

2013 BOARD OF ZONING APPEALS MEETING MINUTES

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 9, 2013. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; V. Max Beard; Thomas Smith; James R. Hart; and Norman P. Byers. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m.

During Board Matters, Mr. Hart moved to elect the following slate of officers for 2013: Chairman – Mr. Ribble; Vice Chairman – Mr. Hammack; and Secretary – Ms. Gibb. Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Hart then moved that Kathleen Knoth be elected as the Clerk to the Board for 2013. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. JAMES L. LESLIE AND BERNADETTE BOKA LESLIE, SP 2012-MA-070 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 1.8 ft. from rear lot line and to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 4399 Medford Dr., Annandale, 22003, on approx. 13,182 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((15)) 86. (Concurrent with VC 2012-MA-005).

9:00 A.M. JAMES L. LESLIE AND BERNADETTE BOKA LESLIE, VC 2012-MA-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure to remain in a front yard of a lot containing 36,000 sq. ft. or less. Located at 4399 Medford Dr., Annandale, 22003 on approx. 13,182 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((15)) 86 (Concurrent with SP 2012-MA-070).

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 Leslie, 4399 Medford Drive, Annandale, Virginia, affirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. The applicant was seeking a special permit for a reduction to minimum yard requirements based on an error in building location to permit a gazebo, and was also requesting that an existing fence greater than 4.0 feet in height remain in the front yards. Under the variance, the applicant sought permission for an accessory structure to remain in the front yard. Ms. Gumkowski stated that both cases were involved in pending litigation, and were set to be heard on February 21, 2013. She said Cherie Halyard, Assistant County Attorney, was present to answer questions.

In response to a question from Mr. Hart, Ms. Halyard stated that the County filed suit against the applicants in March, 2012. No court action had been taken as of yet. She said that there was nothing prohibiting the Board from acting in this matter, noting that if the applications were approved, the zoning violations would be cured. Ms. Halyard noted that the Zoning Administrator did not have a procedural objection with the Board acting on these applications.

Mr. Hart, Ms. Gumkowski and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the lot requirements in the R-4 District.

In response to a question from Mr. Hart, Ms. Langdon said that the Department of Public Works and Environmental Services required that the wood gazebo and wood shed be removed from the easement. The fence would be allowed to remain. She clarified that although a portion of the fence towards the street goes off site, the application only dealt with the portion on site.

Mr. Beard asked if this matter was the result of a complaint. Ms. Gumkowski stated that it came through Code Compliance, but staff had been unable to confirm whether or not it had been a complaint.

Mr. Hammack stated his concern about a Board decision being appealed by the County, however, Ms. Halyard said there would not be an appeal.

In response to a question from Mr. Byers, Ms. Langdon stated that the application was filed on February 25, 2011, approximately one year ago. Mr. Hammack and Ms. Langdon discussed the length of time it took to get the application before the Board. Ms. Langdon noted that it was not accepted until October of 2012, due to deficiencies in the application and awaiting the applicants' response to those deficiencies.

Mr. Hammack pointed out that the applicant had already agreed to move the structures that were in violation. Ms. Langdon said the issue at hand was the height of the gazebo and the adjacent shed and their placement outside the stormwater easement. Mr. Hammack did not believe the Board had the authority to remove the structures from of the easement.

Mr. Hart stated his concern if the applicants decided to appeal the decision of the Board, noting that the court date was within six weeks. Ms. Langdon suggested that one option would be for the Zoning Administrator to go to the judge and explain the circumstances, asking that the court date be moved further out. Ms. Halyard said that perhaps the Zoning Administrator could enter into an agreed order which would allow the applicants to proceed through the zoning process since nothing had been finalized with the court.

In response to a question from Mr. Hart, Ms. Halyard stated that it was not within the Zoning Administrator's authority to address the portion of the fence that was offsite. She said the encroachment of the easement was not part of the litigation.

Mr. Hammack stated his concern with the possibility of impeding the applicants' appeal rights. He asked why the County did not non-suit the court action, so it would not be procedurally impaired and would allow the Board to take action, then the appeal rights of both parties would be intact. Ms. Halyard thought it would be the Zoning Administrator's position to wait and see what the Board did before it made any determination as to what made sense practically and procedurally in terms of how to resolve the litigation.

