfigured, but that was not what the Board was deciding that day. Mr. Hart stated that on the record before them, he thought the Zoning Administrator was plainly right.

Chairman Ribble called for a vote. The motion to uphold the Zoning Administrator's determination carried by a vote of 7-0.

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~ ~ ~ September 29, 2009, Scheduled case of:

9:30 A.M.        JOHN DENNIS HALL JR., CYNTHIA R. BAUSO, A 2008-LE-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining outdoor storage, have erected a fence in excess of four feet and an accessory storage structure all in the front yard, and are allowing the parking of a vehicle on the unpaved surface of the front yard on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 3405 Austin Ct. on approx. 11,612 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((32)) 62. *(Deferred from 7/1/08, 8/5/08, 10/7/08, and 1/6/09 at appl. req.) (Continued from 4/14/09 and 7/7/09 at appl. req.)*

Chairman Ribble noted that A 2008-LE-011 had been withdrawn.

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~ ~ ~ September 29, 2009, After Agenda Item:

Approval of BZA Meeting Dates for 2010

The Board agreed to consider this matter in a closed session; therefore, this After Agenda item would be moved to the end of the meeting upon reconvening.

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~ ~ ~ September 29, 2009, After Agenda Item:

Request for Reconsideration  
Alexander and Theresa Kuhns, SP 2009-SP-047

Ms. Gibb moved to reconsider Alexander and Theresa Kuhns' SP 2009-SP-047. The motion was seconded by Mr. Beard.

Discussion ensued regarding the reconsideration. Ms. Gibb's reason for reconsidering the case was based on photographs of other fences in the neighborhood. Mr. Hart noted that part of the justification for the reconsideration was that people had hedges or shrubs that were taller and there was no Ordinance provision about that; that one can have bushes as tall as one liked or that would grow; that the question was only the fence. Mr. Hart said he thought staff could investigate again if there was some other issue, but he thought the fence in the front yard in the photographs submitted to the Board was inappropriate.

Chairman Ribble called for a vote. The motion failed by a vote of 3-4. Chairman Ribble, Mr. Byers, Mr. Hart, and Mr. Hammack voted against the motion.

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~ ~ ~ September 29, 2009, After Agenda Item:

Amendment to March 25, 2003 Board of Zoning Appeals Minutes.

Chairman Ribble referred to the September 23, 2009 memorandum from Kathleen A. Knoth, Clerk to the Board of Zoning Appeals.

Mr. Beard moved to accept the amendment. Mr. Hart seconded the motion. The motion carried by a vote of 5-0-2. Mr. Byers and Mr. Smith abstained from the vote.

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~ ~ ~ September 29, 2009, After Agenda Item:

Request for Reconsideration  
Burt Levenson, SP 2009-HM-056

Mr. Beard moved to approve reconsideration of Burt Levenson's SP 2009-HM-056. Mr. Smith seconded the motion.

Mr. Beard clarified that the rule for one to make a motion to reconsider, that person must have been on the prevailing side, and he thought perhaps there was some misunderstanding at the public hearing that had since been clarified.

Mr. Byers said he thought Mr. Beard had clearly articulated the proceeding, but his concern was that the applicant said he went to several neighbors about his proposal; however, there was testimony from several neighbors that had not occurred. Mr. Byers clarified that the issue entailed the keeping of several more dogs than allowed, and it was in an urban area. He said after hearing all the facts, there was a basic consideration for the people living in the community, of whom he thought were very articulate about their views. He said he would not support the motion.

Mr. Hart said he would have supported letting Mr. Levenson keep the five dogs that he had; however, at the time, Mr. Levenson wanted to be allowed to keep the number of dogs he wanted. Mr. Hart said that once he reflected on the all or nothing position, he would perhaps have had a different conclusion on whether to accept the development conditions. Mr. Hart said he thought the fifth dog was the question and if Mr. Levenson was willing to accept the appropriate development condition, he really had no problem with it.

Ms. Gibb said she would not support the motion because she thought two dogs were a lot; that the Ordinance allowed two dogs; that even puppies were involved; that a neighbor across the lake knew exactly



which house generated the barking; that the applicant was often not home; and, if there is more than one dog, usually when one starts to bark, they all will begin barking.

Mr. Beard reminded the Board that the applicant was within 70 feet to have four dogs by-right. He said he also was speaking for the doggies; that one was quite elderly, and when it passed, it would not be replaced. Mr. Beard said he thought Mr. Levenson understood the rules now, and although there were no guarantees, he was willing to revisit the case. As he stated at the public hearing, Mr. Beard reiterated he thought Mr. Levenson had done a disservice to not only himself, but his animals with what Mr. Hart had referred to as drawing a line in the sand.

Mr. Byers commented that he questioned the application, because Mr. Levenson had made it clear that he intended to breed two of his dogs, which would produce a single puppy. The Board was informed by a qualified neighbor that such litters can easily have as many as three; that it was not made clear who would be continually responsible for the care of the dogs while Mr. Levenson travelled, and, the fact that the neighbors who testified in opposition indicated there was no attempt by the applicant to contact them about his proposal.

Mr. Beard pointed out that in Dr. Levenson's request for reconsideration, he said he was more than willing and receptive to have added to his application a development condition and amendment to provide the existing five dogs to remain but upon a death, he would not replace that dog and would remain with less than five dogs.

Chairman Ribble called for a vote. The motion carried by a vote of 5-2 for reconsideration. Ms. Gibb and Mr. Byers voted against the motion.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the 2010 Meeting Agenda pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Gibb seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:32 p.m. and reconvened at 12:38 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 exempt 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.

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~ ~ ~ September 29, 2009, After Agenda Item:

Approval of BZA Meeting Dates for 2010

Mr. Hart moved that the BZA adopt for its 2010 schedule the meeting dates on Ms. Knoth's memorandum dated September 21, 2009, but not meet on the dates that were questioned in the memorandum.


Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:43 p.m.

Minutes by: Paula A. McFarland

Approved on: May 24, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 6, 2009. The following Board Members were present: V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman Ribble was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF THE LORD OF LIFE LUTHERAN CHURCH OF BURKE, VA AND T-MOBILE NORTHEAST, LLC, SPA 79-A-124-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-A-124 previously approved for church and child care center to permit telecommunication facility. Located at 5116 Twinbrook Rd. on approx. 3.04 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 17.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart gave a disclosure that one of the attorneys on the affidavit for this application was an opposing attorney on a case Mr. Hart was working on, but had nothing to do with this application. Mr. Hart indicated he did not believe his ability to participate in the case would be affected.

Jim Michal, 1120 20<sup>th</sup> Street, N.W., Washington, D.C., the applicant's agent, reaffirmed the affidavit.

Suzianne Zottl, Staff Coordinator, made staff's presentation. Staff recommended approval subject to the proposed development conditions.

Mr. Michal presented the special permit request as outlined in the statement of justification submitted with the application. He stated that if the application was approved and the steeple replaced, the existing steeple would be unbolted and shipped to another church in Kentucky.

Vice Chairman Hammack called for speakers.

Gary James, 13345 Fox Hole Drive, Fairfax, Virginia, came forward. He identified himself as the church administrator and spoke in support of the application.

Mr. Byers moved to approve SPA 79-A-124-02 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

TRUSTEES OF THE LORD OF LIFE LUTHERAN CHURCH OF BURKE, VA AND T-MOBILE NORTHEAST, LLC, SPA 79-A-124-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-A-124 previously approved for church, nursery school and child care center to permit telecommunication facility. Located at 5116 Twinbrook Rd. on approx. 3.04 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 17. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-1.
3. The area of the lot is 3.04 acres.
4. The staff recommends approval and the Board adopts its rationale.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in appropriate sections 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 Trustees of the Lord of Life Lutheran Church of Burke, VA and T-Mobile Northeast, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application 5116 Twinbrook Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s), and/or use(s) as indicated on the Special Permit Amendment plat titled Lord Of Life Church, prepared by Compass Technology Services, dated November 17, 2008 as revised through June 29,2009 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted uses.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions.

Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum seating capacity for Lord of Life Lutheran Church shall be limited to a total of 404. The maximum daily enrollment for the nursery school and child care center shall be limited to 99. There shall be no more than 80 children on the site at any one time. The hours of operation for the nursery school and child care center shall be limited to 7:00 am to 6:30 pm Monday through Friday.
6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 157 spaces.
7. Transitional screening 1 (25') shall be provided and maintained along the northern lot line. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of Fairfax County Urban Forest Management.\*
8. The barrier requirement shall be waived, however, a fence may be installed along the property's northern boundary as indicated on the Special Permit Amendment plat.
9. Interior parking lot landscaping shall be provided and maintained in accordance with provisions of Section 13-106 of the Zoning Ordinance.
10. Any lighting of the parking areas shall be in accordance with the following:
  - a. The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - b. The lights shall be a design that focuses the light directly onto the subject property

- c. Shields shall be installed, if necessary, to prevent the light and glare from projecting beyond the facility.
- 11. The Park Authority property used in conjunction with these uses approved by this Special Permit will not, except for landscaping and temporary construction and grading easements, extend beyond those areas indicated on the Special Permit Plat.
- 12. The playground area will be surrounded by a fence six (6) feet in height.

These conditions incorporate and supersede all previous conditions. This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF ST. JAMES EPISCOPAL CHURCH AND T-MOBILE NORTHEAST LLC, SPA 86-V-052-03 (in association with SE 2009-MV-006)

Vice Chairman Hammack noted that SPA 86-V-052-03 had been indefinitely deferred at the applicant's request.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF CHESTERBROOK METHODIST CHURCH, SPA 80-D-068-02

Vice Chairman Hammack noted that SPA 80-D-068-02 had been indefinitely deferred at the applicant's request.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. HUDSON AND TANYA LAFORCE, SP 2009-DR-068 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck addition 6.0 ft. from side lot line and roofed deck 25.0 ft. from front lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a through lot. Located at 6302 Hunting Ridge La. on approx. 14,804 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((38)) 16.

Vice Chairman Hammack called the applicants to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Tanya LaForce, 6302 Hunting Ridge Lane, McLean, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions.

Ms. LaForce presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the current deck was in the middle of the backyard, and they would like to move it to the side, so that it could be used for T-ball and soccer. Ms. LaForce noted that due to the proximity of Kirby Road, there were privacy issues, which is why they needed a six-foot fence.

In response to questions from Mr. Hart and Ms. Gibb regarding the height of the fence, Ms. Caffee said she had made a site visit, and noted that the fence was barely visible from Kirby Road. Mrs. LaForce stated that several pine trees blocked the view of the fence, and there were several other fences at this same height in the neighborhood.

Vice Chairman Hammack called for speakers.

Christine Leonard, architect for the project, came forward. She stated that no large trees or shrubs would be removed. She said that the applicants had the support of their neighbors, and submitted a petition with their signatures.

Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2009-DR-068 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HUDSON AND TANYA LAFORCE, SP 2009-DR-068 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck addition 6.0 ft. from side lot line and roofed deck 25.0 ft. from front lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a through lot. Located at 6302 Hunting Ridge Lane on approx. 14,804 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((38)) 16. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation for the addition.
3. The front porch seems to be a logical and appropriate addition to the house.
4. From the drawings provided, it is depicted as a fairly insubstantial addition; a roof over the front step and two posts to hold it up.
5. Only one corner of the roof extends into the minimum yard.
6. It is sort of an oddly shaped lot and the house is turned at almost 45 degrees to the lot lines.
7. The Board did not think the front porch would negatively impact anyone.
8. The porch would be particularly helpful to someone trying to unlock the door in the rain with groceries.
9. With respect to the deck addition, based on the record, the Board thought it would not be visible because it is so low.
10. It counts as an addition because of the treatment of the sides below the floor of the deck, but because of the fence and topography, the Board thought it would not have any particular negative impact on anyone.
11. If the deck were placed behind the addition, it would extend further into what useable space there is

- in the backyard, and it would also be closer to the street.
12. On a lot like this, where the lot is a through lot, the side yard is probably quieter and more appropriate for outdoor living space than putting the deck closer to Kirby Road and the traffic noise.
  13. The Board adopted the rationale in the staff report for approval of the porch and deck.
  14. The fence is a closer call because, although this is a through lot, it looks like the house next door is facing Kirby Road, as are the four houses across the street; from the photographs the fence appears to be consistent with the next door neighbor.
  15. We have testimony regarding the vegetation concealing the fence.
  16. The fence does appear to be set back somewhat from the street.
  17. The Board has a petition signed by several neighbors in support of the fence.
  18. On the record, the fence appears to meet the standards in the standard special permit resolution.
  19. The additional standards set out in Section 8-922 have been met.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the proposed roofed deck, deck addition and fence as shown on the plat prepared by John E. Krobath, Rice Associates dated June 9, 2005 and signed June 10, 2005, revised by Christine A. Leonard and signed through June 8, 2009 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (6,268 square feet existing + 9,402 square feet (150%) = 15,670 total square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. BARRANDA RIDGE, LLC, AND DREAM TO RIDE, LLC, SP 2009-SP-067

Vice Chairman Hammack noted that SP 2009-SP-067 had been administratively moved to November 17, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038-02 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modifications of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8, CRA and HC. Providence District. Tax Map 49-2 ((1)) 26C.

Vice Chairman Hammack called the applicants to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart gave a disclosure that his law firm was involved in a case where some of the opposition's attorneys were from Mr. McDermott's firm, the applicant's agent, but said that matter was unrelated to this application. Mr. Hart indicated he did not believe his ability to participate in the case would be affected.

Frank McDermott, 1751 Pinnacle Drive, McLean, Virginia, agent for the applicant, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said a special permit issued in 2008 was conditioned upon the applicant obtaining building permits within one year of the approval. Due to unforeseen issues, the applicant had been unable to do so, and was requesting an additional 12 months, or possibly longer.

Mr. McDermott presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant had completed structural and accessibility improvements and fire suppression management on the site, but was then advised a site plan was necessary. Mr. McDermott stated that rezoning and special exception approvals had been obtained, and the applicant was working to obtain a site plan on the entire property.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SPA 2006-PR-038-02 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038-02 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modifications of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8, CRA and HC. Providence District. Tax Map 49-2 ((1)) 26C. 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 6, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant provided testimony, and staff agreed, that the applicant has worked diligently to get its building permit within the year since the time their special permit was approved.
3. Things went awry and the Board understands how those things happen.
4. The applicant continues to work to file a site plan.
5. The applicant has made arrangements to have the site plan prepared.
6. Since the staff is in agreement and, from the report, the applicant has done a lot of work so far, the Board saw no reason not to allow the applicant to have 18 more months to obtain a site plan.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the appropriate sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, June 16, 2009, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.
3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within eighteen (18) months 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.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A. *(Admin. moved from 12/16/08, 1/13/09, 3/10/09, 4/21/09, 4/28/09 and 5/19/09 at appl. req.) (Continued from 6/2/09 and 8/11/09.)*

Vice Chairman Hammack called the applicant to the podium.

Mr. Hart gave a disclosure that his law firm was engaged in a case with Mr. Emerich's firm, the agent for the applicant, but said that case was unrelated to this hearing. Mr. Hart indicated he did not believe his ability to participate in the case would be affected.

At the direction of the Vice Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Jerry Emerich, agent for the applicant, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.



Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant was requesting an amendment to allow several changes, including the deletion of the ten-year time frame for construction of previously approved crypts, columbaria, mausoleums, and niches; deletion of the previously approved locations for these structures, and the ability to place them anywhere on the property subject to a 50-foot setback; deletion of native trees previously shown to be saved; and a 30-year, long-range plan associated with stockpiling soil on the property, with a maximum height of 25 feet, covering 6.5 acres, which in some areas would be 32 feet above present grade. Ms. Langdon said the proposed stockpiling would be located in the northeast corner of the cemetery adjacent to the Long Branch Stream Valley along the eastern and southern periphery. She said the Stream Valley was designated as a Resource Protection Area (RPA), as well as an environmental quality corridor, noting that much of the Stream Valley was located within a floodplain. Staff recommended approval in part, specifically the deletion of the time limit on construction of the previously approved structures, but did not support approval of the other requests. Ms. Langdon said staff requested that the applicant provide a plot plan for review to get an idea of the number of structures contemplated with their possible locations, but it had not been provided. Ms. Langdon said a development condition had been added, so if the request was approved, all structures would be located a minimum of 100 feet from the lot line, with the hope that there would not be many close to residential lots. She said the applicant wanted construction to be allowed on top of the stockpile once it reached completion, but staff did not support that request, as it could potentially allow 25-foot structures on top of a 25- to 30-foot stockpile. Ms. Langdon said that although a stockpile currently existed on the property, the particulars of the stockpile were not shown on any previous special permit plats.

She reminded the Board that the public hearing had been opened on June 2, 2009 and was continued until today, so that staff and the applicant could address outstanding issues. Ms. Langdon then provided a chronology of meetings and submissions since that time, noting that staff from the Department of Public Works and Environmental Services (DPWES) and the Department of Planning and Zoning met with the applicant on June 29, 2009 and on August 11, 2009. The applicant submitted a revised rough grading plan to DPW for review. On September 21, 2009, staff from DPW's Stormwater and Geotechnical Section provided a memorandum with comments on the August 11<sup>th</sup> submission, and on September 24, 2009, the applicant submitted a revised special permit amendment plat. She said the applicant submitted comments and revised development conditions on September 25, 2009, but noted that an addendum outlining any changes or modifications of staff recommendations would have been due on September 21<sup>st</sup>. She said the recently submitted plat and the revised development conditions were submitted to several County agencies for review, but there had not been sufficient time for review or comments back from those agencies. Further, Attachment A had been referenced in the applicant's submission, but staff had not received that attachment.

In closing, Ms. Langdon said that there were still several outstanding issues on the property, and referenced a recent memo from Stormwater Management, which identified problems with the recently submitted plans. She noted that staff from DPWES was present to answer questions.

In response to a question from Mr. Beard, Ms. Langdon stated that the pictures in the staff report were indicative of the stockpiling which staff had referenced, specifically one large stockpile covering 6 ½ acres of the site.

Ms. Gibb and Ms. Langdon discussed other pending cemetery applications which have stockpiling issues, with Ms. Langdon noting that grading plans had been submitted, but were rejected in favor of the applicants filing a special permit amendment.

In response to a question from Ms. Gibb, Ms. Langdon stated that the issue of cemetery stockpiling had not come up before, since staff was not aware that it was being done. She said this stockpiling had been noticed by an inspector who was at the site to review construction of a maintenance building.

In response to a question from Mr. Hart, Ms. Langdon stated that staff had just received a copy of the applicant's changes to the development conditions, and would need at least a couple of weeks to review them and coordinate feedback from other county agencies.

Mr. Hart and Ms. Langdon discussed a petition submitted by adjacent property owners, which complained about a road being moved to within 72 feet of their property instead of the required 102 feet. Ms. Langdon said the applicant was proposing to clear out that area for more gravesites.

In response to a question from Mr. Hart, Jerry Stonefield from DPWES explained the process of site-plan review within the stormwater section of the Environmental and Site Review Division, noting that they try to ascertain the approximate size and location of stormwater facilities to make sure that enough space is being designated on the site. He said in this case, not enough space was being provided.

Mr. Hart commented on the complicated nature of the application, and asked if the situation would be aggravated by the status quo, until a thorough review could be completed. Ms. Langdon replied that time did not seem to be an issue, but noted that the applicant had been told to remove debris and stabilize the stockpile.

Mr. Hart and Ms. Langdon discussed stockpiling taking place at other cemeteries in the County, with Ms. Langdon noting that the cemeteries on Lee Highway and South Kings Highway were under violation for stockpiling. They also discussed trucking out the excess dirt vs. stockpiling it on site.

In response to a question from Mr. Smith, Ms. Langdon said that no stockpile was shown on the last cemetery plat submitted.

Jerry Emrich, agent for the applicant, commented that the applicant had appealed the decision that the stockpile required a special permit. He said the appeal was on hold, since the applicant was trying to resolve the problem through the legislative process.

Mr. Smith, Ms. Langdon, and Mr. Emrich discussed the approval process for the stockpile area. Mr. Emrich commented that it was a subject of disagreement, whether a full or minor site plan would be required, but said his client would comply with whatever was required.

Mr. Emrich addressed the outstanding issues, including the County's request for a site plan, noting that the applicant had submitted a rough grading plan which dealt with the stockpiling issue. Mr. Emrich pointed out that the cemetery had been in existence in this location for over 50 years, and was a permitted use in an R-1 district with a special permit. Regarding the location of approved crypts, he stated that they were to be located 50 feet from the property line, but the applicant was now proposing a setback of 100 feet. Mr. Emrich referenced the September 21, 2009 memo from DPWES, stating that the items mentioned were engineering issues, and did not need to be addressed by the Board. He also discussed the stormwater management, RPA, soil erosion, and sediment control on the property, noting that these were all regulatory items. Mr. Emrich spoke against staff's recommendation for Board review every five years. He said the applicant needed the ability to plan ahead and be assured there would not be another legislative hearing at a later time. Mr. Emrich addressed the stockpiling issue, noting that the dirt would build up over time with trucks dumping new dirt over existing dirt, thereby compacting it. He also stated that the applicant had retained the services of DeLashmutt Associates, civil engineers, whose comments had been given to staff. Mr. Emrich then introduced Charles DeLashmutt to address the driveway issue.

Charles DeLashmutt, 1120 S. George Mason Drive, Arlington, Virginia, said there was an existing 25-foot landscaped buffer surrounding the entire cemetery where it abuts residential property. He noted that this dense buffer would remain in place between the private drives for grave access and adjacent residential homes.

Mr. Emerich commented that this area had been identified by staff as an area of concern for tree saving and tree removal. He said the applicant proposed to remove some of the trees there and eventually install graves over the long term. Mr. Emrich acknowledged that several issues still needed further investigation, but noted that these were relatively new issues in cemetery regulations. He asked that the Board approve the application.

In response to a question from Mr. Smith, Ms. Langdon said that staff would like to review a plot plan, so that they could see where the crypts could be built in relation to the proposed setback.

Mr. Smith, Mr. DeLashmutt, and Mr. Stonefield discussed the approximate size and location of the stormwater facilities, with Mr. DeLashmutt describing two ponds or silt basins. However, Mr. Stonefield noted that the applicant had not committed to not encroaching on the RPA.

Mr. Hart and Ms. Langdon discussed the area where no columbariums, niches, or masoleums would be built. Mr. Hart and Mr. DeLashmutt discussed the current screening on the cemetery property, and Mr. DeLashmutt said the dirt in the stockpile would be used for grading the swale area towards the creek.

Ms. Gibb, Mr. DeLashmutt, and Mr. Stonefield discussed the proposed stormwater facilities. Mr. Stonefield stated that the silt basins designed for permanent impoundment would not meet the current standards.