Mr. Leslie presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He purchased the property in 1987, which included all the structures shown on the plat. During 2003, they built an addition, which expanded the kitchen and living room, noting that they obtained all the proper permits and went through all the inspections. He said over the years, the demographics in the Annandale area changed, with himself and his neighbors being the victims of crime. Mr. Leslie decided to construct a secure shed for his tools, and in December of 2007, he applied for a building permit. Since there was already a small concrete slab existing on the southeast corner of the lot, he only needed to enlarge it. Mr. Leslie said the weather was getting cold and snow was expected, so he had only a small window of opportunity to get everything ready. When he came to the County to obtain the permit, he asked how long it would take. The counter person said, off the record, that he could always build the shed first and then come back for the permit. Mr. Leslie felt it was a good solution given the window of opportunity. Mr. Leslie said he became busy with family and doctor appointments (his wife was diagnosed with cancer) and he never returned to the Zoning Department to file for the permit. He asked that he be allowed to keep the property as it was, since all structures were there when they bought the property twenty-five years ago. He said the property was uniquely shaped so there was no other location for the gazebo. Mr. Leslie noted that they had already spent over \$5,000 in plats, permits, and legal matters during the past year. Bernadette Leslie stated that one of the reasons they purchased the house was because of the gazebo, and they would like to keep it.

Mr. Beard commented that the gazebo was extremely well shielded, and asked if the applicants knew how the violations came to the attention of the county. Mr. Leslie said he did not know, but recalled a woman from the Zoning Office taking pictures of the property two to three years ago. Mr. Beard remarked how unusual that was, since the County was a complaint-driven system.

In response to a question from Mr. Hart, Mr. Leslie said there was no electricity or plumbing in the sheds.

Mr. Hart commented on the procedural constraints for granting a variance, and asked Mr. Leslie if there was anything unusual regarding his property. Mr. Leslie said no, except for the shape of the lot and the two front yards.

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

Mr. Hammack was concerned that the Board did not have jurisdiction to rule on this application and moved that the Board defer decision until the County entered an order referring the case back to the BZA.

Mr. Byers seconded the motion.

Mr. Smith said he would support the motion, but did not think it was necessary. Mr. Beard thought the Board should make a motion to resolve the issues, so he said he would not support the present motion.

Chairman Ribble called for a vote. The motion failed by a vote of 3-3. Mr. Hart, Mr. Beard, and Chairman Ribble voted against the motion. Ms. Gibb was absent from the meeting.

Mr. Hart moved to approve SP 2012-MA-070 for the reasons stated in the Resolution.

Discussion ensued on whether or not the gazebo would have to be removed from the easement. Ms. Langdon said that staff had asked for input from the Office of Stormwater Management, and they had replied that the gazebo was to be removed. However, she pointed out that they can enforce removal on their own.

Mr. Hart said he wanted to modify Conditions 2 and 3 to say what on the property can stay, but use language which stated that if the County had to access the easement, it would become the applicant's problem. Ms. Langdon said staff could send him a copy of the standard language for review.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES L. LESLIE AND BERNADETTE BOKA LESLIE, SP 2012-MA-070 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 1.8 ft. from rear lot line and to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 4399 Medford Dr., Annandale, 22003, on approx. 13,182 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((15)) 86. (Concurrent with VC 2012-MA-005). 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 9, 2013; 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 record before the Board, this is an unfortunate situation because the applicants purchased the property this way.
3. At the same time, the Board can straighten this out, at least with the special permit.
4. It does not seem to be bothering anyone.
5. This is a neighborhood where there are other structures obviously.
6. Whether they are in easements or not, the Board does not know.
7. There are certainly plenty of accessory structures.
8. It is not atypical for this neighborhood.
9. There is no electricity or plumbing.
10. They are not large enough to need building permits.

11. The Board does not think the applicants are at fault with respect to the location of the structures.
12. With respect to the easement issue, it is difficult for the Board to be the ones making the call about the easement.
13. The Board is afraid that even if they were to leave out the development conditions about either taking out the back end of the shed on the right or shifting the sheds, that the Board would not really be resolving it because DPWES would still have that issue and it is still out there.
14. Staff is technically correct. If somebody is filing an application to do something for a structure that is in the wrong place, the engineer is required to show the easements on the plat to bring it to our attention.
15. The Board has the easement here.
16. Heaven knows there have been enough cases with people complaining about stormwater drainage and photos when it is raining. Who knows what is going to happen in the next hurricane.
17. It is unfortunate and it is a problem, but staff is correct that the structures do not belong in the easement, and that is why they are asking DPWES, and that is why they are telling us the structures cannot stay in the easement.
18. The Board felt that staff's development condition should be left the way it is, but approve the special permit otherwise.
19. The whole issue of the off-site fence, if that had come to the Board, it would have been easy to dispose of.
20. As far as the advertising for this case, the Board is dealing with Lot 86.
21. Whatever this is about, the Board is dealing with the fence on the right and not the fence up by the apartments.
22. The Board does not see that as part of anything.
23. The Board would not have the authority to approve or deny that. They would leave that alone, leave it where it is.
24. The development conditions do not need to be changed. It is what it is. The fence may belong to these people, but if it is located on the other property, it is not the subject of anything today.
25. The applicable standards in the respective motions have been satisfied with the imposition of the development conditions.

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 height and location of fences as shown on the plat prepared by Dickerson Survey and Arborist Services dated March 25, 2011 and revised through May 20, 2012 as submitted with this application and is not transferable to other land.
2. The applicants shall assume all responsibility for repair and/or replacement of any portions of the accessory structure which must be removed to accommodate repairs and/or maintenance within easements as shown on the special permit 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, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to 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 4-0-2. Mr. Byers and Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

//

Mr. Hart moved to deny VC 2012-MA-005. He said the Board had to follow Ordinance standards, noting that this was a fairly ordinary corner lot. Mr. Hart stated that he could not conclude that Standard 2 had been satisfied. The motion died for lack of a second.

Mr. Byers then moved to approve VC 2012-MA-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES L. LESLIE AND BERNADETTE BOKA LESLIE, VC 2012-MA-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory storage structure to remain in a front yard of a lot containing 36,000 sq. ft. or less. Located at 4399 Medford Dr., Annandale, 22003 on approx. 13,182 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((15)) 86 (Concurrent with SP 2012-MA-070). 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, 2013; 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 13,182 square feet.
4. It does meet the standards.
5. The subject property was acquired in good faith.
6. Under Number 2, an exceptional shape at the time of the effective date of the Ordinance is in force and an extraordinary situation or condition of the subject property.
7. The Board has had these kinds of cases before.

8. The Board has some flexibility in this.
9. 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.
10. The granting of a variance will clearly alleviate a demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
11. It is not going to be a substantial detriment to adjacent properties.
12. The character of the Zoning Ordinance is not going to be changed.
13. The variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.
14. There are some mitigating circumstances with regard to this.
15. Frankly, this whole case concerns the Board.
16. There obviously could have been a better process.
17. The process is complaint driven.
18. The Board did not see any evidence of a complaint by anyone in the neighborhood.
19. It has been in existence for a significant period of time.
20. There was support from at least 10 adjacent members.
21. It is well-screened and well-constructed.
22. It is less than 200 square feet, and may not have required a building permit.
23. It has no electricity or plumbing.
24. The Board was not sure how any resident would have understood that he or she would have been in violation of anything.
25. There are other mitigating circumstances from the standpoint of what has actually happened at the residence.
26. The Board has shown some judgment in times past from the standpoint of variances.

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

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

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

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

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

1. This variance is approved for the wood shed in the front yard on the property as shown on the plat prepared by Dickerson Survey and Arborist Services, dated March 25, 2011, and revised through May 20, 2012, 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 including requirements for building permits.

Mr. Beard seconded the motion, which carried by a vote of 4-1-1. Mr. Hart voted against the motion. Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. THOMAS & JILL STANTON, SP 2012-LE-072 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit shed to remain 2.3 ft. from side lot line and 7.8 ft. from rear lot line and reduction of certain yard requirements to permit construction of accessory structure 8.0 ft. from side lot line and 15.6 ft. from rear lot line. Located at 3202 Collard St., Alexandria, 22306, on approx. 9,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 12.

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.

Thomas Stanton, 1211 Gatewood Drive, Alexandria, Virginia, came forward. He said he was the contract purchaser of the property.