Ms. Gibb assumed the chair.

In response to a question from Mr. Beard, Mr. DeLashmutt introduced Mike Dougherty, acting president of the cemetery, who explained that a small amount of dirt was used for fill after a grave settled. He said the stockpiled dirt was mainly being used to level out the back part of the cemetery to prepare it for grave use in the future.

Vice Chairman Hammack resumed the Chair, and called for speakers.

Ken Chayt, 9712 Ceralene Drive, Fairfax, Virginia, came forward, and spoke in opposition to the application. He presented a petition signed by 41 owners and residents of the neighborhood, all of whom were opposed to the proposal. His major concerns dealt with the proximity of the crypts and gravesites to the adjacent homes and the relocation of the cemetery road.

Mr. Hart, Mr. DeLashmutt, and Mr. Chayt discussed the grade differential from the houses to the cemetery road. Mr. DeLashmutt said the road was approximately 8 feet higher.

Mr. Smith questioned Mr. DeLashmutt regarding the previously mentioned 100-foot setback. Mr. DeLashmutt stated that restriction was only applicable for ground burials.

Mr. Smith, Mr. Hart, Mr. Emrich, and Ms. Langdon discussed the location of the cemetery road and the related tree buffering. Mr. Dougherty explained that the sketch was a preliminary drawing which plotted out gravesites.

In response to a question from Vice Chairman Hammack, Mr. DeLashmutt said the circular road shown on the sketch was no longer planned to be built.

Vice Chairman Hammack closed the public hearing, and discussion ensued regarding possible hearing dates.

Mr. Smith moved to defer decision on SPA 81-A-022-09 to January 6, 2010, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 4-2. Mr. Byers and Mr. Beard voted against the motion. Chairman Ribble was absent from the meeting.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON, D.C., SPA 89-S-013-02  
Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 previously approved for church with child care center to permit increase in land area, the addition of a nursery school and private school of general education and site modifications including building additions. Located at 11821, 11829, 11901, 11911, 11919 Braddock Rd. on approx. 16.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 31, 32, 33, 34 and 42. (*Admin. moved from 8/11/09 at appl. req.*)

Vice Chairman Hammack noted that the applicant had requested a deferral to the November 15, 2009 meeting.

Ms. Gibb moved that the public hearing on SPA 83-S-013-02 be deferred until December 15, 2009, at 9:00 a.m., as requested by the applicant. The motion carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:00 A.M. HARVEST CHINESE CHRISTIAN CHURCH, SP 2009-SU-066

Vice Chairman Hammack noted that SP 2009-SU-066 had been indefinitely deferred at the applicant's request.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:30 A.M. PHILIP C. ELVY, A 2009-HM-027 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the PRC District in violation of Zoning Ordinance provisions. Located at 2027 Lakebreeze Way on approx. 1,885 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((12)) (2) 34.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appeal had been withdrawn.

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~ ~ ~ October 6, 2009, Scheduled case of:

9:30 A.M. MARILYN HILDEBEIDEL, A 2009-MV-034 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit and has established outdoor storage in excess of what is permitted on property in the RE District in violation of Zoning Ordinance provisions. Located at 10900 Harley Rd. on approx. 5.08 ac. of land zoned RE. Mount Vernon District. Tax Map 118-2 ((2)) 11A.

Vice Chairman Hammack noted that A 2009-MV-034 had been administratively moved to a date to be determined in February of 2010, at 9:30 a.m., at the applicant's request.

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9:30 A.M. KEVIN M. FERGUSON AND C. NICOLE FERGUSON, A 2009-MV-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard on property in the R-E District in violation of Zoning Ordinance provisions. Located at 7408 Old Spring Dr. on approx. 1.29 ac. of land zoned R-E. Mount Vernon District. Tax Map 118-1 ((2)) 37.

Vice Chairman Hammack noted that A 2009-MV-035 had been administratively moved to December 8, 2009, at 9:30 a.m., at the applicant's request.

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~ ~ ~ October 6, 2009, After Agenda Item:

Approval of April 19, 2005, May 12, 2009, and June 16, 2009 Minutes

Mr. Beard moved to approve the Minutes. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Minutes by: Suzanne L. Frazier

Approved on: June 22, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 20, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:17 a.m. [There was technical difficulty this morning, which resulted in the meeting being called late.] Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M. TRUSTEES, SPRINGFIELD MASONIC LODGE 217, A.G. & A.M., SPA 77-S-189 (In association with SE 2009-LE-027) (place of worship) (*Indefinitely deferred from 1/27/09 at appl. req.*) (*Reactivated from indefinitely deferred.*)

Chairman Ribble noted that SPA 77-S-189 had been administratively moved to October 27, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M. DAVID R. SIERZCHULA, SP 2009-SU-069 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 14.0 ft. from side lot line and accessory structure to remain 2.8 ft. from side lot line and 7.6 ft. from rear lot line. Located at 15467 Meherrin Dr. on approx. 13,085 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 50.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

David Sierzchula, 15467 Meherrin Drive, Centreville, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Mr. Sierzchula presented the special permit request as outlined in the statement of justification submitted with the application. He said the error in the building location occurred many years before he was the homeowner. It was 1989 when the original owner added a deck and sunroom addition, and had not followed through with obtaining the required permits. Mr. Sierzchula said he hoped the Board would agree that the circumstances of his application were done in good faith, and that the much needed renovation of their kitchen would be permitted and they could commence with the construction.

As there were no speakers, and Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-SU-069 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID R. SIERZCHULA, SP 2009-SU-069 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 14.0 ft. from side lot line and accessory structure to remain 2.8 ft. from side lot line and 7.6 ft. from rear lot line.

Located at 15467 Meherrin Dr. on approx. 13,085 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 50. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 20, 2009; 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 specific criteria set forth under the Ordinance Sections 8-006 and 8-914 for these permits to be granted.
3. In particular, with respect to the sunroom addition, that the error was done in good faith or through no fault of the property owner.
4. The testimony is that the former owner extended and enclosed the sun-roof, which is following the side wall of the existing house in 1989, prior to the present applicant taking title to the property.
5. It has been there for all those years without impacting anyone in any way.
6. The construction that was done; clearly the applicant has satisfied the condition that the non-compliance was done in good faith.
7. With respect to the play-set, the testimony is there is no other really good location on the property to grant this, and it is not seen that the play-set or the sunroom is detrimental to the use and enjoyment of other property 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**, with the following development conditions:

1. This special permit is approved for the location of the existing sunroom addition and accessory structure (playset) as shown on the plat prepared by Stephen L. Moore, Stephen L. Moore Land Surveying, Inc. dated July 6, 2009, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits and final inspections for the sunroom addition shall be obtained or the structure shall be brought into compliance with Zoning Ordinance Requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M.       NAWAL TODI, SP 2009-PR-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.5 ft. from front lot line. Located at 2121 Tysons Executive Ct. on approx. 7,567 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 1.

Chairman Ribble noted that there was a request for a deferral at the applicant's request, and called for a motion.

Mr. Hammack moved to defer SP 2009-PR-070 to December 15, 2009, at 9:00 a.m. The motion was seconded by Ms. Gibb, and carried by a vote of 7-0.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M.       LEO GRANDINETTI, SP 2009-PR-065 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 4.8 ft. from side lot line and 5.8 ft. from rear lot line. Located at 2509 Buckelew Dr. on approx. 10,190 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((2)) 56. (*Decision deferred from 9/22/09.*)

Chairman Ribble noted that SP 2009-PR-065 had been deferred for decision. He asked staff if there was new information for consideration.

Shannon Caffee, Staff Coordinator, said that morning she submitted a memorandum with attachments received from the applicant's agent which contained testimony, proposed new plans, and proposed new development conditions.

Chairman Ribble called for a motion.

Mr. Byers moved to deny SP 2009-PR-065 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LEO GRANDINETTI, SP 2009-PR-065 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 4.8 ft. from side lot line and 5.8 ft. from rear lot line. Located at 2509 Buckelew Dr. on

approx. 10,190 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((2)) 56. (Decision deferred from 9/22/09) 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 20, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. It is determined that the error exceeds 10 percent of the measurement involved.
3. The non-compliance was not 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 an issuance of a building permit.
4. Such reduction will impair the purpose and the intent of the Ordinance.
5. It will be detrimental to the use and enjoyment of other property in the immediate vicinity.
6. It could create an unsafe condition with respect to both other property and public streets.
7. To force compliance with minimum yard requirements would not cause unreasonable hardship upon the owner.
8. The applicant indicated that he believed Fairfax County told him he could build a shed in his back yard, which was probably true, but it is not believed any Fairfax County employee said a shed 5.9 feet, 4.8 feet, at a height of 16.5 feet could be built.
9. What staff may have said was, if it was at or below 8.5 feet tall, you can put it in your backyard.
10. Although it is speculation regarding staff's instructions, anyone who builds something this large, 16.5 feet, should have additional questions about whether it is in compliance or not.
11. It is noted that this did not require a building permit because the shed itself is 103.2 square feet, but perhaps would have if the lean-to in the back was included, and the reason it did not require a building permit was because there was no access between the shed and the lean-to.
12. Also questioned is the good faith of this individual, and it is not an intent to judge, but after the previous public hearing this individual, as witnessed by staff, did accost Mrs. Rooney and verbally berate her with regard to her comments, and although that is not within the BZA's purview having to do with land use, it does talk to the credibility of the witness. If the witness is willing to go to this extent with an individual who is elderly, it calls into question the other comments that have been made.
13. The reduction will impair the purpose and intent of the Ordinance, as the purpose of the Ordinance, particularly in a county the size of Fairfax County with over a million people, is not only to respect the property rights of the individual owner, but to respect the rights of those that are around him.
14. This is a classic case of "I'm going to do what I'm going to do, when I want to do it, how I want to do it, and then I'll beg forgiveness." We cannot operate that way as a civil society; we all have to live with one another.
15. It is detrimental to the use and enjoyment of the other property in the immediate vicinity.
16. Mrs. Rooney has indicated that she looks out her back and sees a 16.5 foot high shed.
17. Counsel for the applicant indicated that the applicant can move the shed and put it in the middle of his yard, and it would be in compliance.
18. It is seriously doubted that the applicant would like to look out his rear window and see a shed that is 16.5 feet high.
19. Although the revised conditions talk about something that is 15 feet high and proposed screening; the difference between 16.5 feet and 15 feet is not relevant.
20. This could create an unsafe condition with respect to Mrs. Rooney's property.
21. There have been no formal complaints through stormwater management with regard to environmental issues, but that does not mean that there are not environmental issues but only that there has not been a formal complaint.
22. It is known that neighbors are very loath to go the formal route and complain, particularly when those individuals are older; it takes a tremendous amount of time and a tremendous amount of effort.
23. To force compliance with minimum yard requirements would not cause an unreasonable hardship upon the owner, because the hardship, whatever it may be, is self-inflicted, and has not taken in consideration the neighbors that are in this neighborhood.
24. Our elders should be treated with respect, and that is where they receive some measure of fairness as before a group such as this.



25. It is noted with great interest, and agreed with, that Mrs. Rooney is a member of what Tom Brokaw has called the "Greatest Generation."

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 4-3. Mr. Beard, Mr. Smith, and Mr. Hart voted against the motion.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M. WAYNE M. TESTERMAN, SP 2009-SP-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain in the minimum required front yard. Located at 7640 Clifton Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((14)) 14. (*Admin. moved from 8/4/09.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Wayne Testerman, 7640 Clifton Road, Fairfax Station, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation

Discussion ensued with Ms. Langdon and Board members which concerned the road being a dead end; original setbacks when the lot had consisted of 10 acres; the lot's lack of screening; the two structures' proximity to Goldflower Court; and, the Zoning Administration Division determination that the property required a special permit.

Mr. Testerman presented the special permit request as outlined in the statement of justification submitted with the application. He said his neighbor apparently had a personal problem with him, as it was the neighbor who called in a complaint. Mr. Testerman said he could barely see his neighbors' houses, even during the winter, because of the dense woods and heavy vegetation. Mr. Testerman said he built his garage around 1990 to look like a barn because it was in the country; that he built it further away from the property line than the original building, which had collapsed; that his reconstructed garage's footprint was slightly smaller than the original; that he had no intent of negatively affecting anyone; that all his neighbors except Mr. Graham, who has lived in the neighborhood for eight years, thought it was attractive; and, he had no idea that any building permits were required.

Mr. Beard clarified that the 1950 building permit referenced in the staff report was for the brick structure, and it was the barn-looking garage that was built around 1990.

Mr. Testerman responded to Mr. Hammack's questions concerning the development of the subdivision; his 20 years of renting, and recent purchase of the property several years ago; the fact that the former owners rented to him with an understanding that it would be he to whom they would sell when the time came; and, the proximity of Mr. Graham's property to his. He said Mr. Graham's mother and brother lived there for years and all got along perfectly. He said he did not know what went wrong after Todd Graham took residence.

In response to Mr. Hammack's question concerning utilities, Mr. Testerman said there was electricity, but no water.

Discussion ensued regarding an adjoining subdivision; the location of his and Mr. Graham's property on a drawing; the time-frame of Goldflower subdivision's development; configuration of certain lots; and, the particulars of a by-right subdivision's approval.

Chairman Ribble noted one opposition letter from Mr. Todd Graham.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-SP-033 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE M. TESTERMAN, SP 2009-SP-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain in the minimum required front yard. Located at 7640 Clifton Rd. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((14)) 14. (Admin. moved from 8/4/09.) 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 20, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. On the record before the Board, the applicant has presented testimony showing compliance with the required standards.
3. From the photographs, the impact, if any, on Lot 7 or the Gold Flower Court side of things from these structures is minimal.
4. The one structure has been there for almost 60 years.
5. The newer structure still has been there for a number of years, and it is further away from the house on Lot 7 than the older structure is.
6. It is understood why this is technically a front yard, although to the innocent passerby, it would be hard for them to conceive of this as a front yard.
7. These structures are set well back from the street, and the only people who would be getting close to it would either be on Lot 7 or driving up to the end of a lonely dead-end with a lot of trees around it.
8. Given the photographs and the configuration that is depicted on these drawings, there is not going to be a significant negative impact.
9. These structures have been there for a long time, and they don't seem to be particularly harming anybody.
10. The Board does not have any documentation showing an approval, but it appears that the Gold Flower Court subdivision probably took place in the 1970s, which would have been many years after the first of the two structures was built.
11. This was also part of a larger subdivision more recently, and it does not seem to have been an issue at the time. There have been opportunities for this to have come up, and it did not.
12. If this was coming in fresh and they were asking for permission to do this, the Board might not allow it because there is room to do it, but because these have already been here in this configuration for so long, it does not make any sense to move it, and moving it would not have any material change in what the impact of it would be.

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 structures (brick building #1 and frame garage) as shown on the plat prepared by Scartz Surveys, dated April 6, 2009, as submitted with this application and is not transferable to other land.
- 2. Within 120 days of approval of this application, building permits and final inspections shall be obtained for the accessory structure (frame garage) 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 7-0.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M.. BRIAN AND GINA DEAN, SP 2009-DR-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from front lot line of a corner lot. Located at 2106 Grayson Pl. on approx. 15,900 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 89. (*Admin. moved from 9/22/09 at appl. req.*)

Chairman Ribble noted that SP 2009-DR-053 had been administratively moved to March 24, 2010, at 9:00 a.m., at the applicants' request.

Susan C. Langdon, Chief, Special Permit and Variance Branch, concurred with Chairman Ribble's statement that this date would be a Wednesday.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for place of worship, private school of general education and telecommunications facilities to permit site modifications including columbarium. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A.

Chairman Ribble noted that SPA 83-D-022-04 had been administratively moved to December 8, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:00 A.M. ST. BERNADETTE'S CATHOLIC PARISH, SPA 78-S-276 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP S-278 previously approved for a church and private school of general education to permit addition of nursery school and child care center. Located at 7600 Old Keene Mill Rd. on approx. 24.73 ac. of land zoned R-2. Braddock District. Tax Map 90-1 ((1)) 1.

Chairman Ribble noted that SPA 78-S-276 had been administratively moved to January 6, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:30 A.M. MATTHEW D. FERGUSON, A 2008-PR-049 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has conducted land disturbing activities by installing a brick and slate walkway in the side yard and has altered the pre-existing drainage swell without an approved grading plan in violation of Zoning Ordinance provisions. Located at 1907 Gables La. on approx. 11,102 sq. ft. of land zoned R-3 and H-C. Providence District. Tax Map 39-1 ((32)) 40. (*Admin. moved from 10/28/08, 1/27/09, 4/21/09, and 6/30/09 at appl. req.*)

Chairman Ribble noted that A 2008-PR-049 had been administratively moved to November 3, 2009, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:30 A.M. BAHRAM B. FOROUZANFAR, A 2009-MA-033 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has paved a portion of the front yard on property located in the R-2 District in excess of the allowable surface area under Zoning Ordinance provisions. Located at 6548 Spring Valley Dr. on approx. 752 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 52. (*Admin. Moved from 10/20/09.*)

Chairman Ribble noted that A 2009-MA-033 had been administratively moved to October 27, 2009, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 20, 2009, Scheduled case of:

9:30 A.M. EP COMPANY L.C. (A/K/A E. P. MOWING AND LANDSCAPING INC.), A 2009-MV-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that

appellant is operating a storage yard, a use not permitted in the zoning district(s), has expanded the nonconforming use of a contractor's offices and shops and has constructed concrete bins in the floodplain and Resource Protection Area without special exception approval and without site plan or building permit approval, all on property in the C-6, C-8, H-C, CRD and Pt. HD Districts in violation of Zoning Ordinance provisions. Located at 8801 Richmond Hwy. on approx. 2.85 ac. of land zoned C-6, C-8, HC, CRD and pt. HD. Mt. Vernon District. Tax Map 109-2 ((2)) 9. (*Decision deferred from 7/28/09.*)

Chairman Ribble noted that this appeal had been deferred for decision. He asked staff whether there was additional information.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff had a presentation, Staff Coordinator, Charles Fitzhugh, was present, and the appellant's the agent, Ms. Kelsey, had distributed information that morning.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth.

Charles Fitzhugh, Zoning Enforcement Branch, presented staff's position as outlined in the staff report. Staff maintained that the appellant had been operating his storage yard by expanding the non-conforming use of a contractor's office and shop (a landscaping business), and had constructed concrete bins in the flood plain and resource protection area without a special exception, site plan or building permit approval, which was in violation of Zoning Ordinance provisions. In 2002 an appeal was filed in response to a Notice of Violation contending that the use of the subject property as a commercial contractor's office and shop existed prior to the Zoning Ordinance regulations requiring site plan approval. William Shoup, the Zoning Administrator at that time, noted in his December 26, 2002 zoning interpretation letter that the use of the property as a contractor's office and shop was a legal, non-conforming use and that a Non-Residential Use Permit was issued for the existing business. Mr. Shoup's letter contained a plat, submitted 1963, as a basis for the purpose of establishing the extent of the non-conforming use. The December 26, 2006 letter stated the business may operate without site plan approval so long as there were no additional structures on the property beyond those reflected on the 1963 plat. Staff contended that the 1963 plat clearly showed the dimensions of each building on the subject property, four of which were substantially smaller in size than the present structures located there. At the July 28, 2009, public hearing, the representative for the appellant displayed a plat for the property dated 1999, which was represented as depicting the dimensions of the buildings existing on the property when the appellant committed to restricting the non-conforming use to that which was shown on the 1963 plat. The review of the 1999 plat, sealed by a land surveyor, stated that the plat was a boundary survey, and the physical improvements shown were from the County's aerial photography, which did not contain dimensions of the buildings. Staff did not believe that the aerial representations provided accurate dimensions of the structures on the property, and performed its own measurements of the buildings shown on the 1999 plat with an engineer scale to see if the aerial dimensions were those shown on the 1963 plat. It was noted that three of the four buildings, which staff contended had been enlarged since 2002, had smaller dimensions in 1963 than those reflected on the 1999 plat.

At the appellant's request, on Tuesday, October 6, 2009, the Zoning Administrator and staff met with the appellant and his representative to review the steps needed to bring the property into compliance. At that meeting, it was noticed that the sign did not have a permit, and could not be legally established until the property was in compliance as a whole. Once the property was made compliant, the appellant could apply for a sign permit. Also, at the request of the appellant, Zoning Enforcement staff conducted a site inspection October 16, 2009. At the time of staff's inspection, it appeared that the storage yard use had been abated, therefore, that portion of the appeal was no longer at issue. The other issues, as stated in the appeal description, continue to remain, and should be brought into compliance. Those issues included the caretaker's residence and concrete bins that were stacked up on portions of the site being utilized as structures.

Staff respectfully recommended that the Board of Zoning Appeals uphold the Zoning Administrator as set forth in the Notice of Violation, dated March 20, 2009.

In response to Ms. Gibb's question of whether the non-compliant buildings could be downsized, Ms. Stanfield said it was the determination of Eileen McLane, Zoning Administrator, that the buildings would have to be removed, because they had been enlarged. They could not be reduced to their former size.

Discussion ensued regarding functions, sizes, placement, descriptions, usage, building materials of the structures identified as non-compliant, the pertaining photographs, and staff's concern about the entire property being located within the floodplain in the Resource Protection Area.

Mr. Fitzhugh explained the expansions that the Zoning Ordinance allowed. He noted that several sheds had already surpassed the permitted 250 square-foot area of expansion.

Vice Chairman Hammack assumed the Chair.

Susan Epstein, Property Maintenance Supervisor, Zoning Enforcement Branch, concurred with Mr. Smith's understanding that the original Notice of Violation letter referenced removing three structures.

Mr. Hart clarified that there were five issues: the buildings; the storage bins; whether the appellant was permitted to have a care-taker sleep in more than one of the buildings; the sign; and, whether there was a storage yard. He then noted that the storage yard matter was abated.

Discussion ensued regarding the history of the sign, and current requirements for signage.

Chairman Ribble resumed the Chair.

Michael Simms, Senior Zoning Inspector, was administered the oath before his testimony. His recollection was that the appellant was required to remove the sign and once they became compliant, they could apply for a sign permit. The sign would be inspected to assure it was placed in a proper location. He said staff's directions concerning the sign's removal had not been written but, in fact, were oral, because the initial negotiations were about the expansion in use.

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the appellant's agent, proceeded with her presentation. She explained that the submission of the 1999 plat was not necessarily to claim the buildings on the site were the correct size, but to show the 1963 plat was flawed. She pointed out the differences in the parcel's shape and lot lines, the presence of what appeared to be iron pipes, and that one of the buildings was not permanently placed, but could be relocated. Ms. Kelsey said with these referenced differences one could come to a conclusion there were other flaws in the plat.