Chairman Ribble made a disclosure that he knew Mr. Stanton for years, but indicated he did not believe his ability to participate in the case would be affected.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-LE-072 subject to the proposed development conditions.

Mr. Stanton presented the special permit request as outlined in the statement of justification submitted with the application. He said he noticed that most of the surrounding homes had substantial additions. He contacted the County, and was told he needed a special permit because the existing house was nonconforming. He noted that he had obtained written approval of the addition from 18 neighbors. He also commented that he felt the zoning process should be made easier, noting how expensive it was.

Mr. Hart stated that the Planning Commission and Board of Supervisors would be meeting later in the year to review the current application fees, noting that the public would have the opportunity to be heard on the subject at public hearings. Mr. Stanton said the fees were not necessarily the problem, but also felt the County oversight was cumbersome. He also felt there should not be a charge for a normal building permit request. Mr. Beard commented that he felt the application fees were too high.

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

Mr. Byers moved to approve SP 2012-LE-072 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS & JILL STANTON, SP 2012-LE-072 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building locaton to permit shed to remain 2.3 ft. from side lot line and 7.8 ft. from rear lot line and reduction of certain yard requirements to permit construction of accessory structure 8.0 ft. from side lot line and 15.6 from rear lot line. Located at 3202 Collard St., Alexandria, 22306, on approx. 9,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 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 January 9, 2013; and

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

1. The applicants are the owners of the property.
2. The applicants have 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 Building Location, and the additional standards for the Provisions for the Reduction of Certain Yard Requirements as contained in Sect. 8-922.
3. The Board determines the applicants meet the requirements under A through G.
4. The applicants have 18 letters of support.
5. The staff recommends approval of the accessory structure, and the Board adopts its rationale.

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

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

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

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

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

1. This special permit is approved for the location and size of an accessory storage structure and a garage (552 square feet), as shown on the plat prepared by Rinker Design Associates, P.C., dated May 10, 2012, as revised through December 6, 2012, as submitted with this application and is not transferable to other land.
2. Prior to commencement of and during the entire construction process, the applicant shall designate the area around trees 1, 3 and 4 as shown on the special permit plat as a tree save area to protect existing on-site vegetation and shall install tree protection fencing to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment does not occur within the area.
3. Notwithstanding Note 7 on the special permit plat, three evergreen trees, a minimum of four feet in height at time of planting, shall be planted between the proposed garage and the western lot line.
4. The garage shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. DAVID AND RACHEL SEMANCHIK, SP 2012-HM-068 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 11724 Lake Forest Dr., Reston, 20194, on approx. 17,880 sq. ft. of land zoned PDH-1. Hunter Mill District. Tax Map 11-3 ((20)) 13.

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.

David Semanchik, 11724 Lake Forest Drive, Reston, Virginia, reaffirmed the affidavit. He also introduced his mother-in-law, Diane Keller.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-HM-068, subject to the proposed development conditions.

Mr. Semanchik presented the special permit request as outlined in the statement of justification submitted with the application. He thanked Ms. Horner and the staff for their hard work and diligence throughout the special permit process. Mr. Semanchik again introduced his mother-in-law, Ms. Keller, who would be taking care of his two young daughters. He said he would be happy to answer any questions.

In response to a question from Mr. Hart, Mr. Semanchik said he was in agreement with the proposed development conditions.

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

Mr. Hart moved to approve SP 2012-HM-068 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID AND RACHEL SEMANCHIK, SP 2012-HM-068 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 11724 Lake Forest Dr., Reston, 20194, on approx. 17,880 sq. ft. of land zoned PDH-1. Hunter Mill District. Tax Map 11-3 ((20)) 13. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 13, 2013; 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 recommendation of approval, and it adopts the rationale in the staff report.
3. This does not seem like it is going to be bothering anyone.
4. It is a nice big lot.
5. With the development conditions, any impacts would be satisfactorily mitigated.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, David and/or Rachel Semanchik, and is not transferable without further action of this Board, and is for the location indicated on the application, 11724 Lake Forest Drive, (17,880 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by B.W. Smith and Associates, Inc., dated May 26, 2011, as signed and sealed by Timothy J. Farrell, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.

6. The accessory dwelling unit shall contain a maximum of 1,041.5 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit.
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 dwelling 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.
11. All parking shall be provided on site as shown on the special permit plat.

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

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

Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Smith and Mr. Hammack were not present for the vote. Ms. Gibb was absent from the meeting.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. GEORGE SALES, SP 2012-PR-069 Appl. under Sect(s). 8-914, 8-922 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure with attached roofed deck 2.4 ft. from side lot line and 2.2 ft. from rear lot line, reduction of certain yard requirements to permit construction of addition 6.3 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 2622 Shelby Ln., Falls Church, 22043, on approx. 13,735 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((7)) 13.

Chairman Ribble noted that SP 2012-PR-069 had been indefinitely deferred at the applicant's request.

//

There was a brief five-minute recess due to lack of a quorum.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN & ALLYSON G. BLOOM, A 2012-DR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure (a playset) contributes to the coverage of over 30% of the minimum rear yard on property in the R-2

District in violation of Zoning Ordinance provisions. Located at 2090 Grace Manor Ct., McLean, 22101 on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11.

Mavis Stanfield, Assistant Zoning Administrator, noted that the appellants were requesting a deferral until April 3, 2013, so that they could consider other remedies.

Mr. Byers moved to defer the public hearing on A 2012-DR-025 to January 3, 2013, at 9:00 a.m. Mr. Hammack 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.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. FRANCIS S. RATH, A 2012-DR-024 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-E District without an approved special permit in violation of Zoning Ordinance provisions. Located at 1051 Kelso Rd., Great Falls, 22066 on approx. 6.03 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((2)) A.

Chairman Ribble noted that A 2012-DR-024 had been administratively moved to March 8, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. THOMAS D. AND CHRISTINA DAVIS, A 2012-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have allowed the construction of a roof over a deck that extends into the minimum required side yard and have failed to submit required as-built house location surveys for construction on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1859 Patton Ter., McLean, 22101 on approx. 11,113 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 24.

Chairman Ribble noted that A 2012-DR-026 had been administratively moved to June 5, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ January 9, 2013, Scheduled case of:

9:00 A.M. BERNADETTE M. KEANY, PROPERTY OWNER, A 2012-MV-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the removal of the first floor, footings and foundation of an existing dwelling is not in substantial conformance with approved Variance VC 2011-MV-010. Located at 5736 Mallow Tr., Lorton, 22079, on approx. 7,500 sq. ft. of land zoned R-E. Mount Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (Admin. moved from 10/17/12 and 11/28/12 at appl. req.)

Chairman Ribble noted that A 2012-MV-010 had been withdrawn.

//

~ ~ ~ January 9, 2013, After Agenda Item:

Approval of January 10, 2006 Minutes


Mr. Beard moved to approve the Minutes. Mr. Hammack 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.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:49 a.m.

Minutes by: Suzanne Frazier

Approved on: April 20, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 16, 2013. 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.

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (Decision deferred from 11/28/12)

Chairman Ribble noted that the Board had received a request for deferral on SP 2012-SP-059.

Mr. Hart moved to defer decision on SP 2012-SP-059 to March 6, 2013, at 9:00 a.m., at the applicant's request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2004-LE-053 previously approved for church to permit the addition of a private school of general education, site modifications and building addition. Located at 5901 Wilton Rd., Alexandria, 22310, on approx. 2.0 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. (Admin. moved from 11/7/12 and 12/5/12 at appl. req.)

Chairman Ribble noted that the Board had received a request for deferral on SPA 2004-LE-053.

Mr. Byers moved to defer decision on SPA 2004-LE-053 to March 6, 2013, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. JULIO DEL POZO, SP 2012-PR-074 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.9 ft. from the rear lot line. Located at 6807 Custis Pkwy., Falls Church, 22042, on approx. 7,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 453.

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.

Julio Del Pozo, 6807 Custis Parkway, Falls Church, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report.

Mr. Del Pozo presented the special permit request as outlined in the statement of justification submitted with the application. He stated a storm caused the destruction of the roof of the shed when a tree fell over. He

showed photographs of the shed before and after the storm which reflected the damage and the changes he made to ensure damage would not happen again. Mr. Del Pozo said the 1.3 foot difference in height on either side of the shed was due to the unevenness of the ground. He pointed out that the original structure had a flat roof, and the new structure had a slanted roof so debris would cause less damage.