Ms. Kelsey addressed what staff referred to as cement bins, but which she considered jersey barricades. She said her own research showed no bins evidenced on any of the site plans she reviewed, and that she found no conclusive documentation on the signage matter. Ms. Kelsey explained the use and condition of the two buildings occupied by a caretaker. She explained that the buildings were formerly tourist cabins having water, a kitchen, and electricity; that either of the two buildings would be utilized by the caretaker all week, either by Enrique Pisfil, the owner, or his son, and, the remaining two buildings' unities and kitchens were removed, and now utilized as storage sheds. Ms. Kelsey said she felt it should not matter which building was used by the caretaker.

Discussion ensued regarding particulars of Mr. Shoup's letter, and the information from which he made his determination; historic differences with information evidenced from plats; changes in techniques and tools/mechanisms for taking measurements; assumptions of why the 1963 plat was not appealed; staff's position that the structures must be razed; whether upgrading kitchen utilities was considered an expansion of a non-conforming use; clarification of the issue that only one building be utilized by a caretaker; and, consideration of 2002 and 2003 aerial photographs depicting several unidentified markings in different locations.

In closing staff comments, Ms. Stanfield pointed out that the purpose of staff's Attachment depicting jersey barriers was to display their exact appearance as opposed to the concrete blocks that constitute the structures on the property. She added that Mr. Simms confirmed that the concrete bins were not on the property at the time of the 2002 inspection.

There being no further questions or comments, Chairman Ribble closed the public hearing.

Mr. Smith moved to uphold the determination of the Zoning Administrator. He said he grappled with the 1963 plat, the 1999 plat, and the aerial photographs. He thought they should be bound by the 1963 plat. He said in this case, it was a non-conforming use that was being discussed, which meant that the use went back to

1959. He said he assumed that when the parties got together in 2002, Ms. Epstein mentioned, staff took the official plat approved by the County. It was the oldest plat that they had, and it most likely depicted what the property looked like at the time it would have qualified as a non-conforming use. He said it seemed reasonable to him why that plat was used. Mr. Smith said the appellant was represented at that time by council, that they were informed and their legal rights were known, and the decision was not appealed. Mr. Smith said he, therefore, concluded that the 1963 plat would be used, and based on that, with respect to the buildings, he would find that there has been an expansion of the non-conforming use.

Mr. Smith noted specific discrepancies in the measurements; however, no matter how it was looked at, there had been some expansion.

Mr. Smith said that with respect to the caretaker's house, depending on how one read it, Ms. Epstein testified what the County's intent was to provide that various employees would spend nights in one of the old tourist cabin units on a rotating basis in order to provide security on the property. He said his interpretation in that case was to defer to the County's intent.

Mr. Smith then referenced the concrete bins. When he looked at the photographs, it looked to him that the use of those concrete blocks appeared to actually be supporting a significant amount of earth, which was the purpose of those bins. It looked to him that probably was a structure which should go through a site plan process.

Mr. Smith said he was deferring to the County with respect to the sign.

Mr. Smith said with regard to the last issue of the storage yard, he understood that issue had been fixed.

Mr. Hart said he would second the motion for discussion. Mr. Hart said he thought he agreed with Mr. Smith for the most part, although he had some thoughts about some of the more difficult issues. With respect to the expansion of use of one of the buildings which was raised in the letter, he would conclude on that on the issue, at least, the appellant did meet their burden. He was persuaded that there was a kitchen before, and the replacement of appliances in the Building 6 cabin would not be jeopardizing the non-conforming use.

With respect to the caretaker, Mr. Hart did not believe that sentence was not clearly written. He referenced the bottom paragraph on Page 2 of Mr. Shoup's letter of December 26, 2002, saying the phrase 'on a rotating basis' was what was confusing. Mr. Shoup had placed it next to 'old tourist cabin units', instead of 'various employees.' If he had said it 'various employees on a rotating basis will spend nights in one of the old tourist cabin units, Mr. Hart said he thought staff's interpretation would make more sense to him. He disagreed with Mr. Smith on that.

On the sign violation, he said he would agree that the appellant did not meet the burden of showing that the Zoning Administrator was wrong.

As to the bins, and to the extent that the Zoning Administrator issued a violation on a certain date, it seemed they were configured as storage bins. They were piled up with these interlocking pieces to make walls and enclosures that which he thought constituted a structure

Mr. Hart thought the most difficult issue was whether the sheds, once expanded, could be cut back to be in compliance, but he thought maybe that was for a judge to determine

Mr. Hart said, regarding Mr. Smith's motion, he agreed that there was a showing that the non-conforming use was expanded.

Mr. Smith said it was a well-reasoned analysis from Mr. Hart. On Building 6, he would amend his motion to pull that back, as it was not in the original zoning violation letter. He moved to amend the motion to delete Building 6 from the finding of expansion of use.

As the Second, Mr. Hart accepted the motion. He then moved to amend Mr. Smith's motion, as amended, to upholding-in-part. They were mostly upholding, but to modify the motion to take out the night watchman issue being limited to one cabin. It was limited to one person, but that person could move around, based on the 2002 letter from Mr. Shoup.

Chairman Ribble said he would second that.

Mr. Hammack said he could not support that. He would agree with Mr. Smith; that he had read this several times, as all the Board had, and he thought the operative language was 'spend nights in one of the old tourists' cabin units.

Chairman Ribble called for a vote on the amended motion, as to whether or not one caretaker at a time can stay in more than one unit. Chairman Ribble clarified for Mr. Beard that the Board was voting on the amended motion.

Mr. Byers said he understood the parsing of language, and that the Board had to be extraordinarily careful. He said he looked at it, and he agreed with Mr. Smith; that he agreed with Mr. Hart, that one could look at it and wonder what he really meant. Mr. Byers said the one thing that made a difference to him was that Susan Epstein was there. That she is under oath, and this is what Mr. Shoup meant. Mr. Byers said he thought Mr. Shoup meant one cabin

Chairman Ribble called for a vote on the amended motion, as stated by Mr. Hart.

The motion failed on a vote of 2-4. Mr. Beard, Mr. Smith, Mr. Byers, and Mr. Hammack voted against the motion. Ms. Gibb was not present for the vote.

Discussion ensued with regard to the confusion created by the meaning of the letter, and on all the issues.

At Chairman Ribble's request, Mr. Smith clarified that the part of Mr. Hart's motion that he accepted was the removing Building 6 from the analysis, but there would still be a finding of an expansion on buildings 5, 8 and 9.

Chairman Ribble called for a vote.

The motion to uphold the Zoning Administrator's determination, pursuant to Mr. Smith's motion, carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding legal matters and representation in court 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. Ms. Gibb was not present for the vote.

The meeting recessed at 11:54 a.m. and reconvened at 12:35 p.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Paula A. McFarland

Approved on: February 1, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 27, 2009. The following Board Members were present: V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John F. Ribble III and Thomas Smith were absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:05 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. BRITTANY L. VO, DDS, SPA 80-D-035-04

Vice Chairman Hammack noted that SPA 80-D-035-04 had been withdrawn.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. TRUSTEES, SPRINGFIELD MASONIC LODGE 217, A.G. & A.M., SPA 77-S-189 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 77-S-189 to permit place of worship. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (*Indefinitely deferred from 1/27/09 at appl. req.*) (*Reactivated from indefinitely deferred.*) (*Admin. moved from 10/20/09 at appl. req.*)

Vice Chairman Hammack called the applicants to the podium.

Susan Langdon, Chief, Special Permits and Variance Branch, noted that the applicant had not yet arrived.

Vice Chairman Hammack said the case would be moved to the end of the agenda.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. HOMERO A. ESCOBAR, SP 2009-LE-061 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.2 ft. from side lot line and to permit a fence greater than 4.0 ft. in height in a front yard. Located at 3403 Sapphire Ct. on approx. 10,470 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 79.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Homero Escobar, 3403 Sapphire Court, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Rodney Root, agent for the applicant, made the presentation, since the applicant's ability to speak English was limited. He pointed out that the Board had already heard two other fence height increase applications on this same road within the last twelve months, which were approved. He said Gentele Court had become a major thoroughfare, and the fence would shield the residence from traffic, noise, and intrusion. Mr. Root said the shed existed when the applicant bought the property, and was located behind the house. He was unaware that a permit was necessary when he moved it to the back of the property, so that a deck could be constructed.

In response to a question from Mr. Hart, Mr. Root said that the shed did not interfere with the drain, noting that there was a mild slope on the property.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to approve SP 2009-LE-061 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOMERO A. ESCOBAR, SP 2009-LE-061 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.2 ft. from side lot line and to permit a fence greater than 4.0 ft. in height in a front yard. Located at 3403 Sapphire Ct. on approx. 10,470 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((24)) 79. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant is compliant with all seven of the delineated items under Sect. 8-914.
3. The Board received two (2) e-mails and one (1) letter in support of the application.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of the shed and the proposed relocated fence as shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, Inc. dated April 2, 2009, revised through June 19, 2009 and signed through June 24, 2009 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 a.m. GIOVANNI GARCIA, SP 2009-PR-073 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 14.6 ft. from side lot line. Located at 8432 Overbrook Rd. on approx. 1.0 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((8)) 16.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Giovanni Garcia, 8432 Overbrook Road, Fairfax, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Mr. Garcia presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the main structure had been in place for almost seven years, specifically the slab, walls, and pillars. However, when the roof was being constructed, he received a letter from the Pine Ridge Civic Association stating that the structure was not allowed. Mr. Garcia said there was a walkway next to the structure with trees and an existing fence. He explained that the measurement for the original placement of the structure was taken from the neighbor's existing fence, as he assumed that it was the property line. Mr. Garcia stated that the error was made in good faith. He did note that other larger similar structures were located on lots about two to three blocks away.

In response to questions from Mr. Byers and Mr. Hart, Mr. Garcia said he built the structure himself. He said he had help, but that neither he nor the others who helped him were licensed contractors. Mr. Garcia said the structure was used for storage and as a workshop, even though there was no electricity. He explained that he used battery powered tools. Mr. Garcia said that the exterior was not yet finished.

Vice Chairman Hammack called for speakers.

Carol Donnelly, 8500 Overbrook Road, Fairfax, Virginia, a direct neighbor of the applicant, came forward, and spoke in opposition to the proposal. She stated that construction had been ongoing for several years.

In response to a question from Mr. Hart, Ms. Caffee said the County received a complaint in December 2008, alleging there was an accessory dwelling unit on the property. This was deemed unfounded when inspected by the County. She said the inspector told the applicant at that time that he needed a building permit for the structure. It was when the applicant tried to get a building permit, that it was discovered to be too close to the property line.

Ms. Caffee noted that the applicant had been issued a Notice of Violation in 2006 for operating an office at his residence, but that he did comply and get an office use permit.

Fran Wallingford, co-chairman of the Pine Ridge Civic Association Land Use Committee, came forward, and also spoke in opposition to the application. Her main concern was the size of the structure.

Roxana Garcia, co-owner of the residence, came forward, and spoke in support of the application, stating that the applicant needed a place for storage.

In rebuttal, Mr. Garcia said the lot and storage building were attractive, and built in good faith. He asked the Board to allow him to keep it.

Mr. Beard commented that the building was handsome, but a significant structure. He said that storage structures were allowed, but one had to go through the proper procedures to have one.

Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to deny SP 2009-PR-073 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GIOVANNI GARCIA, SP 2009-PR-073 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 14.6 ft. from side lot line. Located at 8432 Overbrook Rd. on approx. 1.0 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((8)) 16. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. This is a difficult case.
3. The Board has to go by the Ordinance and Ordinance provisions.
4. The Board has to call balls and strikes, which sometimes is not easy to do.
5. The Board has to conclude that all of the applicable standards have been met.
6. The Board could not conclude that a few of applicable standards were satisfied on the record before them.
7. Sect. 8-914, Subsection 2b, requires that the noncompliance was done in good faith or through no fault of the property owner or was the result in an error in the relocation of the building subsequent to the issuance of a building permit, if such was required. Nothing happened subsequent to the building permit because there was not one.
8. That leaves the Board with "it was done in good faith or through no fault of the property owner." The Board could not conclude, based on the record, that condition was satisfied.
9. For someone with an architectural background who was hiring other people to help, who is capable of designing a building like this, a structure of this size, it would be obvious that some sort of permit would be required.
10. The structure is in the vicinity of 800 square feet. The numbers jump around a little bit depending on how the math is done, but it is much larger than a garage.
11. The Board could not conclude that it was done through no fault of the property owner.
12. Another standard, Subsection 2c, that is related to Subsection 3 under 8-006, states that the proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted Comprehensive Plan. The location, size, and height of buildings, structures, walls,

- and fences and the nature and extent of screening, buffering, and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
13. The Board is familiar with the Pine Ridge neighborhood, but could not recall structures as large as this as close to the property line.
  14. There are some detached garages, as there are in other neighborhoods, but this structure is something different than a garage.
  15. It is not unattractive; it seems to be well constructed and made out of compatible materials, but the structure itself is so large and the location of it is such that the Board could not conclude it is harmonious.
  16. It dovetails with Subsection 2c under 8-914, that the reduction will not impair the purpose and intent of the Ordinance.
  17. In the R-1 District, it is expected that structures would be further away.
  18. There are other areas where structures are required to be further away, but under certain circumstances, the Board approves them. One of the things the Board looks to is other similar approvals in the same area. The Board did not think it had that here.
  19. This is a neighborhood where there are some detached garages, but they are generally larger lots with fairly large spacing.
  20. This structure is also somewhat closer to the lot line than the existing house.
  21. Again, calling balls and strikes, the Board could not conclude that all of the standards had been met.
  22. The Board did not reach the issue of the covenants. The issue of covenants comes up in many cases. It may be that the covenants apply; it may be that they can or cannot be enforced. That would really be for a judge to decide. It is between neighbors or between the association and a property owner. The Board cannot really get into that.
  23. The Board is going by what the Zoning Ordinance requires.
  24. Unless all of these standards are met, this special permit under 8-914 cannot be approved.
  25. The Board recognizes this causes some hardship to the property owner. The building permit says this was a \$15,000 project. The Board thought it looked a little more involved than that.
  26. It was a little bit unclear on the record exactly what happened about the structure going up once and coming down, or why that was.
  27. That suggested to the Board that the owner is not entirely without fault or had some reason to expect that a permit would be required for a structure of this unusual size in this particular location.
  28. The Board did not know whether the structure could be cut back or could be shifted somewhat interior to the lot. There is plenty of room on this lot for a structure of that size or perhaps even larger.
  29. Under 8-006, the Board is to make some determination about whether there is appropriate screening and buffering. From the photographs, it appears that there are no plants around the structure; no plants are proposed.
  30. Although, at times, the Board has put in development conditions requiring screening and buffering, the Board does not know where to start with that. The applicant has not proposed that.
  31. On a case like this, the Board did not think it was enough to craft a development condition that would create some screening of the structure either toward the next-door neighbor or toward the street.
  32. It appears on the proposal before the Board that the structure is exposed in both directions and not screened at all.
  33. This does not satisfy 8-006, Subsection 3.
  34. The Board concluded 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.
  35. The granting of the special permit will impair the intent and purpose of the Zoning Ordinance and would 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. Byers seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 a.m. SHERRY BROWN, SP 2008-MV-059 Appl. under Sect(s). 8-918, 8-922 and 8-923 of the Zoning Ordinance to permit accessory dwelling unit and for reduction of certain yard requirements to permit addition 11.6 ft. from side lot line and fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((11)) 11. (*Admin. moved from 9/16/08, 12/2/08, 3/3/09, and 6/2/09 at appl. req.*) (*Decision deferred from 9/15/09.*)

Vice Chairman Hammack noted that the Board had previously approved an intent to defer SP 2008-MV-059 to November 3, 2009. Therefore, he asked for a motion.

Mr. Beard moved to defer the decision on SP 2008-MV-059 to November 3, 2009 at 9:00 a.m.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. RAJ KONERU, SP 2009-DR-072 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in the front yards of a corner lot. Located at 8334 Alvord St. on approx. 1.22 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 23.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Raj Koneru, 8334 Alvord Street, McLean, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation.

Mr. Koneru said he had a sore throat and introduced his daughter, Brittney, to provide the application presentation. She said her family needed the six-foot fence for safety and security, since the property was close to two heavily traveled highways. She noted that their home had been vandalized three times since it was purchased in 2006. Ms. Koneru said the fence would not adversely affect any of the neighboring properties, and provided letters of support from all adjacent neighbors.

In response to a question from Ms. Gibb, Ms. Koneru stated that there were other similar fences in the neighborhood, specifically on Rector Lane and Brook Road. She provided photos of these homes. Ms. Koneru also noted that the house would be gated.

Ms. Gibb stated her concern that no other adjacent neighbor had a fence, and that the proposed fence was rather dense.

In closing, Ms. Hedrick noted that a gate was not shown on the plat submitted with the application, and so a development condition would be needed to address it.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to deny the application. She felt the applicant had not met all the standards for special permits, specifically that the fence was not harmonious with the surrounding area.

Mr. Hart seconded the motion for purposes of discussion. He acknowledged that the Board had not previously approved six-foot fences in areas where there had not been one previously. However, Mr. Hart suggested that the Board defer decision on the application, so Board members could get a better look at the neighborhood and other fences in the area.

Ms. Gibb amended her motion to defer decision on the application until November 17, 2009, at 9:00 a.m.

Mr. Hart seconded the motion, which carried by a vote of 4-1. Mr. Beard voted against the motion. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M.            RICHARD MONTGOMERY, SP 2009-SU-075 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13224 Coralberry Dr. on approx. 10,350 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-3 ((20)) 53.

Vice Chairman Hammack called the applicant to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Richard Montgomery, 13224 Coralberry Drive, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation.

Mr. Hart and Ms. Hedrick discussed the basement apartment, with Ms. Hedrick stating that the applicant said the apartment was already in place when he bought the house.

Nancy Stallings, the zoning inspector who issued the Notice of Violation, said she went to the back door and spoke to an individual who was not the applicant, but who was living there, and observed a kitchen in an open area. Ms. Stallings continued that she eventually saw the other rooms. These included a room in the back, which could not be used as a bedroom, since the small window was not large enough for safety egress.

In response to a question from Mr. Hart, Ms. Stallings said she believed the only closet present was in the non-bedroom.

Mr. Hart, Mr. Byers, Mr. Beard, and Ms. Stallings discussed the number of people living in the basement, specifically a mother, daughter, and grandfather, and the location of the beds. Ms. Stallings stated that she was not let in for a full inspection, but was allowed to stand just inside the door.

Mr. Montgomery presented the special permit request as outlined in the statement of justification submitted with the application. He told the Board he was a full-time college student, and lived in the subject property with his mother. Mr. Montgomery said his mother frequently traveled outside of the country on business, and did not want the house to remain empty and unsupervised for long periods of time. He noted that he had purchased the house as is, and only did aesthetic work on it. This including painting and carpeting the downstairs. Mr. Montgomery stated he wished to rent the basement area, and asked that the Board grant his request.

Mr. Beard and Mr. Montgomery discussed the age restriction on potential renters, specifically, that they had to be 55 years of age or older.

Responding to a question from Ms. Gibb, Ms. Hedrick stated that the basement could not be rented to a handicapped person, since it was not handicapped accessible.

Vice Chairman Hammack called for speakers.

Fred Sedajdi came forward, stated he was a long-time resident of Fairfax County and spoke in favor of the application. He said Mr. Montgomery was a respectable member of the community, and financially responsible. He felt the letters written against the applicant were based on racial bias.

Pia Trigiani, counsel for the Franklin Glen Governance, and Robert Miller, 13219 Coralberry Drive, Fairfax, Virginia, came forward to speak in opposition. Their main concerns were that the proposed use was inconsistent with the recorded covenants, and was an inappropriate use of the property. Also, they did not want a precedent set, if the application were approved, along with on-site parking.

In response to a question from Mr. Hart, Mr. Miller said that he did not know of any other accessory dwelling unit in the neighborhood.

In rebuttal, Mr. Montgomery submitted a petition containing the signatures of people who supported his application.

Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to approve SP 2009-SU-075 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD MONTGOMERY, SP 2009-SU-075 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13224 Coralberry Dr. on approx. 10,350 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-3 ((20)) 53. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-3 Cluster.
3. The area of the lot is 10,350 square feet.
4. Staff recommended approval of the application.
5. After the hearing and discussing the issues, the Board has a much better feeling for the application insofar as it meeting the County ordinances.
6. In concert with the Development Conditions, the Board is extremely sympathetic to the neighbors in this situation, but as stated to the attorney, the Board found that this was virtually a by-right situation if the criteria is met for this use of an accessory dwelling unit as outlined in the relevant sections of the Zoning Ordinance.
7. Parking seems not to be an issue here, even though it is a cul-de-sac.
8. One of the neighbors said that they were not aware of any parking issues from the last tenant, not that that goes forward.
9. The Board felt you have to go forward based upon the predicates within the report.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-918 of the Zoning Ordinance.



Ms. Gibb seconded the motion, which **FAILED\*** by a vote of 3-0-1; **THEREFORE, THE APPLICATION WAS DENIED.** Mr. Hart abstained from the vote. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

\*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. DOUGLAS H. GOLDHUSH/WANDA GOLDHUSH, SP 2009-DR-071 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an accessory structure 10.0 ft. from side lot line. Located at 6514 Sunny Hill Ct. on approx. 24,258 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 22-3 ((4)) 64.

Vice Chairman Hammack called the applicants to the podium.

The Vice Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Douglas Goldhush, 6514 Sunny Hill Court, McLean, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. Staff recommended approval with adoption of the proposed development conditions.

Mr. Goldhush presented the special permit request as outlined in the statement of justification submitted with the application. He said the setback reduction was being requested, so that he could adequately maneuver vehicles into and out of the garage. Mr. Goldhush stated that his homeowners association's architectural board had approved the request, as had his adjacent neighbors.

Vice Chairman Hammack called for speakers.

Thomas Diggs, 1720 North Albemarle Street, McLean, Virginia, came forward. He said he was the builder for the project, and further described the proposed garage.