In response to Mr. Byers's question, Ms. Langdon said that because the shed had electricity, it would need an electrical permit.

Mr. Byers and Ms. Langdon discussed the information available to homeowners regarding the requirements for structures over eight feet high located in the side or rear yard.

In response to questions from Mr. Hart, Mr. Del Pozo stated that he put the roof on the uncompleted shed to protect it from the rain, but stopped work when he got the letter from the inspector. He said the siding would be completed, and he agreed to a development condition requiring it.

In response to Mr. Hart's question concerning the nature of the complaint, James Watson, Department of Code Compliance, stated that the complaint was that the shed height exceeded eight feet.

Mr. Hart asked whether there was going to be electricity in the shed, and Mr. Del Pozo stated that he had electricity, but removed it after speaking with the inspector, and now had a permit to install it.

In response to questions from Mr. Hammack, Ms. Langdon stated that the application was advertised as 2.9 feet from the rear lot line, and the eave was included in the calculation. Mr. Del Pozo stated that it was the same shed which had been there for about six years, and he had repaired some damage, which resulted in the shed being a foot taller.

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

Mr. Hammack moved to approve SP 2012-PR-074 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JULIO DEL POZO, SP 2012-PR-074 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.9 ft. from the rear lot line. Located at 6807 Custis Pkwy., Falls Church, 22042, on approx. 7,500 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 453. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 2013; 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 applicant has satisfied subsections A through G set forth in Sect. 8-914, in particular under B, that the non-compliance was done in good faith and through no fault of the property owner.
3. The reduction will not impair the purpose or intent of the Ordinance or be 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 the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

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

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

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

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

- 1. This special permit is approved only for the location of a one-story frame shed, as shown on the plat prepared by Dickerson Survey and Arborist Services dated October 14, 2012, submitted with this application and is not transferable to other land.
- 2. All applicable permits and final inspections shall be obtained for the frame shed within 180 days of approval of this special permit.
- 3. The siding on the shed shall be completed from the ground to the eave.

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, six (6) months after the date of approval unless a building permit and final inspections have been approved 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.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, SP 2012-PR-071 Appl. under Sect(s). 8-917 and 8-922 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from the front lot line. Located at 6906 Jackson Ave., Falls

Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119.

Chairman Ribble noted that SP 2012-PR-071 had been administratively moved to April 3, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. CARL A. SERGER, SP 2012-DR-073 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 shed to remain 17.1 ft. from side lot line and 10.6 ft. from rear lot line and to permit reduction in certain yard requirements to permit construction of addition 10.1 ft. from side lot line. Located at 9201 Weant Dr., Great Falls, 22066, on approx. 23,546 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 35.

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.

Carl A. Serger, 9201 Weant Drive, Great Falls, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Gumkowski noted that there was an error on page 2 of the staff report in the fourth bullet under the background section which should read an application on 9036 instead of 9201 Weant Drive. Staff recommended approval of SP 2012-DR-073, subject to the proposed development conditions.

Mr. Serger presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing to add to what was in his statement of justification.

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

Mr. Byers moved to approve SP 2012-DR-073 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL A. SERGER, SP 2012-DR-073 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 shed to remain 17.1 ft. from side lot line and 10.6 ft. from rear lot line and to permit reduction in certain yard requirements to permit construction of addition 10.1 ft. from side lot line. Located at 9201 Weant Dr., Great Falls, 22066, on approx. 23,546 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 35. 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 16, 2013; and

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

1. The applicant is the owner of the land.
2. Staff recommends approval of the addition, and the Board adopts its rationale.

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

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

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

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

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

- 1. 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 garage addition and shed located as shown on the special permit plat, prepared by B.W. Smith and Associates, Inc., dated August 2, 2012, revised through September 11, 2012, 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 (1407.8 square feet existing + 2110.5 square feet (150%) = 3,517.5 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 generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. SUN SOOK HONG, SP 2012-SP-075 Appl. under Sect(s). 3-305 and 8-914 of the Zoning Ordinance to permit home child care facility and to permit reduction in minimum yard requirements based on error in building location to permit open deck to remain 0.4 ft. from side lot line. Located at 4103 Mount Echo Ln., Fairfax, 22033, on approx. 8,639 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (29) 11.