There being no further speakers, Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2009-DR-071 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS H. GOLDHUSH/WANDA GOLDHUSH, SP 2009-DR-071 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an accessory structure 10.0 ft. from side lot line. Located at 6514 Sunny Hill Ct. on approx. 24,258 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 22-3 ((4)) 64. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. Staff recommends approval, and the Board adopts the rationale in the staff report.
3. There is nothing for the applicant to apologize for.
4. The Board has been doing this for a number of years and asking these questions all of the time. There are drawings and provisions the Board does not understand.
5. On the record before the Board, this will be an attractive structure.
6. It does not seem to be causing any negative impact on anyone.
7. With the incorporation of the development conditions, any impact would be mitigated.
8. The Board determined that the application meets all the criteria in the Section 8-922 motion.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 850 square feet) of the accessory structure (garage), as shown on the plat prepared by Harold A. Logan, dated April 1, 2009, as revised through June 29, 2009, submitted with this application and is not transferable to other land.
2. Building permits for the garage shall be obtained prior to construction.
3. The garage shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
4. The applicant shall designate the area at the edge of the building envelope to the northern property boundary as tree save area to preserve the on-site, jointly-owned, and off-site trees and vegetation in this area and to provide screening for the adjacent property owner.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. TRUSTEES, SPRINGFIELD MASONIC LODGE 217, A.G. & A.M., SPA 77-S-189 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 77-S-189 to permit place of worship. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (*Indefinitely deferred from 1/27/09 at appl. req.*) (*Reactivated from indefinitely deferred.*) (*Admin. moved from 10/20/09 at appl. req.*)

Vice Chairman Hammack called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Larry Johnson, 5415-A Backlick Road, Springfield, Virginia, agent for the applicant, reaffirmed the affidavit.

Kelli Goddard-Sobers, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to proposed development conditions.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed a limitation on the number of groups or frequency in which groups could use the Lodge.

Larry Johnson presented the special permit request as outlined in the statement of justification submitted with the application. He said the intention was not to make the lodge a place of worship, but a temporary solution until churches have permanent homes. Mr. Johnson stated that only one church used the lodge on Sunday mornings, and another on Friday mornings. He said there were 80 parking spaces on site so that parking should never be an issue.

In response to a question from Mr. Hart, Mr. Johnson said the applicant had been working on removing the graffiti, and that the area would be painted. He said the applicant had spoken with the police about monitoring the area for vandalism.

As there were no speakers, Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SPA 77-S-189 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

TRUSTEES, SPRINGFIELD MASONIC LODGE 217, A.G. & A.M., SPA 77-S-189 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 77-S-189 to permit place of worship. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Indefinitely deferred from 1/27/09 at appl. req.) (Reactivated from indefinitely deferred) (Admin. moved from 10/20/09 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 October 27, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The applicant presented testimony that they are simply having several religious-type, cultural-type groups meet a couple times a month, once a month, in their building.
3. It seems to be complimentary to the use that the Masonic Lodge has.
4. It is not going to be simultaneous with their use.
5. There was testimony that there will not be any parking issues or any impact on surrounding properties.
6. The staff report is favorable, which the Board incorporated.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the appropriate sections of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit amendment is granted to the applicant only, Trustees, Springfield Masonic Lodge and is not transferable without further action of this Board, and is for the location indicated on the application, 7001 Backlick Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception/special amendment plat titled 'Springfield Lodge # 217, A.F.A.M.'; prepared by Springfield Associates Inc. and revised by Sukwinder S. Ruprai as revised through October 7, 2009, and approved with the 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 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 lines for the proposed parking spaces shall be painted to properly delineate the parking spaces prior to issuance of the Non-Residential Use Permit (Non-RUP).
6. Upon issuance of a Non-RUP, seating capacity for the principal area of worship shall be limited to a maximum of one hundred and fifty (150). No uses shall occur simultaneously on the site.
7. All parking shall be provided on-site, as depicted on the special exception/special permit amendment plat. Approval of a parking reduction shall be obtained through the Board of Supervisors as required by Section 11-102.4B of the Zoning Ordinance prior to the issuance of a new Non-RUP for the place of worship to permit the shared use of the Masonic Lodge parking lot for both the Masonic Lodge use and place of worship uses. If approval of parking reduction request # 25098-PKS-001-1 is not obtained from the Board of Supervisors, then this special permit amendment application will become null and void.
8. Prior to issuance of the Non-Residential Use Permit, all proposed landscaping shall be installed in the northern and southern parking areas as depicted on the SE/SPA Plat. The Urban Forest Management Division of the Department of Public Works and Environmental Services (DPWES) shall be consulted prior to said installation to ensure that the appropriate size of trees and selection of species is made based on existing and proposed site conditions. All landscaping that is installed pursuant to this special permit amendment shall be maintained in good health by the applicant or successors.
9. Existing lighting, including parking lot, security, and/or other incidental lighting, may remain. All new and replacement lighting and lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
10. All signs shall be in accordance with the provisions of Article 12 of the Zoning Ordinance.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit amendment shall not be valid until this has been accomplished.

Pursuant to Section 8-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established 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

amendment. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF LORD OF LIFE LUTHERAN CHURCH, SPA 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-050 previously approved for church to permit addition of nursery school. Located at 13421 Twin Lakes Dr. on approx. 3.76 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A.

Vice Chairman Hammack noted that SPA 95-S-050 had been administratively moved to December 1, 2009, at 9:00 a.m., at the applicant's request.

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9:30 A.M. MHC MEADOWS OF CHANTILLY, LLC, A 2009-SU-012

Vice Chairman Hammack noted that A 2009-SU-012 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the violation had been cleared.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:30 A.M. SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. *(Admin. moved from 8/7/07 and 11/6/07 at appl. req.) (Decision deferred from 2/26/08, 5/13/08, 6/17/08, 12/16/08, and 4/14/09.)*

Vice Chairman Hammack noted that that the Board had received a deferral request regarding A 2007-LE-017.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, recommended March 31, 2010.

Larry Johnson, 5415-A Backlick Road, Springfield, Virginia, agent for the applicant, indicated his agreement with that date.

Mr. Hart moved that the decision on A 2007-LE-017 be deferred until March 31, 2010, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:30 A.M. MERRIFIELD GROUP, LLC, A 2009-PR-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established uses without an

approved site plan, minor site plan waiver, building permits or Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 2931, 2947, 2943 and 2939 Mayberry St. on approx. 1.89 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) 38, 39, 40 and 41. (*Admin. moved from 5/19/09 at appl. req.*)

Vice Chairman Hammack noted that A 2009-PR-006 had been administratively moved to January 27, 2010, at 9:30 a.m., at the applicant's request.

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~ ~ ~ October 27, 2009, Scheduled case of:

9:30 A.M.       BAHRAM B. FOROUZANFAR, A 2009-MA-033 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has paved a portion of the front yard on property located in the R-2 District in excess of the allowable surface area under Zoning Ordinance provisions. Located at 6548 Spring Valley Dr. on approx. .752 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 52. (*Admin. Moved from 10/20/09.*)

Vice Chairman Hammack called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Cathy Belgin, Staff Coordinator, presented staff's position as set forth in the staff report dated October 20, 2010. She provided a brief history of the site, noting that it was constructed in 1955, with a building permit issued in 2003 for several additions and two one-story garages, one on either side of the residence. Ms. Belgin noted that the driveway did not require a building permit, but the plat associated with the building permit illustrated a driveway coming from each of the proposed garages to the street, with a curved connector drive between them. She said the appellant purchased the property in January of 2006. As the result of a complaint, an inspection was conducted of the property in June 2009, resulting in the issuance of a Notice of Violation (NOV), because the front yard paving was in excess of the 25 percent maximum pavement allowed. She said the approved building permit for the additions depicted a series of driveways that could have potentially met the Zoning Ordinance limitation, however, an aerial photograph showed that the driveways were constructed significantly wider than shown on the plat. Ms. Belgin said staff suggested several different ways to bring the property into compliance, including removal of the circular driveway connection or narrowing of the driveways. However, the appellant did not feel he should be penalized for this error since the paving had been constructed prior to his purchase of the property. She also told the appellant that he could also apply for a variance from the Zoning Ordinance requirements to bring the property into conformance. Ms. Belgin respectfully recommended that the Zoning Administrator's determination be upheld.

In response to a question from Mr. Hart, Ms. Belgin said that staff had an aerial photograph of the property from 2002 showing only one driveway. She said the driveways built in 2003. Ms. Belgin did not believe that cutting off the triangle bases at the street would bring the property into conformance.

Bahram Forouzanfar presented the arguments forming the basis for the appeal. He acknowledged that Photo 1 in Attachment 7 dramatized the size of the driveway, noting that the width varied from 9 feet in some areas, up to 12 feet. Mr. Forouzanfar said he checked with the County before purchasing the property, and was assured that it had been properly inspected and approved. He said the majority of the property was wooded, and there was 10 to 12 feet of landscaping on either side of the driveways. He noted his neighbors had no problem with the property. Mr. Forouzanfar felt his driveway was very close to meeting the standards set out in the Zoning Ordinance, noting that his two driveways together were no wider than a standard double car garage.

Ms. Gibb commented that the appellant had made excellent arguments to justify a variance, but not that the Zoning Administrator was incorrect in issuing the NOV.

In response to a question from Mr. Beard, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the variance application fee was \$885.00.

Mr. Forouzanfar felt his property should fall under Section 11-102(8)(B), which allowed a larger-paved area on property which had, among other things, primary access from a major thoroughfare and contained a vehicular turn-around area.

In response to a question from Ms. Gibb, Ms. Belgin said the phrase 'major thoroughfare' was a technical term for a certain level of road, of which this one was not.

Vice Chairman Hammack asked the appellant if he had anything to show that staff's computations were incorrect, and he did not.

In response to questions from Mr. Hart and Mr. Hammack, Mr. Forouzanfar said he would like additional time to consider removing the triangle portions of his driveways or possibly applying for a variance.

Ms. Gibb commented that if the appellant had a survey done when he purchased the property and bought title insurance, he might be insured for any reparations to bring the driveways into compliance.

In response to a question from Vice Chairman Hammack, Ms. Stanfield suggested a deferral to the April 14, 2010 meeting.

Vice Chairman Hammack called for speakers.

Kathy Tubb, neighbor of the appellant, came forward and spoke in support of the appeal. She said the appellant had done nothing wrong, and felt the maximum paving limitation should be waived.

As there were no further speakers, Vice Chairman Hammack closed the public hearing.

Mr. Beard moved to defer decision on A 2009-MA-033 to April 14, 2010, at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

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~ ~ ~ October 27, 2009, Scheduled case of:

Approval of January 6, 2009; February 10, 2009; and March 10, 2009 Minutes.

Ms. Gibb moved to approve the minutes. Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Byers was not present for the vote. Chairman Ribble and Mr. Smith were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:09 p.m.

Minutes by: Suzanne L. Frazier

Approved on: June 22, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 17, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. STACY A. HOEFLICH, SP 2009-MV-087 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 and 5.0 ft. from rear lot line. Located at 5647 Fenwick Dr. on approx. 3,616 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((16)) 9A.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Stacey Hoeflich, 5647 Fenwick Drive, Alexandria, Virginia, reaffirmed the affidavit.

Lisa Feibelman, Staff Coordinator, made staff's presentation. She said Mike Adams, from the Zoning Enforcement Branch, was present to answer questions.

Mr. Hart said the shed appeared to be in an easement, and asked if there was a drainage easement at the rear of the property. Ms. Feibelman stated that staff had not been able to identify the owner of the easement. She said the engineer who prepared the plat could not find any recorded easement on the property, nor was there any mention of an easement in the title work.

In response to a question from Mr. Beard, Ms. Feibelman said that this case came to the Board by way of a complaint from 2007.

Mr. Hammack and Mr. Adams discussed the time frame for the complaint, with Mr. Adams stating that the complaint had been assigned to another inspector in 2007, and then to him in 2008. He stated that the applicant has been trying to get a special permit, but it had taken time.

Mr. Hart and Ms. Feibelman discussed the delineation of an Ordinary High Water Mark (OHWM) on the section drawing. Ms. Feibelman explained that it marked the level of a flood from June 2006.

Ms. Hoeflich presented the special permit request as outlined in the statement of justification submitted with the application, noting that the rainfall reaches the OHWM two to three times a year. She presented pictures showing the water level. She continued that the shed was on a 1.5 foot platform, which allowed approximately 95 percent of the items in the shed to remain dry. She said the dilemma was because the shed was in an easement and not to code. Ms. Hoeflich stated that if she took the platform off, the shed would get wet, but it would be to code. She said it would be a financial hardship to move the shed.

Mr. Byers and Ms. Hoeflich discussed the construction of the shed, with Ms. Hoeflich stating that a professional company built it on her property. She noted that there was no plumbing or electric in the shed.

In response to a question from Mr. Smith, Ms. Hoeflich said this shed replaced another shed which was in the same location.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-MV-087 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

STACY A. HOEFLICH, SP 2009-MV-087 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 an accessory storage structure to remain 1.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 5647 Fenwick Dr. on approx. 3,616 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((16)) 9A. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The Board was satisfied, from the testimony of the applicant, that the error was done in good faith.
3. The applicant replaced an existing shed on the same location.
4. The shed was only 8.5 feet in height.
5. Based on the topography and the arrangement of the subdivision, allowing the shed to remain there would not be detrimental to the use and enjoyment of other property in the immediate vicinity, nor would it create an unsafe condition with respect to other property and public streets.
6. The applicant has satisfied the required standards for the granting of the special permit as set forth in Sect. 8-914 of the Ordinance.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an existing detached accessory structure (shed) as shown on the plat prepared by George M. O'Quinn, Alexandria Surveys International, LLC, as dated May 13, 2002 and revised through May 23, 2002 as updated by Mark X. Lapierre, Lapierre Studio – Landscape Architects, revised and signed through July 24, 2009, submitted with this application and is not transferable to other land.
2. This special permit is approved subject to the rights, if any, that may exist in favor of the holder of the easement in which the shed is presently located.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. ANTHONY J. AND CAROL D. TETHER, SP 2009-MA-083 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6400 Lyric La. on approx. 12,086 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 524. (Admin. moved from 11/17/09 at appl. req.)

Chairman Ribble noted that SP 2009-MA-083 had been administratively moved to the December 1, 2009, meeting at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. CONSTANTINE SARA KINIS, SP 2009-MA-088 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

William B. Lawson, Jr., agent for the applicant, 6045 Wilson Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed Development Conditions contained in the staff report.

In response to a question from Mr. Hammack, Ms. Caffee said she believed that building permits were obtained for enclosure of the carport.

Mr. Hart asked if there were two separate investigations by the County. Peggy Delean from the Zoning Enforcement Branch said an inspection had been made while the house was being renovated in 2008, and that case was closed. She said the case was reopened when another complaint was received.

Mr. Hart and Ms. Caffee discussed the number of unrelated people allowed in the residence.

Responding to a question from Mr. Hammack, who pointed out that all parking had to be on site, Susan Langdon, Branch Chief, Special Permit and Variance Branch, noted that four cars would easily fit on one

side with three on the other. Ms. Caffee added that the driveway only covered only 29.7 percent of the front yard area.

Mr. Lawson presented the special permit request as outlined in the statement of justification submitted with the application. He gave the following information. A third kitchen had been added when the applicant's sister moved into the property, but it had since been removed. The application before the Board was to allow a second kitchen, the same second kitchen which was present when it was inspected and found to be okay in 2007. Mr. Lawson said the only difference between the 2007 and 2009 kitchen inspections was that staff was being more aggressive as to what constitutes a kitchen. He noted that the rule of thumb for a kitchen used to be defined as the ability to cook, and stated that if the application was approved, the applicant will add a stove in the kitchen area. Mr. Lawson stated that the proposed accessory dwelling unit had a separate entrance, was well screened from the front of the property, and had a large driveway to accommodate onsite parking. The applicant was a single person, and needed extra income in order to hold onto the house, especially since he recently lost his job. The house was uniquely designed to accommodate an elderly resident.

Mr. Hammack and Mr. Lawson discussed the number of individuals currently residing at the house, with Mr. Lawson noting there were two males and one female, and there had never been more than four people residing there.

In response to a question from Mr. Beard, Mr. Lawson said that if the application were approved, the accessory dwelling unit would be rented to a person over 55 years old.

Mr. Smith and Mr. Lawson discussed the number of people who would reside in the house. Mr. Lawson stated that if the application was approved, his client would agree to limit the house residents to four.

Chairman Ribble called for speakers.

The following speakers came forward to speak: Louanne Wheeler, 3217 Hallran Road, Falls Church, Virginia, and Bill Titus, 3214 Hallran Road, Falls Church, Virginia. They spoke in opposition to the application, with their main concerns being the preservation of the single-family nature of the neighborhood, setting a bad precedent by granting this request, and the numerous vehicles being parked on the street.

In rebuttal, Mr. Lawson stated that the vehicles which belonged to the applicant's roommates and guests were always parked in the driveway or at the end of the street, never near adjacent property. He said his client would like to keep his property, and asked that the Board approve the application.

Mr. Byers moved to deny 2009-MA-088 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

CONSTANTINE SARAKINIS, SP 2009-MA-088 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12. 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 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-3.

3. The area of the lot is 10,735 square feet.
4. The Board disagrees with staff from the standpoint of their recommendation of approval.
5. The Board does not believe the application is in accordance with the intent of the Comprehensive Plan specific to Bailey's Planning District, Area I, Glenn Forest Community Planning Sector B2, and plan map for residential development.
6. This is a very sensitive area.
7. The Comprehensive Plan calls for stabilization in residential development and revitalization in this planning district.
8. To permit an accessory dwelling unit under these circumstances brings about destabilization in neighborhoods that are designed for single-family residences.
9. The Zoning Ordinance states that the proposed use shall be in harmony with the general purpose and intent of all applicable zoning district regulations; the Board does not believe it is in compliance.
10. The Board of Supervisors had a very good idea with regard to accessory dwelling units, to defray some of the costs of senior citizens and disabled persons in this County.
11. That clearly was not the intent of the applicant.
12. There have been two violations; one that was cleared in 2007 and another in January of 2009.
13. These violations were long before the applicant was unemployed.
14. This is a very narrow street, and there are twelve (12) single-family homes on it.
15. The very fact of asking people to park someplace else tells the Board that there is an issue with regard to parking.
16. In some of the pictures that were shown, the cars were parked illegally. There is not enough space between where they are parked and the driveway.

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 appropriate sections 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 4-2. Mr. Smith and Mr. Beard voted against the motion. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. RAED (RUDY) Z RIHANI, SP 2009-DR-057 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7419 Tillman Dr. on approx. 23,526 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((1)) 8D. (*Admin. moved from 9/22/09 for notices.*)

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Jessica Rihani, 7419 Tillman Drive, Falls Church, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of the application, subject to the proposed development conditions contained in the staff report.

Ms. Rihani presented the special permit request as outlined in the statement of justification submitted with the application. She said she and her husband had aging parents, and wanted the option to take in a family member in a time of need. Ms. Rihana stated that a kitchen in the basement would further assist her family, and serve as an in-law suite. She said there was no intention of renting out the space, and asked that the Board approve the application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-DR-057 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAED (RUDY) Z RIHANI, SP 2009-DR-057 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7419 Tillman Dr. on approx. 23,526 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((1)) 8D. (Admin. moved from 9/22/09 for notices) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. Staff recommends approval, and the Board adopts the rationale in the staff report.
3. This site is suitable for this kind of apartment in the basement.
4. There is plenty of room for parking.
5. The house is well away from the street.
6. The house has a long driveway with a side-load garage and a parking area sort of in a turnaround next to the garage, so even if there were cars, you would not necessarily notice them.
7. The accessory dwelling unit is concealed from the street.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval for the accessory dwelling unit is granted to the applicant only, Raed (Rudy) Z. Rihani, and is not transferable without further action of this Board, and is for the location indicated on the application, 7419 Tillman Drive (23,526 square feet), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the house location survey plat prepared by John A. Walsh, B.C. Consultants, dated March 29, 2006, revised through June 25, 2009, as qualified by these development conditions. Notwithstanding the foregoing, the applicant shall obtain a waiver for the shed location from appropriate authorities or otherwise bring it into compliance with applicable requirements.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(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 a maximum of 1400 square feet, including a maximum of one bedroom as shown on Attachment 1.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit.
10. Parking shall be provided as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. JOHN G. CULBERTSON, SP 2009-MV-084 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7805 Accotink Pl. on approx. 21,875 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((9)) 2.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

John Culbertson, 7805 Accotink Place, Alexandria, Virginia, reaffirmed the affidavit.

Chairman Ribble made a disclosure that he knew the applicant, but indicated he did not believe his ability to participate in the case would be affected.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the development conditions contained in the staff report.

Mr. Culbertson presented the special permit request as outlined in the statement of justification submitted with the application. He noted that he had the support of his neighbors, and asked that the Board approve his application.

Mr. Hart and Mr. Culbertson discussed the design of the addition, specifically the dormer windows as shown on the floor plan.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2009-MA-084 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOHN G. CULBERTSON, SP 2009-MV-084 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7805 Accotink Pl. on approx. 21,875 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((9)) 2. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-2.
3. The area of the lot is 21,875 square feet.
4. Staff recommends approval, and the Board adopts the rationale of the staff.
5. The applicant made a very comprehensive and well thought out application and presentation.
6. The Board agreed with the applicant's comments.
7. There is plenty of parking, a two-car garage, and 82-foot long driveway that can handle the cars in this case.
8. It is going to have a minimal impact with just the applicant, who has referenced very soon he will be 55-years young, and has a tenant who will also meet the requirements of the Ordinance.
9. This would not modify or disrupt the character of the neighborhood.
10. The use is in harmony and consistent with the character of the neighborhood.
11. The Board received a couple of letters in support from the neighbors.

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 for the accessory dwelling unit is granted to the applicant only, John G. Culbertson, and is not transferable without further action of this Board, and is for the location indicated on the application, 7805 Accotink Place (21,875 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the house location survey plat, prepared by Larry N. Scartz, Certified Land Surveyor, dated July 8, 2000, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or

permanently and totally disabled. Until the applicant/owner reaches age 55, the accessory dwelling unit shall only be occupied by a person 55 years of age or older.

5. All applicable permits and final inspections for the kitchen located within the accessory dwelling unit shall be approved prior to occupancy of the unit.
6. The accessory dwelling unit shall contain a maximum of 891.5 square feet, including a maximum of one (1) bedroom, as shown in the floor plan included as Attachment 1 to these conditions.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. Parking shall be provided as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. JON M. AND PAMELA K. YEREB, SP 2009-LE-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 4617 Winston Pl. on approx. 12,683 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((6)) 54.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Jon M. Yereb, 4517 Winston Place, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Yereb presented the special permit request as outlined in the statement of justification submitted with the application. He said his wife had elderly parents and wanted to add another bedroom to accommodate them.

In response to a question from Mr. Hart, Mr. Yereb said he did not want to add a kitchen for his in-laws, just a bedroom.



As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2009-LE-086 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JON M. AND PAMELA K. YEREB, SP 2009-LE-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction to certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 4617 Winston Pl. on approx. 12,683 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((6)) 54. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owners of the property are the applicants.
2. Staff recommended approval of this application.
3. There is a unique character to the property and the physical situation as outlined by the applicant.
4. The applicants request a 50% reduction which is in keeping with the modified Comprehensive Plan.
5. The applicants meet all of the submission requirements set forth in Section 8-922.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 260 square feet) of the addition, as shown on the plat prepared by Alexandria Surveys International, LLC, and signed by Andrew L. Westerman, dated June 23, 2009, submitted with this application and is not transferable to other land.
3. Building permits for the addition shall be obtained prior to construction.
4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,053 square feet existing + 4,579 (150%) = 7,632 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.
6. The applicant shall designate the area at the edge of the building envelope to the eastern property boundary as tree save area and install tree protection fencing to preserve the off-site trees and vegetation in this area and to provide screening for the adjacent property owner.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. PAUL & CHRISTINE HANCHER, SP 2009-HM-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 13019 Piney Glade Rd. on approx. 8,751 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((18)) 18.

Chairman Ribble called the applicants to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Paul Hancher, 13019 Glade Road, Herndon, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval subject to the proposed development conditions.

Mr. Hancher presented the special permit request as outlined in the statement of justification submitted with the application. He said the deck and covered screen porch were present when he purchased the house, however, the covered screen porch was detached from the house by about 4.0 feet. Mr. Hancher said he wanted to keep the same size deck, but move the screened porch closer to the house.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-HM-082 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

PAUL & CHRISTINE HANCHER, SP 2009-HM-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 13019 Piney Glade Rd. on approx. 8,751 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((18)) 18. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The applicants have satisfied the six criteria set forth in the Ordinance.
3. The Board adopts the recommendation set forth by the staff.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903 and 8-922 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (288 square feet), as shown on the plat prepared by Dewberry & Davis LLC, dated June 25, 2009 as revised through August 11, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,511 square feet existing + 3,766.5 square feet (150%) = 6,277.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. BARRANDA RIDGE, LLC, AND DREAM TO RIDE, LLC, SP 2009-SP-067 (riding and boarding facility)

Chairman Ribble noted that SP 2009-SP-067 had been administratively moved to May 26, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (Admin. moved from 6/16/09, 7/14/09, and 8/11/09 at appl. req.) (Decision deferred from 9/29/09)

Chairman Ribble noted that the Board had previously approved an intent to defer decision on SP 2009-SU-018 to December 15, 2009. Therefore, he asked for a motion.

Mr. Beard moved to defer the decision on SP 2009-SU-018 to December 15, 2009, 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.

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The meeting recessed at 10:54 a.m. and reconvened at 11:00 a.m.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:00 A.M. RAJ KONERU, SP 2009-DR-072 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in the front yards of a corner lot. Located at 8334 Alvord St. on approx. 1.22 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 23. (Decision deferred from 10/27/09.)

Chairman Ribble recused himself from the hearing, and Vice Chairman Hammack assumed the chair.

Susan Langdon, Chief, Special Permit and Variance Branch, reminded the Board that the public hearing was already closed and the matter was for decision only.

Raj Koneru, 8334 Alvord Street, McLean, Virginia, presented the Board with additional material dated November 6, 2009, which included fencing information, police incident reports for his home, and photographs of his home and that of adjacent neighbors.

Mr. Hart moved to approve SP 2009-DR-072 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAJ KONERU, SP 2009-DR-072 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in the front yards of a corner lot. Located at 8334 Alvord St. on approx. 1.22 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 23. (Decision deferred from 10/27/09) 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 17, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. Mr. Hart went out to review the site and the neighborhood.
3. Although he tended to agree with Ms. Gibb that there were not a lot of fences in the neighborhood like this at this height, at the same time, he felt the impact of what was requested here would be minimal.
4. The impact of the fence would be sufficiently mitigated by the placement of landscaping.
5. A colored string which runs through the evergreens indicated where the fence would be going and would be largely concealed by the evergreens.
6. Adding the fence in the proposed location would not necessarily change the character of the neighborhood.
7. Although sometimes it is illustrative to look at other fences nearby, it is not a prerequisite for this type of application under the Ordinance that there already be six-foot fences. You could be the first six-foot fence if you meet the criteria otherwise.
8. The fence is set pretty far back from the pavement.
9. There is a little bit of topography on one side.
10. The fence would not substantially impact anyone in a negative way.
11. It is a very attractive fence.
12. The property is well maintained.
13. The fence will be substantially concealed by the vegetation.
14. Other than the examples the Board was given at the last hearing, which the Board was not particularly swayed by those examples and thought there might be some problems with this, there is a wooden fence either kitty-corner or one house down which is obviously more than a four-foot fence and appears to be in the front yard.
15. The proposed fence did not look like it would be the first six-foot fence in the immediate neighborhood.
16. The applicable criteria have been satisfied.
17. One other factor that helped to persuade the Board that the application met the standards was the problems that this property has had with security, being on a busy road. The fencing of the property would help the owner deal with the problem of previous break-ins.
18. Each of these cases is different, but it seemed that the security problem was one more justification for allowing a fence on the property.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and maximum height of a 6 foot wrought-iron ornamental fence in the front yards in the location as shown on the plat prepared by Bowman Consulting, dated June 19, 2009, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Chairman Ribble recused himself from the hearing. Ms. Gibb was absent from the meeting.

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Chairman Ribble resumed the Chair.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:30 A.M. ALFRED H. THOMPSON AND AUDREY THOMPSON, A 2009-PR-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing a junk yard and storage yard to be operating on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09.)*

9:30 A.M. BRIAN LEO KELLY, A 2009-PR-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a junk yard and storage yard on property in the R-1 and HC Districts in violation of Zoning Ordinance provisions. Located at 8915 Lee Hy. On approx. 9.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((1)) 54B. *(Continued from 5/5/09.) (Decision deferred from 8/11/09.)*

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, provided a status update since the Board last heard the matter on August 11, 2009, noting that the area had experienced a substantial clean-up in the meantime.

Bruce Miller, Senior Zoning Inspector, stated that he had received a call from Brian Kelly in which Mr. Kelly said he was now operating at another location, and had removed most of his equipment from the subject property. Mr. Kelly indicated that he would have the remainder of the equipment removed by February 1, 2010.

Ms. Stanfield said staff would like the Board to defer decision on the appeal until February 10, 2010, and reassess the status of the property at that time. She felt most, if not all, of the violations would be cleared by then. Ms. Stanfield stated that Alfred Thompson, one of the appellants, would like to address the Board.

Following Chairman Ribble's invitation, Mr. Thompson distributed a document to the Board delineating the history of the property and containing photographs showing the progress which had been made in clearing the site. He stated his agreement with the proposed deferral.

Mr. Hart and Mr. Thompson discussed the cars which had parked on the property over the years, with Mr. Thompson not being able to recall if there was ever a time when vehicles had not been stored on the site.

Mr. Byers moved to defer decision on A 2009-PR-004 and A 2009-PR-007 to February 10, 2010, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:30 A.M. MIDDLEBURG ASSOCIATES, LLC, A 2009-DR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has erected an accessory structure that exceeds seven feet in height and does not comply with the minimum side yard requirements for the R-3 District in violation of Zoning Ordinance provisions. Located at 1253 Ingleside Av. on approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B.

Chairman Ribble noted that A 2009-DR-037 had been administratively moved to March 24, 2010 at 9:30 a.m., at the applicant's request.

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~ ~ ~ November 17, 2009, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, 6/3/08, 9/9/08, and 12/9/08 at appl. req.) (Continued from 3/24/09, 6/30/09, and 9/22/09.)

Chairman Ribble called the appellant to the podium.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, reminded the Board that the appeal had been continued from September 22, 2009, pending the outcome of the special permit application.

Barnes Lawson, Jr., agent for the appellant, presented the arguments forming the basis for the appeal. He noted that the appellant could not be present for the hearing, but distributed a letter from her to the Board for their consideration. Mr. Lawson provided a history of the property, noting that the problem started with a zoning violation citation. He said the appellant met with the zoning inspector, Danny Forshee, and did everything that was asked of her, curing all of the zoning violations noted in the citation with the exception of the height of the fence, which was approved by this Board at their meeting two weeks ago. Mr. Lawson stated that it was subsequently discovered that the garage was too close to the side lot line. After checking with the County staff, Mr. Lawson was told that because of the garage situation, the previously inspected and approved kitchen-like accessories had to be removed, and the garage doors had to be put back on. Mr. Lawson disagreed, stating that the appellant's residence was currently in the same condition that it is was in when approved by the County.

As far as the issue of the kitchen, Mr. Lawson thought the County had to go with the plain meaning of the Ordinance, specifically that a dwelling unit was defined as unit you can cook in, and the appellant had removed all cooking appliances. With regard to the garage, Mr. Lawson handed out copies of a decision rendered in the case of *Richard William Horner, et al., v. Board of Zoning Appeals of Fairfax County, Virginia, et al.*, in which the Court upheld the homeowner's right to add onto a garage obtained through a variance, without having to first amend said variance. He paraphrased the judge, who said that when you have a variance or a nonconforming situation, and you go to the side of the structure that is in compliance with zoning, you are free to exercise your rights under the Zoning Ordinance. Mr. Lawson said, based on the *Horner* ruling, that it was perfectly all right for the appellant to have taken the wall out and substituted garage doors with a façade and siding. He also pointed out that several building permits for the garage work had been issued by the County. In closing, Mr. Lawson said that the appellant could not afford to take down the garage walls and put the garage doors back up. He asked that the Board overturn the decision of the Zoning Administrator.

Mr. Hart and Ms. Stanfield discussed the County requirement to remove all of the kitchen cabinets, with Ms. Stanfield noting that without their removal, the use could easily be reestablished.

In response to a question by Mr. Hart, Ms. Stanfield said the conversion of the garage to a living space was done without a building permit. Had one been applied for, it would not have been approved. Mr. Lawson commented that the garage was falling apart. The appellant thought she was improving the situation by fixing up the garage.

Mr. Hammack and Mr. Lawson discussed the tax ramifications of converting the garage to a living space, with Mr. Lawson pointing out that a different tax rate is applied for a living area.

Discussion ensued with Mr. Smith, Mr. Hart, Mr. Byers, Ms. Stanfield, and Mr. Lawson concerning the allowable number of dwelling units on one lot, the increased size of the garage, and the lack of a building permit when converting the garage.

Chairman Ribble called for speakers.

William Baskin, 301 Park Avenue, Falls Church, Virginia, appeared before the Board on behalf of the appellant. He said he was the attorney of record in a court case which the County staff cited in the staff report as precedent in this matter, specifically *Eileen M. McLane, et. al., v. Daniel Retter, Trustee, et al.* Mr. Baskin said he was present to clarify that, in that instance, the judge ruled that since the property owner had not responded to a Notice of Violation, it was a "thing decided", and the defendants were not permitted to put on the defenses of a valid nonconforming use;. Therefore, the merits of a valid nonconforming use were not heard or decided.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the decision of the Zoning Administrator. He felt the subject property, notwithstanding the people involved, has been replete with violations for a long time. Mr. Beard said he was sympathetic with the appellant's situation, and commented that Mr. Lawson had fought the good fight.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Ms. Gibb was absent from the meeting.

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~ ~ ~ November 17, 2009, After Agenda Item:

Request for Reconsideration Regarding Giovanni Garcia, SP 2009-PR-073.

Mr. Hart stated that he visited the site and adjoining properties, but could not find one structure as large as this one or as close to the principal residence. He found nothing in the reconsideration material to the matter.

Mr. Byers commented that the structure was 5½ times the size allowed by a special permit.

No motion was made, therefore, the request for reconsideration was denied.


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As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Minutes by: Suzanne L. Frazier

Approved on: June 22, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 1, 2009. The following Board Members were present: Chairman John F. Ribble III; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.; V. Max Beard and Nancy E. Gibb were absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. ANTHONY J. AND CAROL D. TETHER, SP 2009-MA-083 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6400 Lyric La. on approx. 12,086 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 524. (Admin. moved from 11/17/09 at appl. req.)

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Anthony J. Tether, 6400 Lyric Lane, Falls Church, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Tether presented the special permit request as outlined in the statement of justification submitted with the application. He said he was unaware of the Ordinance restriction concerning the number of dogs allowed on a property, and that his son brought his three beagles when he moved in with them. He conceded that this breed is known for barking, and although he has strived to keep them under control, outside activity excites them. Mr. Tether said all the dogs were part of the family. He was not asking for permanent permission, but just until each beagle passed or his son moved out. Mr. Tether said it was impossible to estimate when his son and daughter-in-law would be able to move out. He noted that other dogs in the neighborhood, of which both his next-door neighbors had one, would bark and his pets were blamed. He said he whenever they were allowed outside, a family member would attend to them and immediately bring them inside if they became vocal.

Mr. Hart referenced a number of complaint letters citing the constant annoyance and diminished enjoyment of neighboring properties, because of the dogs' incessant barking/baying. Two letters specifically pointed out that on the same night the dogs barked relentlessly after 9:30 p.m.

Mr. Tether attributed that occurrence to a mechanic working on his neighbor's car in her driveway.

Chairman Ribble called for speakers.

Coleen Coyle, 3504 Rustic Way Lane, Falls Church, Virginia, came forward to speak. Her issues concerned the diminished quality of life the neighbors were experiencing due to the constant barking; that no one could enjoy their deck, have a barbecue, or just have coffee. She said this situation was ongoing for months, and that the Barcroft residents have registered numerous complaints.

In response to Mr. Hart's question concerning how the matter was brought to staff's attention, Ms. Caffee said there was a complaint filed whereby staff issued a Notice of Violation on June 25, 2009.

Edwin Davis, 3505 Rustic Way Lane, Falls Church, Virginia came forward to speak. He stated his strong opposition to allow five dogs on the property; that the barking seemed to explode; that it had been going on for a very long time without the Tethers overseeing their dogs' activities; and, the applicants were extraordinarily inconsiderate of their neighbors, as repeatedly they were asked to address the matter to which they had not responded.

Chris Lyons, 3504 Rustic Way Lane, Falls Church, Virginia, came forward to speak. He said it was he who distributed the petition before the Board that morning; that the neighbors were reticent to complain, as the

Barcroft residents try to get along and be considerate of each other. He noted that his daughter had come home crying in fear, because as she passed by the dogs would rush the fence. Mr. Lyons pointed out that there has been no walking of the dogs.

The following speaker came forward to speak in support. Chairman Ribble administered the Oath to him.

David Matoon (phoenic), 6344 Cavalier Corridor, Falls Church, came forward to speak in support. He said he personally did not know the applicants, but he shared their plight; that he too has a beagle puppy that loves to howl and does bite playfully. He said the Barcroft residents tended to be rather extreme in their complaints about all sorts of things, and circulated maligning rumors. Mr. Matoon urged that there be some kind of compromise between the parties, and that a government body need not become involved. He said the Tethers should be allowed to keep their dogs, as each was a part of their family.

Mr. Tether said he thought the Beagle breed was the problem; that they are energetic; that they have rushed the fence, but only to greet a passerby; and he maintained that the dogs were very friendly. Mr. Tether assured he would try very hard to keep the dogs from barking.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to deny SP 2009-MA-083 for the reasons stated in the Resolution.

Discussion ensued regarding the Board members' reasons for supporting the motion to deny.

Mr. Hammack said he thought that five dogs on a lot that size was a stretch, perhaps even if they were well behaved; that he thought the dogs were basically noisy. He said he would be happy to hear what Mr. Tether may have for a solution.

Mr. Tether stated that this situation was not about five dogs, but rather beagles, and his concern was the Board may be insinuating that no beagles be allowed at Lake Barcroft. He offered the solution to de-bark the three beagles. Mr. Tether said he maintained the yard, removing waste, and kept the property clean.

Mr. Hart quoted pertinent Ordinance Statutes, acknowledging these cases were very difficult. He noted that the matter of de-barking was not previously raised; that those in opposition had no opportunity to address the matter nor was it considered as a development condition. Mr. Hart said he was reluctant to impose such a condition after the Board had come this far without it.

Chairman Ribble stated that he would not support a de-barking solution. He said the matter was about numbers not just noise.

Mr. Hammack said noise was certainly a dominant factor, but he believed five dogs were way more than the cases the Board usually heard. He said de-barking the dogs, frankly did not appeal to him; that it was not advertised, and having it raised after the fact did not change his motion. He said he would consider a temporary motion to allow Mr. Tether 90 days to place the dogs, and he thought staff could deal with that.

Mr. Byers said the solution of de-barking the dogs, which on a personal standpoint, he disagreed with totally, could have been offered any time since April 2008, long before the application reached the Board. He said this matter could have been resolved, and although a part of it, the issue was not about barking, and in the Ordinance there was a rationale so that we could live together in neighborhoods. Mr. Byers said in his judgment the lot was not large enough for five animals, and he agreed with Mr. Hammack. He said the conditions were not fair to the animals. They were not designed for an urban environment, and they should be someplace in a rural setting. Mr. Byers said that was what he would encourage.

Chairman Ribble called for a vote.

The motion carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY J. AND CAROL D. TETHER, SP 2009-MA-083 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6400 Lyric La. on approx. 12,086 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 524. (Admin. moved from 11/17/09 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The case is difficult because there are normally certain factors that have been considered; the age and health of the dogs, and a lot of other things that sometimes are justified.
3. A criterion to consider is whether the proposed use shall be such that it is harmonious with and will not adversely affect the use or development of neighboring properties; and, based on the opposition and testimony heard, the Board cannot come to that conclusion.
4. Although sympathetic to the applicant's problem, in this particular case the three beagles do impact adjoining property owners.
5. Based on the health and youth of the three beagles, and the indefinite timeframe that the son and daughter-in-law may live with the applicant, the Board cannot support the application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. THIEN D. VU, SP 2009-BR-090 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 structures to remain 9.2 ft., 6.3 ft. and 5.8 ft. from side lot lines. Located at 4409 Shirley Gate Rd. on approx. 43,547 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 56-4 ((6)) 5.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Quy V. Do, Do Architects, LLC, 5627 Rapid Run Court, Burke, Virginia, agent for the applicant, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Do presented the special permit request as outlined in the statement of justification submitted with the application. His main points were: the accessory structure located 9 feet from the southern side lot line was built by a previous owner; February 25, 1986 and March 4, 1986 Notice of Violations were issued to the former owners and resolved April 2, 1986; that the applicants purchased the property in 1986 and understood it was free and clear of any errors or violations; and, his clients believed they should not be penalized for errors done previous to their ownership. Mr. Do said they were applying for a reduction of minimum side yard based on the error in the building location in order to permit the existing accessory structure to remain. He said there would not be a second dwelling unit or a second kitchen. The gazebo and trellis were installed around 1995 without building permits, because the Vu's did not know about the Ordinance stipulations. Mr. Do requested the Board to approve the special permit on a basis of compassion and common sense.

In response to Mr. Byers' question concerning the second kitchen, Ms. Caffee said the referenced development condition could be deleted, because recent inspections found that the kitchen had been removed.

Mr. Do submitted that his clients previously had not understood the second kitchen issue, but now do and are complying with all Ordinance and Code requirements.

Mr. Hart questioned staff about the gazebo and its foundation; the possibility of moving it; that it had no electricity; that there were two easements running through the front yard; whether there was a requirement for a waiver concerning paved area; and, the matter of drainage.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff was concerned about when the driveway was constructed, and whether the easements should be revisited to determine whether waivers may be required.

In response to Mr. Smith's question concerning the former kitchen area, Mr. Do explained that the appliances, except a washer/dryer unit and a water heater, were removed and basically the room was used for storage. He briefly discussed the property's lot lines and access and egress from the driveway currently paved slightly over an easement. He said the driveway's present location was actually a safe feature.

To clarify Mr. Hammack's question concerning the amount of paved area, Ms. Caffee acknowledged she inaccurately spoke giving her presentation. The property was in a zoned residential conservation district, where the front yard coverage would not apply.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-BR-090 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

THIEN D. VU, SP 2009-BR-090 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 structures to remain 9.2 ft., 6.3 ft. and 5.8 ft. from side lot lines. Located at 4409 Shirley Gate Rd. on approx. 43,547 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 56-4 ((6)) 5. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction of the Minimum Yard Requirements based on Error in Building Location, and the Board has determined that the applicant meets all the criteria under this particular section of the Ordinance, A through G.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of existing detached accessory structures (one-story block and vinyl frame structure, gazebo and trellis) as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated June 19, 2009, revised through August 21, 2009, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits and final inspections for the detached structures (one-story block and vinyl frame structure and gazebo) shall be obtained or the structures shall be removed or brought into compliance with Zoning Ordinance requirements.
3. Within 6 months of approval of this special permit, the applicant shall apply for and gain approval and/or waiver for the existing driveway to remain within the easements or the driveway or portions thereof shall be removed from the easements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. RICHARD EISSNER, SP 2009-SP-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.4 ft. from rear lot line. Located at 9419 Onion Patch Dr. on approx. 9,120 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 505.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Richard Eissner, 9419 Onion Patch Drive, Burke, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-SP-091, subject to the proposed development conditions.

Mr. Eissner presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife moved into their home in 1981. In the mid-80s they put in an in-ground pool, but over the past few years, they realized they were not using the pool frequently. They thought filling in the pool and putting in a screened-in porch would be much more usable. He said he had the approval of their Architectural Review Board.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-SP-091 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD EISSNER, SP 2009-SP-091 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 18.4 ft. from rear lot line. Located at 9419 Onion Patch Dr. on approx. 9,120 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 505. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There is a staff recommendation of approval, and the Board adopts the rationale in the staff report.
3. This is a relatively modest request.
4. Given the photographs and information the Board has, this will not have a significant negative impact on anybody.
5. The proposal may have less of an impact than the swimming pool.
6. The Board has determined that all the criteria in the Sect. 8-922 motion have been met.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (280 square feet), as shown on the plat prepared by Jeff Warner Land Surveying, Inc., dated August 4, 2009 as revised through August 14, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,922 square feet existing + 2,883 square feet (150%) = 4,805 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The existing pool and a portion of the pool deck shall be removed to accommodate the proposed addition. The remaining deck shall be in conformance with minimum yard requirements of the Zoning Ordinance. Open pervious areas created by the removal of the pool and deck shall be re-planted.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. GLENN ANDERSON, SP 2009-PR-092 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 33.7 ft. from front lot line of a corner lot. Located at 2336 Addison St. on approx. 31,790 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 19.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Glenn Robert Anderson, 2336 Addison Street, Vienna, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-PR-092, subject to the proposed development conditions.

Mr. Anderson presented the special permit request as outlined in the statement of justification submitted with the application. He said the house was 60 years old; that they were the second owners; the house had been well-maintained by the previous owner; and, he and his wife bought the home because of its large lot that was heavily wooded with mature trees. The garage's proposed location was the only area on the lot that saved the trees, and even a slight shift would take out a tree that they very much wanted to keep. Mr. Anderson said the existing garage would be rebuilt onto the house and the proposed garage would be used for storage and vehicles. He noted that the driveway would be expanded to accommodate the requested three-car garage.