Chairman Ribble noted that SP 2012-SP-075 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC. & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 Appl. under Sect(s). 3-303 and 3-304 of the Zoning Ordinance to amend SP 76-M-088 previously approved for a community swim club to permit construction of a wireless telecommunications facility. Located at 6011 Crater Pl., Alexandria, 22312, on approx. 14.54 ac. of land zoned R-3. Mason District. Tax Map 61-4((6)) (T) 056 and 72-2 ((3)) (T) C. (Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12 and 12/12/12 at appl. req.)

Chairman Ribble noted that SPA 76-M-088 had been administratively moved to March 6th, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. BOYD TRISTAN CLOERN REVOCABLE TRUST FN, DARA ALDERMAN REVOCABLE TRUST FN, BOYD TRISTAN CLOERN, CO-TRUSTEE, DARA RAE ALDERMAN, CO TRUSTEE, A 2012-DR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have altered the drainage swale, which is impeding the water pattern, and have erected an accessory structure (a playset) that does not meet size and location requirements on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1850 MacArthur Dr., McLean, 22101 on approx. 10,043 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 31.

Chairman Ribble noted that A 2012-DR-028 had been administratively moved to March 20, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ January 16, 2013, Scheduled case of:

9:00 A.M. BEYER I LLC, A 2012-PR-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, which is a use not permitted, on property in the C-8 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7113 Shreve Rd., Falls Church, 22043, on approx. 33,787 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 40-3 ((12)) 11.

Chairman Ribble noted that A 2012-PR-029 had been administratively moved to April 3, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ January 16, 2013, After Agenda Item:

Approval of May 15, 2007 Minutes


Ms. Gibb moved to approve the Minutes. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 9:35 a.m.

Minutes by: John W. Cooper

Approved on: January 28, 2015


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 30, 2013. The following Board Members were present: V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers, Jr. Chairman John F. Ribble III and Paul W. Hammack, Jr., were absent from the meeting.

Ms. Gibb called the meeting to order at 9:00 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 30, 2013, Scheduled case of:

9:00 A.M. JOHNNY LE, SP 2012-MA-045 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 addition to remain 5.7 ft. from side lot line and deck to remain 7.5 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6902 Columbia Pike, Annandale, 22003, on approx. 10,910 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((16)) (L) 1A. (Decision deferred from 10/17/12 and 11/28/12)

Ms. Gibb called the applicant to the podium.

Johnny Le, 6902 Columbia Pike, Annandale, Virginia, reaffirmed the affidavit.

Ms. Gibb directed the clerk to administer the oath to the participants in the hearing, who swore or affirmed that their testimony would be the truth.

Laura Gumkowski, Staff Coordinator, said the decision on SP 2012-MA-045 had been deferred from November 28, 2012, to obtain clarification regarding the court orders issued for this case, and what the Board would be allowed to rule on in addressing the deck and fence.

Mr. Hart summarized the previous hearing, where Mr. Hammack noted that there were two court orders. The first order was dated December 9, 2011, and prohibited the property owners from constructing, maintaining or allowing a structure on the subject property. A later order dated November 5, 2012, allowed the defendants to file a special permit for a garage and allotted time for them to do so. Mr. Hart said the focus of the 2012 order seemed to deal with just the garage, and Mr. Hammack's concerns were that the request for a deck would seem to violate the earlier order, and the deck was not a part of the later order. Mr. Hart asked whether the Board could grant the special permit if the judge had already prohibited doing anything except the modification of the garage.

Hayden Codding, County Attorney's Office, stated that the prior case only dealt with the garage. The complaint was specifically to prohibit any additions to the garage, and the injunction was that the defendant was not allowed to maintain a structure that was in violation. Mr. Codding said the granting of the special permit would not go against the order.

In response to Mr. Byers' question regarding revised development conditions, Ms. Gumkowski stated that the October 17, 2012 development conditions were correct.

Mr. Byers moved to approve SP 2012-MA-045 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Hart and Robert Burke, Department of Code Compliance, discussed the requirements for building permits in the proposed development conditions, and Mr. Hart suggested the motion be amended to include a requirement for a building permit for the deck enclosure. Mr. Byers and Mr. Smith accepted the amendment.

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

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHNNY LE, SP 2012-MA-045 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 addition to remain 5.7 ft. from side lot line and deck to remain