There being no speakers, Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2009-PR-092 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GLENN ANDERSON, SP 2009-PR-092 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 33.7 ft. from front lot line of a corner lot. Located at 2336 Addison St. on approx. 31,790 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 19. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2009; 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 additional standards for the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance; the Board has determined that the application meets all the submission requirements set forth in Sect. 8-922.
3. Staff has recommended approval, and the Board agrees with their rationale.
4. This is a reasonable use with relatively minimal modification of the setback.
5. The location of the existing garage and the new garage will be compatible because of the prior location.
6. The proposal is compatible with the architecture of the existing dwelling.
7. With the removal of the carport and the covered patio, that will help to lessen the overall bulk that is being added to the property.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:



1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one level, three (3) car garage addition (883 square feet), as shown on the plat prepared by Holmes Smith Engineering, Surveying, Land Planning, dated June 12, 2009, as revised through August 17, 2009, as submitted with this application and is not transferable to other land. The applicant may modify the driveway shown on the plat for appropriate access to the proposed garage.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,011 square feet existing + 3,016.5 square feet (150%) = 5,027.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The applicant shall provide tree save fencing along the eastern, western and northern portions of the site to protect the existing on-site and off-site trees from construction activities. Limits of clearing and grading shall be the minimum amount possible to protect vegetation and tree protection fencing shall remain in place during all demolition and construction phases.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. JOSEPH W. & JOAN R. FIANDER, SP 2009-MA-089 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.5 ft. from side lot line an 12.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 9.3 ft. from side lot line. Located at 3713 Rose La. on approx. 10,381 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((4)) (D) 14.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William A. Reams, Vice President and General Manager of Reamco, Inc., dba Patio Enclosures, Inc., 10595 Furnace Road, Suite 100, Lorton, Virginia, the applicant's agent and contractor, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2009-MA-089, subject to the proposed development conditions.

Mr. Reams presented the special permit request as outlined in the statement of justification submitted with the application. He said they sought to enclose an existing porch, that its roof and foundation were already there, and the structure would remain in the same footprint. He explained that during the permit process, staff noted an accessory structure, playhouse/fort, within the yard's setback requirements. The 25-year-old play house was well screened by vegetation, and no neighbors voiced any objections. There was a letter of support submitted.

There being no speakers, Chairman Ribble closed the public hearing. Mr. Hammack had questions regarding Sect. 8-914, Error in building Location, so Chairman Ribble reopened the public hearing.

In response to Mr. Hammack's question, Mr. Reams said the only information he knew about the playhouse was that the homeowner built it 25 years ago for the children. It was on footers and cross braced, and had no electricity. Mr. Reams said it was assumed that it posed no negative impact, nor was it visible to other properties.

Ms. Johnson responded to Mr. Hammack's questions concerning permits and Code requirements.

Mr. Hammack noted that there was no evidence that the error was done in good faith or through no fault of the owner, in order to address one of the criteria of Sect. 8-914.

Discussion ensued regarding a motion to defer part of the application or to grant it in-part; whether there was additional information concerning the playhouse; and that the playhouse would not require a permit because of its size.

Chairman Ribble closed the public hearing.

Mr. Hammack said given that the Board had no testimony supporting approval under 8-914 at this hearing, he would make a motion to continue the public hearing to allow the applicant to supplement his application to justify the playhouse. He said he did not really have any problem with the work Patio Enclosures intended to do, but since this was all under the one application, he did not want to make an approval-in-part which would require Mr. Fiander to remove the playhouse.

Chairman Ribble re-opened the hearing to allow additional information to be presented.

Mr. Hart suggested that the application be adjourned until the end of the meeting to allow Mr. Reams the opportunity to make a phone call concerning the play house, and then the matter could be decided that day.

Mr. Hammack requested that the application be moved to the end of the agenda.

Chairman Ribble then called the next case.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M.            WENDY ARNOLD, SP 2009-LE-093 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.3 ft. from side lot line and 5.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 27.1 ft. from front lot line. Located at 5811 Larpin La. on 1/6/10 for approx. 14,541 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6)) (F) 3.

Chairman Ribble noted that SP 2009-LE-093 had been administratively moved to January 6, 2010 at 9:00 a.m., due to ads.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF LORD OF LIFE LUTHERAN CHURCH, SPA 95-S-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 95-S-050 previously approved for church to permit addition of nursery school. Located at 13421 Twin Lakes Dr. on approx. 3.76 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 17 and 66-3 ((1)) 39A. (Admin. moved from 10/27/09 at appl. req.)

Chairman Ribble noted that there was a request to defer SPA 95-S-050 to January 13, 2010.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, explained that there were several transportation issues which the applicant was working on.

Chairman Ribble called for a vote.

Mr. Hammack moved to defer SPA 95-S-050 to January 13, 2010, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

In response to Mr. Hart's question concerning the transportation issues, Ms. Johnson said the applicant submitted waiver requests several weeks ago for certain designs which the Virginia Department of Transportation (VDOT) had asked for. VDOT had not had the opportunity to fully address those waivers.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:30 A.M. JOHN D. BIRGE AND SUSAN D. FADOUL, A 2009-DR-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed single family detached condominium development in the R-3 District may not provide access via private driveways onto a public street. Located at 1300, 1308, 1312 and 1316 Ingleside Av. on approx. 2.02 ac. of land zoned R-3. Dranesville District. Tax Map 30-2 ((1)) 1A, 5, 6, 7 and 8. (Admin. moved from 5/19/09 and 8/11/09 at appl. req.)

Chairman Ribble noted that A 2009-DR-005 was administratively moved to March 24, 2010, at 9:30 a.m., at the appellants' request.

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~ ~ ~ December 1, 2009, Scheduled case of:

9:30 A.M. JOLANDA N. JANCZEWSKI, A 2008-SP-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a Riding/Boarding Stable on property in the R-C and WS Districts without an approved special permit nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15. (Admin. moved from 10/28/08 at appl. req.) (Deferred from 12/9/08 at appl. req.) (Continued from 7/14/09)

Chairman Ribble called the appeal application.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said staff and the appellant were requesting a continuance to September 15, 2010. She concurred with Chairman Ribble's statement that staff was working on an amendment to the Ordinance.

Chairman Ribble called for a motion.

Mr. Byers moved to continue A 2008-SP-046 to September 15, 2010, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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~ ~ ~ December 1, 2009, After Agenda Item:

Request for Additional Time  
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, said the applicant had requested 18 months of additional time. Staff did not support 18 months, but would support an additional 9 months. She said the case had been going on for a while. One of the development conditions approved with the application was dedication of property to the Park Authority. The Park Authority was still waiting for that dedication, therefore, they were not in support of extending this for the requested 18 months.

In response to Mr. Hammack's question of why there had not yet been a dedication, Shannon Caffee, Staff Coordinator, said staff was not sure of the reasons, as it was the applicant's engineer who requested the additional time. He gave no details why the park land had not been dedicated, only mentioning that there were issues getting the subdivision plan approved.

Discussion ensued regarding the facts of the application; the length of time for its processing; whether anything had changed; the submission of documents to the County; the fact that the application was granted an extension twice already; and, reasons why an extension of 18 months was requested.

Chairman Ribble suggested that the Board defer the matter for a week and request the engineer explain why the reason 18 months, or any time at all, was needed.

Mr. Byers said the Board had been very prudent and responsible; that this had already been extended twice; that there must be some rationale why the dedication had not yet occurred, and why there has been no submission of documentation. He noted that the process had spanned 6 years, and now the applicant was asking for an additional 18 months. Mr. Byers said some explanation should be provided, and a one-week deferral should be sufficient time to present the information.

Mr. Hart said he would like to better understand the Park Authority's position, because if this were denied, there would not be a development condition, and the Park Authority would get nothing. He submitted it might be worse than waiting the 18 months to end up with nothing.

Mr. Hart then moved to defer the request for additional time for VC 2003-HM-185 to December 8, 2009. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

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Chairman Ribble recalled the case for JOSEPH W. & JOAN R. FIANDER, SP 2009-MA-089.

Mr. Reams said the Fianders originally planned to put the play area toward the middle of the yard, but it was soon realized that with the number of trees, the play equipment footers could not be set deep enough to be secure. The digging gradually moved toward the left side of the yard, as they looked for an appropriate place to set the concrete. Where the playhouse was set was the only area to safely place it. Mr. Reams said Mr. Fiander thought that the location was an allowable distance from the lot line, and was not aware of the Ordinance violation.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-MA-089 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**  
**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JOSEPH W. & JOAN R. FIANDER, SP 2009-MA-089 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.5 ft. from side lot line and 12.8 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of addition 9.3 ft. from side lot line. Located at 3713 Rose La. on approx. 10,381 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((4)) (D) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Regarding the reduction of certain yard requirements, the Board has determined that the applicant has satisfied the six specific criterion set forth in the Code for the granting of this permit.
3. Based on the explanation of the applicant's representative that the applicant was ignorant of the setback requirements required for a structure that otherwise would not require a building permit, the Board finds that the applicant has presented testimony indicating compliance with Sect. 8-006 and Sect. 8-914, and has satisfied the criteria in that Code section for granting the special permit.
4. Apparently the structure has been there in the neighborhood for 25 years with no objection to it by the neighbors.
5. The structure, to a large extent, is concealed by screening.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, 150 square feet for the proposed addition and tree house, as shown on the plat prepared by Larry N. Scartz, Land Surveyor, dated June 19, 2009, as revised through September 1, 2009, as submitted with this application and is not transferable to other land.
3. The applicant shall obtain building permits for the addition prior to construction.
4. The addition shall be architecturally compatible with the existing dwelling on site, as depicted on Attachment 1.
5. The accessory structure shall be maintained in good repair at all times.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Paula A. McFarland

Approved on: June 14, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 8, 2009. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

Chairman Ribble called the meeting to order at 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ December 8, 2009, Scheduled case of:

9:00 A.M. TSION TESFAYE, VC 2009-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 7724 Heritage Dr. on approx. 11,053 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((9)) 1.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Tsion Tesfaye, 7724 Heritage Drive, Annandale, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation.

Ms. Tesfaye presented the variance request as outlined in the statement of justification submitted with the application. She wanted a carport to provide more safety from the elements, plus the added security would assist her in getting in and out of her house. She asked the Board to approve her application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2009-BR-004 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TSION TESFAYE, VC 2009-BR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 7724 Heritage Dr. on approx. 11,053 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((9)) 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 December 8, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant has satisfied the nine (9) required standards for variance applications set forth in the Zoning Ordinance, in particular that the strict application of the Ordinance would produce undue hardship.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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.

1. This variance is approved for the minimum side yard of 2.0 ft., as shown on the plat prepared by Fitzroy J. Bertrand, Real Estate Surveyors & Developers, LLC, dated June 22, 2009, revised and signed through September 4, 2009, submitted with this application and is not transferable to other land.
2. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions.
3. If required by the Virginia Uniform Statewide Building Code, the carport addition may be partially or completely enclosed along the eastern side lot line to comply with fire prevention code requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:00 A.M. CHINMAYA MISSION WASHINGTON REGIONAL CENTER, SPA 00-Y-050-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-Y-050 previously approved for



church to permit a change in permittee. Located in 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 Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Prakash Soman, Trustee of the Regional Center, reaffirmed the affidavit.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval subject to adoption of the proposed development conditions.

John Farrell, 11350 Random Hills Road, Fairfax, Virginia, agent for the applicant, said the applicant waived his presentation, and reserved the time for rebuttal, if necessary.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SPA 00-Y-050-02 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHINMAYA MISSION WASHINGTON REGIONAL CENTER, SPA 00-Y-050-02 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 in 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. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. The present zoning is R-C and WS.
3. The area of the lot is 8.64 acres, Fairfax County; 0.55 acres, Loudoun County.
4. The staff has no objection to the approval of the special permit amendment.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Chinmaya Mission Washington Regional Center, and is not transferable without further action 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 determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of 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 spaces 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 picnic pavilion shall be landscaped as shown on the special permit plat. At least fifty percent (50%) of this area shall be landscaped contemporaneously with the first phase of development; a minimum of fifty (50%) of the trees 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). The applicant may design the 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 (MWCOC) "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 MWCOC 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 plan 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 and 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 with 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 line 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 location 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.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:00 A.M. JOSEPH D. LUDOVICI, SP 2009-MV-095 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.3 ft. from side lot line. Located at 1143 Greenway Rd. on approx. 9,719 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 141.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Joseph D. Ludovici, 1143 Greenway Road, Alexandria, Virginia, reaffirmed the affidavit.

Shelby Johnson, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Ludovici presented the special permit request as outlined in the statement of justification submitted with the application. He wanted to add on a family room, but maintain the existing plain of the house, and noted this configuration would be in keeping with the style of the neighborhood homes. He asked the Board to approve his application.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2009-MV-095 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH D. LUDOVICI, SP 2009-MV-095 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.3 ft. from side lot line. Located at 1143 Greenway Rd. on approx. 9,719 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 141. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. Staff recommends approval, and the Board adopts the rationale in the staff report.
3. The house has been there since 1958.

4. Although it would be possible to construct the addition with a 15-foot setback, reducing it to 10.3 feet would not make a difference.
5. The line of the addition is consistent with the line of the existing house and the other homes in the neighborhood.
6. With the development conditions, the potential impacts of the structure have been sufficiently mitigated.
7. There will be no significant negative impact.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 545 square feet) of the addition, as shown on the plat (two pages) prepared by Dominion Surveyors, Inc., dated March 19, 2005, revised by Rebecca L.G. Bostick, Architect, through November 20, 2009, submitted with this application and is not transferable to other land.
3. Building permits for the addition shall be obtained prior to construction.
4. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,739 square feet existing + 2,608.5 (150%) = 4,347.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. Prior to the issuance of a building permit for Phase II of construction, a 10-foot wide storm drain easement shall be provided in a form approved by the County Attorney, for the purpose of providing access to the storm drain facilities along the eastern side and rear yards, in the approximate location shown on the SP Plat.
6. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:00 A.M.       THANH TRAN, SP 2009-SU-096 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 5366 Wharton Park Ct. on approx. 10,634 sq. ft. of land zoned R-3. Sully District. Tax Map 54-4 ((21)) 4.

Chairman Ribble called the applicant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John R. Pohzehl, 13545 Waverly Loop, Chantilly, Virginia, agent for the applicant, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Pohzehl presented the special permit request as outlined in the statement of justification submitted with the application. He stated that since the property had more side yard than back yard, the only place to construct an addition would be on the existing deck. He said this would allow the applicant to also keep a good distance to the property line.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2009-SU-096 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

THANH TRAN, SP 2009-SU-096 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.3 ft. from rear lot line. Located at 5366 Wharton Park Ct. on approx. 10,634 sq. ft. of land zoned R-3. Sully District. Tax Map 54-4 ((21)) 4. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. Staff recommended approval and indicated that the applicant has met all the required standards for approval under the Ordinance.
3. The property backs up to a 30-foot conservation easement.
4. There will not be an impact on the rear neighbor.
5. The addition is such that it will not have an impact on either side neighbor.
6. The addition seems like it is the minimum necessary to achieve its objective.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a sunroom addition (203 square feet), as shown on the plat prepared by AVW & Associates, Land Surveying, dated June 22, 2009, as revised through September 14, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,959 square feet existing + 4,423.5 square feet (150%) = 7,382.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:00 A.M. TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for place of worship, private school of general education and columbarium to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (Admin. moved from 10/20/09 at appl. req.)

Chairman Ribble noted that this hearing had been administratively moved to January 13, 2010, at 9:00 a.m. at the applicant's request.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:30 A.M. KEVIN M. FERGUSON AND C. NICOLE FERGUSON, A 2009-MV-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a junk yard and a storage yard on property in the R-E District in violation of Zoning Ordinance provisions. Located at 7408 Old Spring Dr. on approx. 1.29 ac. of land zoned R-E. Mount Vernon District. Tax Map 118-1 ((2)) 37.



Chairman Ribble called the appellants to the podium.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff had received a letter from the appellants' attorney on December 2, 2009, requesting a deferral.

Chairman Ribble called for speakers to address the question of the deferral request, and no one came forward.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

In response to a question from Mr. Smith, Chuck Cohenour, Senior Zoning Inspector, stated that staff went to inspect the site on November 11, 2009. Since there were No Trespassing signs on the property, Mr. Cohenour said photos were taken with a telephoto lens.

Mr. Smith, Ms. Stanfield, and Brian Parsons, staff coordinator, discussed the deferral request from the appellants, and Ms. Stanfield read the letter into the record. Mr. Parsons noted that he gave the appellants' attorney a range of future hearing dates, and they had picked the furthest date out.

Mr. Smith moved to continue the public hearing on A 2009-MV-035 to January 27, 2010 at 9:30 a.m., stating that this would be the last delay.

Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:30 A.M. SCI VIRGINIA FUNERAL SERVICES, INC., A 2009-PR-038 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has expanded the use and conducted land disturbing activity on property in a Resource Protection area and the R-1 District, which is not in conformance with the conditions of Special Permit Amendment SPA 88-P-050-1, in violation of Zoning Ordinance provisions. Located on approx. 74.65 ac. of land zoned R-1. Providence District. Tax Map 50-1 ((1)) 36.

Chairman Ribble called the case. He noted there had been a deferral request, but staff did not support it.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who affirmed that their testimony would be the truth, and the public hearing was opened.

Tara Boyd, the applicant's agent, 123 East Main Street, Charlottesville, Virginia, came forward, and stated the appellant was no longer pursuing the deferral request.

Cathy Belgin, Ordinance Administration Branch, made staff's presentation. Staff recommended the Board uphold the determination of the Zoning Administrator.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted there was another cemetery with a stockpiling issue, but there was not a scheduled court case, as the notice of violation was being resolved by removal of the stockpiling.

Mr. Hart posed several questions which clarified the extent of the stockpiled dirt, the need for a grading plan, and the make-up of another photographed pile of debris, which extended across the entire back-side of the property, with portions being concrete and trees.

There was discussion regarding the relevance of specific documents submitted by the appellant, the need for a special permit amendment rather than just a site plan, because of the need to address the change in topography caused by the stockpiling, the increased volume of stockpiling in recent years, changes in method and quantity of burials, the appellant's submittal of a site plan, which required a special permit amendment as it was not in compliance, and one main issue being that the area and depth of the stockpiling was too extensive.

Ms. Boyd came forward. She explained the appellant had received two other violations, but had taken the necessary steps to come back into compliance. Ms. Boyd emphasized the appellant's stance was that a special permit amendment should not be required, since the displaced dirt was an integral part of the permitted use of a cemetery, and there was fear that by applying for a special permit amendment there would be a restriction placed on the amount of allowed dirt, which could limit the capacity of the business. She stated that no additional soil had been added to the property, the extensive height of the stockpiled dirt was due to it not being spread evenly across the entire storage area, and that land disturbance was expressly permitted in the original special permit approval. Ms. Boyd acknowledged there were issues the appellant was working to fix, but the only apparent zoning violation was related to the maintenance building, which the appellant did intend to bring into compliance, and had requested sufficient time to do so.

There was discussion regarding how the business would be impacted by stockpile restrictions, the definition of stockpile, the need for a permit for the proposed mausoleum, and the applicant's stance that there was no change in use, and no dirt had been added to or removed from the property, so no special permit should be required, but rather just the submittal of an updated plat.

In response to questions posed by Mr. Hart, it was clarified that the applicant's site plan was rejected, since it was staff's understanding that a special permit was required. With regard to the oversized building, staff stated there were no relevant tax records for the building.

The appellant did not dispute the stockpile covered a larger area, and reached a greater depth than would be allowed were the dirt from an outside source. The appellant also did not dispute there was removal of trees from the buffer area. Ms. Boyd explained the appellant's intent to replant trees in the buffer area, but there was an unresolved issue regarding surrounding neighbors having extended their yards into the cleared buffer area.

Mr. Hart expressed concern with the evident use of the piled dirt by neighboring youth. He suggested possible restrictions that could deter continued outside use. He did not support the idea that any dirt on the property could be moved wherever, and in whatever quantities the appellant desired. Mr. Hart inquired if there were any other legal authorities which evidenced stockpiling, not previously included in an approved plat, being permitted without a special permit amendment. Ms. Boyd had no examples, but she did express the appellant's concern and efforts to prevent outside access.

There was discussion regarding the inclusion of other debris, such as downed trees, in the stockpile area. Staff expressed it was not common practice to bury downed trees, rather than remove them from the property.

Ms. Boyd explained the lot was not suitable for anything other than a cemetery, and described the process of utilizing new areas of the site for new burials. She also clarified there was no notable increase in activity since the 1970s, and dictated the obstacles being faced by the appellant in regard to the requirements being imposed.

Ms. Boyd demonstrated the appellant's plan regarding grading and compacting the stored dirt, and emphasized the present dirt had not been compacted, so it would end up having less of a topographic gradient. The appellant's engineer, Bill Zink, came forward and detailed the intended action to be taken and the conclusions drawn from the geotechnical report, which addressed the soil, slope, and sediment control. He explained the plan for any new dirt that would be unearthed due to operation of the cemetery, and stated it should not exceed the present height of 10 to 12 feet, but the intent was to continually level the dirt.

Mr. Zink explained the long-term impact of the proposed plan, but Ms. Gibb questioned the short-term impacts. Mr. Zink described how the site would look following the submitted minor site plan and sediment control measures. He also stated the Resource Protection Area did not exist when the dirt was placed there, and though unaware of any remediation efforts taken in previous years, there did not seem to be massive erosion or run-off.

Staff stated they had not observed any off-site dirt being brought on to the property.

Mr. Zink explained the sediment basin and the diversion dike, and clarified the location of discharge from these areas. He also elucidated upon the long-term plan for the storage of dirt, and emphasized his strict attempts to respect the buffer zone and create a plan which was legally abiding.

There was dissension regarding whether a public hearing needed to be held to approve the proposed sediment control system.

Chairman Ribble called for additional speakers.

Robert Fells, general counsel and external Chief Operating Officer of the International Cemetery, Cremation, and Funeral Association, came forward. He mentioned a previously submitted letter. His main points included the necessity of soil displacement in cemetery operations, too stringent of limitations leading to waste rather than recycling of a cemetery's valuable resource, and the analogous situation of cemeteries having tax exemption status while being permitted to have on-site soil storage.

Blair Harsh, member of the neighboring community, came forward. His main concerns included the increased activity on the property, the removal of vegetation which resulted in excessive water flow into his backyard, the destabilization of the trees on the hill left him fearful of a tree falling into his yard, and the general desire of the community to look upon trees rather than graves.

The Board recessed from 11:26 a.m. till 11:36 a.m.

Chairman Ribble called the meeting to order.

Mr. Harsh noted he represented a citizen's association, so he was given additional time to speak. He explained the safety concerns caused by the activities of the cemetery, the stance of the residents being that the special permit needed to be adhered to, and his personal observation of the dirt pile growing by several feet in the past few years.

Maryl Kerley, member of the Board of Directors for the surrounding community's Homeowners Association, came forward. She discussed issues the Holly Crest neighborhood had experienced with the applicant's operations, and how healthy trees had been knocked down as a result of excess debris traveling down the slope of the hill. Ms. Kerley explained she had met with the managerial cemetery staff the previous year, and they stated they would still honor the buffer zone, but refused to put that same statement into writing. She also expressed how devastated the area had become due to the destruction of the natural buffers which prevented the excessive run-off presently being dealt with.

The remaining speakers Tom McCarthy, member of the Board of Directors for the Homeowners Association; Todd Lesser, 2613 Holly Manor Drive, Falls Church, Virginia; Jeff Tuttle, 2607 Holly Manor Drive, Falls Church, Virginia; Jeff Howard, member of the neighboring community; Catarina Couto-Brand, president of Holly Crest Homeowners Association; and James Ball, president of Misty Woods Homeowners Association; individually came forward.

Vice Chairman Hammack assumed the Chair.

Mr. Howard had not been sworn in, so the Chairman directed the clerk to administer the oath to Mr. Howard, who swore or affirmed his testimony would be the truth under penalty of the law.

The speakers' main points included resident observation of bulldozers and dump trucks operating beyond the scope of average dirt removal, the impact of tree removal on increased water run-off, the appellant's reparation plans being solely a result of County involvement, the drastic increase in activity having begun two or three years ago, suspicion the appellant was bringing in off-site dirt with potentially contaminated debris due to the excessive volume, examples of unfulfilled promises by the appellant to fix the issues they caused with tree and brush removal, the decreased home value, photographic evidence of cement debris within the soil, and the noise and visual issues caused by the appellant.

Chairman Ribble resumed the Chair.

There was discussion regarding the existence of restrictions placed on the operation of equipment which generates nuisance noise, and whether any residents had called the police department to file a noise complaint.

There was further discussion regarding the extent of the build-up of downed trees, the concern with whether the appellant's plan would actually be able to stabilize the area, the presence of construction debris, the negative impact on forested area outside of the buffer zone, Urban Forestry Management's lack of support in depositing downed trees rather than removing them, concern with how the issues would be repaired, the severity of the run-off, and the sediment control measures to be taken as being something that should have been done preventively.

Staff commented on personal observance of building debris in the soil on the appellant's property, and clarified the appellant had been told certain functions were permitted if shown on the approved special permit plat, and that the cemetery did not qualify for grandfathered status, since there was already an existing special permit approval for the property.

In response to questions from the Board, staff stated the roots of several trees had been covered with fill, and that covering the roots harms trees due to soil compaction. Ms. Boyd indicated the appellant was not bringing outside dirt onto the property. Chris Downey, market director for the appellant, attested there was no activity on the property from dusk till 7:00 a.m., so he had no understanding of why there would be a truck dumping dirt in the early morning hours. Mr. Downey also had no knowledge of where the concrete blocks had originated from, and disagreed with others' testimonies regarding the extent of growth of the dirt pile. He explained the commercial vehicles owned by the appellant, and the occasional rental of a bulldozer. Mr. Downey was unable to answer several questions regarding how the trees were taken down, and who tore them down without replacing them. An additional representative of the appellant explained it was not whole trees left behind, but rather just limbs, and though the appellant had not been great at removing diseased trees in a timely manner, the standard procedure was to remove them from the property and offer some of it as firewood.

Ms. Boyd came forward to offer the appellant's rebuttal with regard to issues raised during the hearing. Her main points included the soil being moved from the resource preservation area to elsewhere onsite in order to legally comply, the appellant's plan to restore all vegetation removed from the buffer area, a section of the removed vegetation was part of the cemetery property that was legally allowed to be expanded into, and that there had been no significant increase in operations on the property. Ms. Boyd also explained the topography of the area and the existing drainage precautions in place, and emphasized there was an increase in run-off because of the increase in rain, but the increase in height of the stored soil did not impact the storm water run-off.

There was discussion regarding the orange fence installed by the appellant at the request of the County, and the intended silt fence construction, which would allow for removal of the orange fence.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to uphold the determination of the Zoning Administrator for A 2009-PR-038. He explained the central issue was the permitted amount of dirt removal, displacement, and stockpiling for the regular operation of a cemetery. It was Mr. Hammack's belief that with the original special permit approval, it was intended that any changes made to the approved plan, or the approved use, would require filing for a special permit amendment, and at some point there needs to be reasonable controls on the amount of allowable dirt and debris on the property before it is considered an expansion of use. He stated this case demonstrated a disruptive use as evidenced by testimony and photographs of what was more reminiscent of a debris landfill than a cemetery stockpile. The stored dirt was piled high, and was filled with extensive debris, both natural and commercial, which the appellant could not fully explain. With regard to all issues being faced with the appeal, the appellant agreed the maintenance building was in violation, and it was Mr. Hammack's understanding that the Zoning Administrator was correct in issuing the notices of violation.

Ms. Gibb seconded the motion.

Mr. Hart discussed the need to use this case as an example of unclear guidelines regarding cemeteries, which need to be specified through the Zoning Ordinance. He also explained the issue before the Board was the validity of the notices of violation at the time of their issuance, not the remediation of those violations, and

it was his understanding that they were rightly issued. Referencing the Zoning Ordinance, Mr. Hart did not believe the source of the fill was relevant, only the placement of it, and it was placed in an area larger than permitted. It was evident that the increased operation and construction on the property was done prior to a site plan or grading plan being submitted, so the appellant was acting without approval. The Zoning Ordinance stated the need for director approval to make certain modifications to the land. Mr. Hart clarified there had been dispute over the interpretation of the Zoning Ordinance, but the facts presented were accurate. He stated that it was not presently the task of the Board to determine if the appellant should be allowed additional time to bring the over-sized building into compliance. Mr. Hart was in agreement with staff's determination that the subject property had demonstrated a significant increase in use, which needed to be mitigated through additional approval from the Board.

Mr. Smith explained his position in supporting the Zoning Administrator's decision, as it was his opinion that the use on the property had expanded to such an extent that a special permit amendment did seem appropriate.

The motion carried by a vote of 6-0. Mr. Beard was absent from the meeting.

Chairman Ribble noted the Board had received and taken into consideration a letter submitted by a speaker who had to leave the meeting.

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~ ~ ~ December 8, 2009, Scheduled case of:

9:30 A.M. RICHARD LORD, A 2009-SP-039 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit and that modifications to an unfinished basement have been made without an approved Building Permit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6616 Saddlehorn Ct. on approx. 9,400 sq. ft. of land zoned R-3. Springfield District. Tax Map 88-1 ((11)) 9.

Chairman Ribble called the appellant to the podium.

The Chairman directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mavis Stanfield, Deputy Zoning Administrator, Zoning Administration Division, explained the appellant had cleared the violation. She requested the case be dismissed.

Richard Lord, the appellant, came forward and spoke to his agreement with the dismissal of the case given the Board review the validity of the violation, as it was his belief it was improperly issued. He detailed the process he had been through with the County since the original notice of violation, and explained the efforts he had taken at each step to comply with Fairfax County requirements.

Chairman Ribble called for speakers.

Laurel Zielinski, 6615 Saddlehorn Court, Burke, Virginia, and Jane Brown, 6610 Saddlehorn Court, Burke, Virginia came forward. They expressed their request that the Board uphold the determination of the Zoning Administrator regarding the appellant operating an accessory dwelling unit in his basement, and claimed Mr. Lord was omitting key details from his interactions with the County.

Staff explained the notice of violation was reissued due to being incorrectly issued originally, and verified that as of the June 22<sup>nd</sup>, inspection noted there was a complete second dwelling unit on the property.

Mr. Lord reiterated the second dwelling unit was only set up for the purposes of the inspection, and explained how he had been negatively impacted as a neighbor in terms of parking. He stated that there was no issue with him maintaining an accessory dwelling unit in the future, as it no longer existed, and he simply wanted to rebut the validity of the violation that he was ever operating one.

Mr. Byers moved to dismiss Appeal A 2009-SP-039.

Mr. Smith seconded the motion.

Mr. Hart made a substitute motion. He moved to uphold the determination of the Zoning Administrator for Appeal A 2009-SP-039. Mr. Hart explained the appellant requested a decision on the accuracy of the subject Notice of Violation, and it was his understanding that the letter did not reference occupancy of the space, and was accurate to the existing physical facilities at the time. He was not aware of any existing limitations on inspections which would not permit the issuance of a Notice of Violation for an inspection related to a pending special permit application or any other non-complaint driven reason for County staff to be present on the property. Mr. Hart felt there would likely not be any enforcement action since the violation was considered moot, but in terms of the validity of the original violation, it was his position that the Zoning Administrator was correct.

Ms. Gibb seconded the substitute motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Mr. Beard was absent from the meeting.

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~ ~ ~ December 8, 2009, After Agenda Item:

Request for Additional Time  
Maroun S. Bechara and Barbara M. Bechara, VC 2003-HM-185

Maroun Bechara, the applicant, explained the work had started late, but a nine-month deferral would be sufficient for the work to be completed.

Julie Cline, Fairfax County Park Authority, clarified there had been opposition to an 18-month extension, but there was no issue with a 9-month extension.

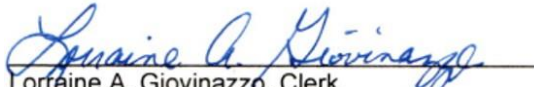
Mr. Hart moved to approve the additional time, with a new expiration date of May 25, 2010. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 1:32 p.m.

Minutes by: Suzanne L. Frazier/Lorraine A. Giovinazzo/Emily J. Armstrong

Approved on: September 13, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 15, 2009. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble noted the recent passing of John DiGiulian, previous Chairman of the Board of Zoning Appeals for 13 years. He and Mr. Hart each expressed the Board's appreciation for Mr. DiGiulian's years of service and dedication to his responsibilities as a Board of Zoning Appeals member for 30 years.

~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. THE CHURCH FOR ALL NATIONS, INC., SPA 83-P-057-05 (change in permittee and deletion of land area)

Chairman Ribble noted that SPA 83-P-057-05 had been administratively moved to January 13, 2010, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. NAWAL TODI, SP 2009-PR-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.3 ft. from front lot line. Located at 2121 Tysons Executive Ct. on approx. 7,567 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2 ((48)) 1. (Deferred from 10/20/09 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Nawal Todi, 2121 Tysons Executive Court, Dunn Loring, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval to permit reduction of certain yard requirements to permit construction of a sunroom addition 10.3 feet from the front lot line. Staff recommended approval subject to the proposed development conditions.

Discussion ensued regarding staff's December 8, 2009 Addendum.

Mr. Todi presented the special permit as outlined in the statement of justification submitted with the application. He said he would like his family to enjoy the outside with the sunroom, and the reason to build it was to extend the kitchen area so that the family members could enjoy getting together.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2009-PR-070 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NAWAL TODI, SP 2009-PR-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.3 ft. from front lot line. Located at 2121 Tysons Executive Ct. on approx. 7,567 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-2

((48)) 1. (Deferred from 10/20/09 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. Staff's recommendation is adopted.
4. The addition will be slightly larger than what is existing.
5. Aside from the addition of the sun room, there will not be much change.
6. The Board has determined the applicant has satisfied the six required standards set forth in Sect. 8-922.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed sunroom addition as shown on the plat prepared by Larry N. Scartz, Scartz Surveys dated November 12, 2009, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,883 square feet existing + 4,324.5 (150%) = 7,207.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials depicted on the plat and included in Attachment 1 to these conditions
5. Prior to final inspection of the addition, the lattice screening above the deck railing shall be removed and the deck shall be brought into compliance with Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special



permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. JONATHAN B. & ELISABETH R. MORSE, SP 2009-DR-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirement to permit construction of addition 20.6 ft. from front lot line. Located at 2220 Casemont Dr. on approx. 12,147 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((8)) 16. (Admin moved from 12/15/09)

Chairman Ribble noted that SP 2009-DR-099 had been administratively moved to January 6, 2010, at 9:00 a.m., at the applicants' request.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. MARY S. STUP/TRUSTEE, SP 2009-DR-098 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 6.25 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 12 ft. 11 in. from rear lot line. Located at 10910 Shallow Creek Dr. on approx. 37,587 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((17)) 40.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Steven T. Stup, 10908 Shallow Creek Drive, Great Falls, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval, subject to the proposed development conditions.

Robert M. Anderson, Wamat, Inc. d/b/a Statz Stone and Structure, 1010 Ruritan Circle, Sterling, Virginia, agent for the applicant, presented the special permit as outlined in the statement of justification submitted with the application. He said the requested patio would be for use in all seasons so the family could enjoy their back yard. He noted that the shape of the lot had a jagged edge to where they had two separate rear lots, and the proposed design would allow them to expand more into the yard.

Chairman Ribble called for speakers.

William D. DeGrandis, 10908 Shallow Creek Drive, Great Falls, Virginia, came forward to speak. He said he was a next-door neighbor, and he fully supported the screened porch proposition. Mr. DeGrandis said the requested deck around the pool was discussed with the Home Owners' Association, the question of drainage was raised, and the applicants were fully cooperative. He said every time any issue was raised, the Stups addressed it.

Discussion with Board members and staff ensued regarding the deck's measurements.

As there were no other speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2009-DR-098 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARY S. STUP/TRUSTEE, SP 2009-DR-098 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 6.25 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 12 ft. 9 in. from rear lot line. Located at 10910 Shallow Creek Dr. on approx. 37,587 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((17)) 40. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses; Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements based on Error in Building Location; and the additional standards for the Provisions of Reduction of Certain Yard Requirements as contained in Sect. 8-922.
3. All other criteria have been met under 8-914 and 8-922.
4. Staff recommends approval of the application for the screened porch addition.
5. Staff's rationale is adopted.
6. There are several letters of support including one from the community's Architectural Review Committee.
7. This particular application has two rear yard lot lines separated by 105 feet in depth, which makes the application even more compelling.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a screened porch addition (525 square feet) and at-grade patio as shown on the plat prepared by Urban Engineering & Assoc. Inc., dated November 13, 2000 as revised through September 26, 2009, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,723 square feet existing + 5,584.5 square feet (150%) = 9,307.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to final building inspections, evergreen trees a minimum of 6.0 feet in height at time of planting, shall be planted between the screened porch addition and the adjacent northern rear lot line. The trees shall be spaced no greater than 10 feet on center.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. THE NEW VISION COMMUNITY CHURCH, INC., SP 2009-SU-018 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church with private school of general education. Located at 14927 Lee Hwy. on approx. 10.0 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((3)) 28. (Admin. moved from 6/16/09, 7/14/09, and 8/11/09 at appl. req.) (Decision deferred from 9/29/09 and 11/17/09)

Chairman Ribble noted that the applicant requested a decision deferral on SP 2009-SU-018 to February 24, 2010, at 9:00 a.m.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said that the applicant had requested the decision deferral, because they were awaiting a decision by Virginia Department of Transportation (VDOT) on their waiver and modification request.

Chairman Ribble called for a motion.

Ms. Gibb moved to defer SP 2009-SU-018 to February 24, 2010, at 9:00 a.m. (There was no second heard.)

Amber Sharm. Amber K. Scharn, Odin, Feldman & Pittleman, P.C., 9302 Lee Highway, Suite 1100, Fairfax, Virginia, responded to Mr. Hart's questions concerning a time-frame for VDOT's response. She noted that they wanted to allow additional time because of the holidays.

Chairman Ribble then called for a vote. The motion carried by a vote of 7-0.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. JAMES BAKER, SP 2009-BR-094 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit an accessory dwelling unit and reduction of certain yard requirements to permit construction of additions 6.0 ft. from side lot line. Located at 6305 Gormley Pl. on approx. 17,848 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 623.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

James Baker, 6305 Gormley Place, Springfield, Virginia, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial, because they believed that the subject application was not in conformance with all the applicable Zoning Ordinance provisions, specifically, Standards 6, 7, 8 and 9.

There was discussion between Ms. Johnson and Mr. Hart with regard to the measurements of a previous proposal for a garage.

Mr. Baker presented his special permit as outlined in the statement of justification submitted with the application. He said there were no zoning violations, and that he was requesting a special permit to add an accessory dwelling unit for his 63-year-old sister and a two-car garage. He explained the design, listing the construction he could do by-right. Addressing concerns of his neighbors, he assured his home would not be a boarding house; however, there were two boarding houses on either side of him. He said he had no plans to move. Mr. Baker said the structure would be compatible and harmonious with the neighborhood. He said staff totally misunderstood his statement of justification, clarifying that there would be only one level.

Mr. Baker responded to Mr. Hart's questions concerning the entranceway to the addition, location of its door, the walkway or paved area, the location and setback of a privacy fence, existing plantings, his carport, the proposed garage's measurements, and the fact that he wanted to place the addition in such a location as to assure window views of the fish pond and backyard.

Mr. Byers asked verification of whether the applicant's sister or a tenant would occupy the accessory dwelling. Mr. Baker assured it would not be a boarding house.

Mr. Hammack told Mr. Baker that the Board could not design his plan; the Board must approve what he proposed, and he was proposing different alternatives. Mr. Hammack said he was not inclined to want to support something when they were being told it could be put here or there, and that the applicant needed to tell the Board exactly what he wanted. Mr. Hammack further explained that the applicant was in control of what was submitted to the County, and that was what staff evaluated.

In response to Mr. Hammack's question concerning Mr. Baker's plans, Ms. Johnson noted the differences between those in the staff report and his presentation. She said staff took their own photographs and aerials, which evidenced what he proposed. She explained the proposed two-car garage's location and distances between the dwelling, the garage, the addition, and lot lines. Ms. Johnson said staff suggested an alternate plan which could be permitted; however, Mr. Baker indicated he was not interested in considering any other alternatives, which was why staff recommended denial.

Mr. Beard commented that what Mr. Baker proposed was what he wanted, and that he was the property owner. Mr. Beard said he saw nothing that he thought was profoundly objectionable, as this was not a 'McMansion' situation. He said he usually tended to defer to staff, but if the applicant wanted it that way, that should be the way he should be able to have it, if at all possible. Mr. Beard noted that if Mr. Baker was 55 years old, he was permitted to have a tenant, and the tenant need not be elderly, handicapped, etc.

To clarify staff's position, Ms. Langdon said staff was not necessarily opposed to an accessory dwelling unit, but staff was charged with reviewing the standards and making a recommendation. She said Standard 9 was not met, and that at least the two-story part of the addition could be located in the rear yard and be allowed by-right. Staff, was not objecting completely to a garage on that side, but staff believed it was not really a two-car garage, it could go smaller, perhaps 8 or 9 feet rather than 6 feet from the side lot line. Ms. Langdon said based on the Standards of 8-922, staff believed there were other alternatives, and staff could support something, but not that which was proposed.

Ms. Langdon responded to Mr. Smith's questions concerning the carport.

Mr. Baker responded to Mr. Smith's question concerning the height of the existing dwelling, the proposed addition and, the roofline.

Chairman Ribble called for speakers.

Bennie Cockfield, 6312 Gormley Place, Springfield, Virginia, came forward to speak in opposition. His issues were that allowing the addition would be against the covenants, out of character with the neighborhood, and cause loss of value to the other properties. He also was concerned about water runoff from the steep slope and sidewalk, which could create a gully. He said a petition was submitted that morning from 17 neighbors who opposed the application, of which 15 were property owners.

Discussion ensued regarding the Board's consideration of petitions and letters from renters/tenants, as well as those from property owners.

Melva Land, 6302 Gormley Place, Springfield, Virginia, came forward to speak in opposition. Her issues were the unit would be a single-family home with an apartment attachment which could be rented if Mr. Baker chose to do so, that it did not fit in with the neighborhood, and it could set a precedent for rental properties in the area.

In rebuttal, Mr. Baker noted that there were boarding houses on either side of him with their numerous cars parked in the driveway and on the street. He said these neighbors were rude, uncooperative, had many people residing there, often parked in front of his home and in front of a fire hydrant, and, Zoning Enforcement staff had issued Notices of Violation. Mr. Baker stated that he had lived alone in his five-bedroom home, and when his sister moved in it would be a total of two people with two cars.

Chairman Ribble closed the public hearing.

Mr. Hart moved to deny SP 2009-BR-094 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

JAMES BAKER, SP 2009-BR-094 Appl. under Sect(s). 8-918 and 8-922 of the Zoning Ordinance to permit an accessory dwelling unit and reduction of certain yard requirements to permit construction of additions 6.0

ft. from side lot line. Located at 6305 Gormley Pl. on approx. 17,848 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 623. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. These applications are difficult; they are reviewed one at a time, and each application in the context of the Zoning Ordinance may have a different result.
3. Some other issues have come up in the public hearing, which are not necessarily controlling on the Board's decision; issues with boardinghouses are those for zoning enforcement.
4. The presence of boardinghouses on either side would not affect the Board's analysis under the Ordinance standards, unless those boardinghouses had been approved with a special permit, which the Board has not done.
5. There are often parking disputes in a neighborhood, but whether there are 20 people living in a house, and people parking by driveways or fire hydrants, those are matters for the police and parking enforcement, and while that may contribute to frustration in the neighborhood, it does not necessarily justify an approval.
6. Suggestions that there were covenants from 1963 which may affect the property may in fact be the case, but the Board cannot base its decision on the presence or validity of real estate covenants; those are private matters between the parties and are for a court to decide, not the Board; the Board must go by the Ordinance.
7. The staff report recommends denial.
8. The rationale in the staff report is adopted.
9. There are several standards which have not been satisfied, and before the Board can approve a special permit like this, it must be found that all the standards were satisfied, and in particular, under Sect. 8-006, Sub. Sect(s) 2 and 3 have not been met, and under Sect. 8-922, Sub. Sect(s) 7, 8, and particularly 9.
10. The Board does not recall an approval by this Board of an intrusion into a minimum side yard of approximately 40 feet length as close as this.
11. Under Sub. Sect. 9, the Board must determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot.
12. Not only is it too long and out of character with previous approvals, the function of the garage itself could not be a two-car garage at 17 feet, and in the past 10 years, the Board has not approved one. It could be a one-car garage with storage or a two-car garage for vehicles head to head instead of side to side. At 17 feet, it really does not need to be as close as six feet to the side.
13. Under certain circumstances, an accessory dwelling unit might well be approvable on this property notwithstanding the frustration in the neighborhood, but not in this location and not in this configuration.
14. The combination of a minimum yard reduction on the side where the door is where there is going to have to be a light, there will be doors opening and closing at whatever hours, there will be lights on and off; there will be conversations at the doorway; deliveries and whatever, it adds to the impact on the neighbor, and it intensifies it as close as it is.
15. With the dimension as close as 6 feet, there will have to be stoop under the Code and a walkway leading to it; there really is not much room for any landscaping to screen or buffer the impact of that on the side.
16. There have been suggestions that some of what was discussed are things that could or might be done or are options, or alternates, but the Board is voting on what is before it.
17. Staff has evaluated the drawings that are in the staff report. The applicant's drawings are not as detailed as the Board sometimes received, but staff has done its best to try and evaluation the proposal before the Board.
18. It is questionable that one can get a two-story accessory dwelling unit addition within the height limit depicted on the plat and still have a roof that would slope and shed water, even if it went down two feet.

19. The Board has not approved a two-story anything in a configuration like this at 6 feet from a property line.
20. This is a large lot with a large open area in the back, and it is obvious that there could be alternates in the back either for some sort of garage with an extended driveway or an addition directly straight back from the rear of the house.
21. The suggestion that because the placement of a window would be something why there could not be an addition there, but that would be pertinent to almost any house in the County.
22. The Board has not been shown that there are not alternatives where the accessory dwelling unit could be placed that it does not have to be 6 feet from the side property line with the door facing sideways and no room for landscaping. That problem under Sub. Sec(s) 7, 8 and 9, particularly of 8-922 indicates that the staff analysis was correct and it would not be appropriate to approve the application.
23. There is concern about the parking configuration because at 17 feet the garage is really only one car functionally. There might be a way to put more smart cars in, as the applicant suggests, but the Ordinance does not measure cars and parking except by an ordinary car.
24. The driveway is only as wide as the garage at that location, and then it tapers back down to a one-car width driveway as it approaches the street. It is questionable whether that works even if it is just the applicant and his sister for the time being.
25. There is nothing in the application that would prevent other people from living in the house and there being more cars. The Board must evaluate whether the parking is sufficient: With a one-car wide driveway with a functional one-car garage, it is very difficult to make all that work.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Byers seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:00 A.M. ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON, D.C., SPA 89-S-013-02  
 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 previously approved for church with child care center to permit increase in land area, the addition of a nursery school and private school of general education and site modifications including building additions. Located at 11821, 11829, 11901, 11911, 11919 Braddock Rd. on approx. 16.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 31, 32, 33, 34 and 42. (Admin. moved from 8/11/09 at appl. req.) (Deferred from 10/6/09 at appl. req.)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John L. McBride, Odin, Feldman & Pittleman, P.C., 9302 Lee Highway, Suite 1100, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Shelby Johnson, Staff Coordinator, made staff's presentation as contained in the staff report. In the staff report dated September 29, 2009, staff recommended denial of this application because staff did not believe the application was in conformance with the Comprehensive Plan or the applicable Zoning Ordinance provisions as outlined in the staff report. Staff's position was based primarily on the outstanding water quality issue related to the preservation of at least 50 percent of undisturbed open space on the site, transportation issues related to a Transportation Impact Analysis (TIA) that had been deemed unacceptable by the Virginia Department of Transportation, and Fairfax County Department of Transportation concerns regarding trip

generation and site intensity. At the applicant's request, the Board deferred the public hearing on October 6, 2009 for this application to allow the applicant an opportunity to address these concerns.

The revised proposal differed from the previous request in that the applicant reduced the size of the fellowship hall from 20,000 sq. ft. to 17,500 square feet with site development at a FAR of 0.095 versus 0.098; was now providing 50 percent undisturbed open space, which was achieved through preservation, restoration, and reforestation of the site; was adding additional low impact design (LID) techniques to collect and store rainwater, then later utilize it for on-site irrigation; and was committing to contribute funding for a future traffic signal at First and Braddock Road to mitigate traffic impacts. Staff also requested that the applicant provide interparcel access and connection to this access on the adjacent parcel to the west, Lot 41, at such time that this access becomes available.

While staff remained concerned about the intensity of the proposed development, staff believed that the revised subject application was technically in conformance with the Comprehensive Plan and all applicable Zoning Ordinance provisions as outlined in the staff report addendum. Therefore, staff recommended approval of SPA 89-S-013, with the implementation of the revised proposed development conditions dated December 15, 2009, which were distributed that morning.

Ms. Johnson responded to Mr. Hart's questions concerning the school's operation; clarification of several development conditions; the consolidation of a lot; the egress traffic pattern; and, possible traffic increase to the area.

Chuck Almquist, Staff Coordinator, Department of Transportation, addressed Mr. Hart's questions concerning development conditions; possible installation of and funding for a traffic signal; usual traffic flow and congestion; proposed traffic patterns; establishing an escrow; and, an approval for a median break at the site's entrance.

Discussion continued regarding development conditions concerning parking matters.

Jim Ciampini, Property Maintenance Supervisor, Zoning Enforcement Branch, responded to Mr. Hammack's question concerning school activities conducted at the church, and several violations cited for a few unrelated situations.

Mr. McBride presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said the St. Mark Coptic Church was the oldest Christian church in the world; that it was founded by St. Mark; and, the church was much older than the Roman Catholic Church. He explained the church's participation in a medical clinic for those who had no health insurance, he noted that the clinic was more of an emergency measure, and never was intended to be a part of the application.

The Little Flock School started as only a child care, but was so popular, it became a private school of education. Mr. McBride said the church had needed this expansion for five years. He said the applicant was committed to the number of students allowed in the development conditions, and that those numbers were tied to trip generation, and sewer issues. He explained the step approach through the construction phases, and the traffic signal contributions, noting the church should not have to contribute such an extensive amount towards a traffic signal if the sewer restriction prohibited the necessity for a signal. He said he thought the majority of the traffic and the spacing of the signals was a lot better at Second Street, and perhaps the flexibility of the signal's placement should be added to a development condition. He clarified the trip generation of the present day up to the build-out, and that the school hours would be arranged around the Braddock Road commuter traffic rush hours. Mr. McBride explained the issues he had with some of the development conditions. He noted his agreement with the Bush and Obama Administrations, that churches were very important; important to our Nation, important to our community, and important to each of us. Concluding his presentation, Mr. McBride said there was a right way and a wrong way to grow churches, and he submitted that this application was the right way to grow a church, listing four reasons: this application added three parcels of land, doubling the acreage, not just intensity; the location was in the right place due to the access and egress roadways and no church member traffic cutting through residential neighborhoods; the implementation of LID techniques to further water quality goals; and, sharing the site with a private school, a private child-care nursery, and a church. The church was efficient with its land usage.

Discussion ensued regarding clarification of several development conditions; an inter-parcel access easement; the 50 percent undisturbed land coverage; specification of the access roadway's width; staff's



requested modification to Development Condition 35; committing the church to provide an inter-parcel access if the parcel became available; verification of the traffic direction to and from the site; the gross square-foot area buildout at Phase III; an estimated school and child-care trip generation; possible impact of peak hours of the church and its facilities; anticipated and cap of children enrollment; the previous lease to another religious facility of a portion of the church's buildings; and an explanation of the sewer provision for and capacity of the facility.

The meeting recessed at 11:29 a.m. and reconvened at 11:40 a.m.

Vice Chairman Hammack assumed the Chair. He called for speakers in support of the application.

Christopher (last name unintelligible), 24740 (address unintelligible), Virginia, came forward to speak in support. He said the church has had a major impact on his confidence. It was more than a place for just worship, but one of extended community service. He noted that there were so many services and ministries on-going for various age groups, that it was essential the church's physical growth kept up with the amazing things the church was doing for both its congregation and its community. He listed many of the activities the church afforded its youth groups, and examples of how the church strove to align its services and ministries to the congregation's needs.

Alison Latiffe (phonetic), 7704 Modisto Lane, Springfield, Virginia, came forward to speak. She said St. Mark's was a great place to grow spiritually, participate in wholesome activities, and to learn different ways to spread God's love to others. Ms. Latiffe said St. Mark's used modern technology to share its lessons with people around the globe and to extend its positive impact to so many. She said St. Mark's was changing lives, and because of that, many from all over the country with extensive professional experience were coming to join the church and work in the Northern Virginia/Washington, D.C. area. She listed several benefits and needs that should be considered to allow the church's expansion.

A speaker came forward (name and address unintelligible), Vienna, Virginia. He said he was so thankful for this Country that had given him and so many others, so much, and above all, the freedom to build churches, which had become almost forbidden in his original homeland. He noted that twice previously he had been before the Board, and was permitted to establish their church, and later proceeded with their Sunday school and day-care ministries. It was through Divine intervention, he claimed, that Mt. Zoar Church sold a parcel to them, and so for the last five years they had been planning for their much needed expansion. He said with the Board's help, they could fulfill their dreams of expansion.

There being no further speakers, Chairman Hammack, called upon staff for closing comments.

Ms. Langdon suggested several editing changes for some of the development conditions for clarification purposes.

Mr. McBride responded to Mr. Beard's questions concerning the existing zoning regulations based upon the applicant's history and assurance of their adherence to the development conditions. He noted the requirement to make application of an occupancy permit, a non-residential use permit which assures the church will take immediate action; the fact that Zoning Enforcement will continue its oversight; and, he will personally be involved with the church for all zoning issues.

Addressing Mr. McBride, Mr. Hart suggested it would be extremely beneficial for the applicant to continue to pursue the possibility of a connection across the empty lot, even if the empty lot could not be acquired. He proceeded to list several activities to warrant it. Mr. McBride concurred with the suggestions.

Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve SPA 89-S-0130-02 for the reasons stated in the Resolution.

Discussion ensued regarding staff's clarification of roads, development conditions, and support for the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON, D.C., SPA 89-S-013-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 previously approved for church with child care center to permit increase in land area, the addition of a nursery school and private school of general education and site modifications including building additions. Located at 11821, 11829, 11901, 11911, 11919 Braddock Rd. on approx. 16.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 31, 32, 33, 34 and 42. (Admin. moved from 8/11/09 at appl. req.) (Deferred from 10/6/09 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 December 15, 2009; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The staff report and its addendum dated December 8<sup>th</sup> are adopted.
3. It is noted that as of September 29, 2009, staff recommended denial, and the applicant submitted an amended plan and worked with staff to address the two main concerns regarding water quality and open space and Virginia Department of Transportation (VDOT) requirements.
4. With respect to the water quality and not having quite 50 percent undisturbed open space, the applicant, by reducing its building size, was able to attain the 50 percent requirement, and by implementing some Low Impact Design (LID) techniques, satisfied staff that they could meet the requirements of General Standard 1 of the Zoning Ordinance under that section.
5. At the last meeting, there was no Transportation Impact Analysis (TIA) report, and the one that came in after the meeting, as the report said, found the impact to be generally acceptable.
6. Although there is still concern about access onto Braddock Road, with the development condition calling for the applicant to contribute funds toward a stoplight, a traffic signal, that matter seems to be resolved.
7. The applicant has worked a long time to get to this point; however, it is still recognized that this is a very intense use for the site and the Board is not looking to see any more intensity there.
8. The applicant is sort of squeaking by with what they have requested because there is a lot proposed, but the applicant has worked hard to meet the requirements of the Ordinance, and staff is convinced that they have.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, St. Mark Coptic Orthodox Church of Washington, D.C. and is not transferable without further action of this Board, and is for the location indicated on the application, 11821, 11829, 11901, 11911 and 11919 Braddock Road, and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Sharon D. Dusza, Rinker Design Associates, P.C., dated March 19, 2009, as revised through November 11, 2009.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the

County of Fairfax during the hours of operation of the permitted uses.

4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit amendment, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a Non-RUP for Phase I construction, the seating capacity in the main area of worship may increase from 300 to a maximum of 600 seats.
6. Within 30 days of special permit approval, the applicant shall apply for a new Non-RUP for the child care center and nursery school and shall have a maximum combined total daily enrollment of 90 children in Phase I. Upon issuance of a Non-RUP for Phase II, the combined daily enrollment may increase to a maximum of 165 children.
7. The maximum hours of operation for the child care center and nursery school shall be 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. Within 30 days of approval of the special permit approval, the applicant shall apply for a new Non-RUP for the private school of general education ranging from pre-kindergarten to eighth grade and shall have a maximum daily enrollment of 56 children in Phase I. Upon issuance of a Non-RUP for Phase II, the number of children for the private school of general education may increase to a maximum of 110 children.
9. The maximum hours of operation for the private school of general education shall be 9:00 a.m. – 3:00 p.m., Monday through Friday. After-school activities shall be permitted until 10:00 p.m., Monday through Friday.
10. The maximum number of employees for the child care center, nursery school and private school of general education combined, shall not exceed (22) employees in Phase I; and 28 employees in Phase II.
11. A combined total of no more than 56 children shall occupy the tot lots outdoor recreation area at any one time; no more than 49 children shall occupy the soccer field outdoor recreation area at any one time.
12. The operator(s) of the child care center, nursery school and private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the site during rush hour periods. The applicant shall provide the name and contact information of the carpool coordinator to the Fairfax County Department of Transportation (FCDOT) annually, or as contact information changes.
13. The design of the buildings shall be in substantial conformance with the architectural renderings included as Attachment 1 of these conditions.
14. The building heights shall not exceed 29 feet for any the proposed structures shown on the Special Permit Amendment (SPA) Plat per the height definition in the Zoning Ordinance, except that domes and towers shall not exceed 54 feet in absolute height.
15. Parking shall be provided as depicted on the SPA Plat. All parking for these uses shall be on-site, except that on certain religious holidays, such as Christmas and Easter, off-site parking arrangements may be made at the Mott Community Center or other nearby public properties. Parking on Lots 31 and 32 shall be limited to uses specific to those structures only. No worship service parking should occur at either property until the property is redeveloped as parking during Phases II and III. Church related vehicles (vans/buses) shall be parked behind the existing and proposed Phase I building. No vehicle repair shall be permitted on-site.
16. Upon the issuance of a Non-RUP for Phase I, all temporary trailers on the site shall be removed.

17. Upon special permit approval, the former Mt. Zoar Church building on Lot 33 and the single family dwelling structures located on Lots 31 and 32 shall be used only for offices, storage and/or ministry/counseling space and ministries such as prayer services and baptisms. There shall be no worship services held within these structures and these structures shall not be rented or occupied for uses unrelated to the church activities outlined above. These structures shall be maintained in good repair or removed from the site.
18. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and the erosion and sedimentation control plan to be implemented during construction.
19. The applicant shall conform strictly to the limits of clearing and grading subject to allowances for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. Irrespective of that shown on the SP Plat, the large gravel parking area and a driveway shown on Lot 31 shall be included within the limits of clearing and grading. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forest Management Division (UFMD), for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible as determined by DPWES. Further, prior to the issuance of the first Non-RUP, areas disturbed with clearing and grading for Phase I shall be stabilized with a ground cover to consist of grasses and/or a naturalized wildflower/meadow mix which shall be maintained until such time as subsequent phased construction is initiated. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SPA Plat, they shall be located in the least disruptive manner necessary as determined by UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
20. The applicant shall submit a Tree Preservation and Reforestation Plan as part of the first and all subsequent site plan submissions or grading plan submissions, whichever occurs first. These plans shall designate the limits of clearing as determined in the previous development condition and require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space." The reforestation plan shall be developed with the intent of re-vegetating and restoring the perpetually undisturbed open space to its natural habitat. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space. These plans shall be prepared by a professional with experience in the preparation of tree preservation and reforestation plans, such as a certified arborist or landscape architect, and shall be subject to the review and approval of the UFMD, DPWES. The tree preservation and reforestation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 8 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture), located within 25 feet to either side of the approved limits of clearing and grading for the entire site and shall be submitted for review by UFMD.
21. The reforestation plan shall contain species based on existing tree and shrub species in areas adjacent to the reforestation area and post-development site conditions to restore the area to the native forest cover type. The plan shall include, but not be limited to, the following:
  - Plant list detailing species, sizes, quantities and stock type of trees and other vegetation to be planted
  - Soil treatments and amendments if necessary
  - Mulching specifications
  - Methods of installation
  - Maintenance

- Mortality threshold
  - Monitoring
  - Replacement schedule
22. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four- (4) foot high, fourteen (14) gauge welded wire attached to six -(6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart. Tree protection fencing shall be erected along the limits of clearing and grading wherever construction activities are proposed adjacent to areas to remain undisturbed. Super silt fence may be approved by UFMD to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.
23. The applicant shall meet the requirements of the Tree Conservation Ordinance pursuant to County Code, Chapter 122.
24. Transitional screening shall be modified along all lot lines to permit existing vegetation on site to meet transitional screening requirements. Notwithstanding proposed landscaping shown on the approved Special Permit Plat, supplemental planting shall be provided as follows:
- Additional plantings shall be provided along the northern lot line adjacent to the Braddock Road frontage in Phase I to meet the intent of Transitional Screening 1.
  - Landscaping shall include substantial ornamental and shade trees, shrubs, foundation and understory plantings to soften the appearance of the parking areas and buildings from the street.
  - The size, species and location of plantings shall be provided in consultation with Urban Forest Management Division (UFMD) and DPWES.
25. The barrier requirement shall be waived along all lot lines.
26. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.
27. Any proposed 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. All lighting shall be full cut-off luminaries, shall be controlled by timers and shall be cut off when the site is not in use, except for security lighting. Any new outdoor lighting fixtures, except those attached to the building, shall be Bollard-style lighting fixtures at a maximum height of four feet, measured from the ground to the highest point of the fixture. Lighting shall not be installed in landscape islands. No new uplighting of landscaping, signage or architecture shall be provided.
28. A minimum of 50 percent of the site shall be preserved as undisturbed open space as depicted on
29. The applicant shall implement the following Low Impact Design (LID) technique in each phase of building construction: provide one or more underground and/or attic cistern(s) with a total storage capacity of no less than 3,000 gallons in each phase to collect rainwater run-off from new building rooftop(s). Collected rainwater shall be stored and utilized for on-site irrigation purposes as designed by a qualified water resource engineer and approved by DPWES.

30. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual (PFM), as determined by DPWES, at the time of site plan review.
31. Stormwater Management (SWM) and Best Management Practices (BMP) measures may be provided via an extended detention facility and infiltration trenches as shown on the SPA Plat as determined by DPWES, which shall be privately maintained. If a modification of the PFM to permit the proposed stormwater management/best management practices as shown on the SPA Plat is not granted by DPWES and SWM/BMP facilities in substantial conformance with the SPA Plat cannot be provided, then a special permit amendment (SPA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES.
32. Public sewer flows generated by the uses allowed by this approval shall not exceed an average of 1,800 gpd, as determined by the Wastewater Planning and Monitoring Division, DPWES. This shall be accomplished through the use of water reduction measures such as low-flow fixtures, waterless urinals and sensor-based faucet controls. The occupancy of the expanded church facilities shall be accomplished in three phases. Phase I shall consist of no more than an additional 300 sanctuary seats, 40 additional children in the child care center/nursery school, 56 students in the private school of general education, and 12 additional employees. The applicant shall submit its quarterly Fairfax Water invoices and a record of the level of occupancy of the place of worship and related facilities to the Director of the Wastewater Planning and Monitoring Division to evidence continued compliance with this condition for the first two years of expanded occupancy in each phase of development, including the development of the proposed Fellowship Hall in Phase III. The applicant is prohibited from increasing occupancy in subsequent phases of development until such time that DPWES deems any excess of the Maximum Allowed Capacity as "unused capacity" that permits such an expansion while maintaining the integrity of the sewer system infrastructure.
33. Prior to issuance of the first Non-RUP for Phase I improvements, the applicant shall construct all road improvements to include a median break along the site's Braddock Road frontage, an eastbound left-turn lane and a right-turn lane, in consultation with FCDOT, and as approved by the Virginia Department of Transportation (VDOT). Site access shall be provided via two curb cuts on Braddock Road; the existing right-in/right-out access on Lot 34 which shall be constructed as a right-in only entrance and the proposed full-access entrance at the median break. All other curb cuts shall be removed as determined by VDOT.
34. Prior to the issuance of a Non-RUP for Phase II development, the applicant shall contribute \$45,000 towards the cost of a traffic signal at the intersection of either First or Second Roads and Braddock Road as determined by FCDOT. Prior to the issuance of a Non-RUP for Phase III development, the applicant shall contribute an additional \$45,000 for the cost of a signal at the intersection of either First or Second Roads and Braddock Road. In the event that a signal is not warranted at either location within five years after completion of the site's final phase of development, the escrowed funds shall be returned to the applicant. However, in the event that a traffic signal has already been installed at either of these locations prior to the applicant reaching the above thresholds, a total of \$90,000 in funds shall be provided to the County to reimburse it for the signal costs at the interval payment schedule designated above.
35. Upon request from Fairfax County Department of Transportation, interparcel access easements shall be provided along the western property line adjacent to the parcel to the west Tax Map 67-1 ((4)) 41 in a form approved by the County Attorney for the purpose of securing access to Braddock Road via Second Road. The ultimate location of said interparcel access shall be determined by Fairfax County Department of Transportation and is to be located within 450 feet of Braddock Road. Once access becomes available to Lot 41, the connection shall be made to this access by the applicant.
36. The applicant shall obtain a sign permit for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.
37. The use of loudspeakers shall not be permitted outside the 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.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to this special permit amendment. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Chairman Ribble was not present for the vote.

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~ ~ ~ December 15, 2009, Scheduled case of:

9:30 A.M. EXXON MOBIL CORPORATION, A 2009-SU-019 (Admin. moved from 7/7/09 at appl. req.)

Chairman Ribble noted that A 2009-SU-019 had been administratively moved to May 19, 2010, at 9:30 a.m., at the appellant's request.

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~ ~ ~ December 15, 2009, After Agenda Item:

Request for an Intent to Defer  
Trustees of Lord of Life Lutheran Church, SPA 95-S-050

Chairman Hammack noted a December 9, 2009 e-mail from Sara Hall, Esquire, requesting a deferral to January 27, 2010. Susan C. Langdon, Chief, Special Permit and Variance Branch, explained that the applicant had amended the application, which had been scheduled for January 13, 2010; therefore, additional time was needed for its preparation. She said staff was in agreement with the January 27, 2010 date.

Chairman Hammack called for a motion. Mr. Hart moved to accept the deferral to January 27, 2010. The motion was seconded by Ms. Gibb, and carried by a vote of 6-0. Chairman Ribble was not present for the vote.

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Mr. Hart noted that Mr. Byers' term was soon to expire. He then moved that the Board endorse Mr. Byers' appointment for another term. The motion was seconded by Mr. Smith, and carried by a vote of 6-0. Chairman Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Paula A. McFarland

Approved on: July 19, 2017

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals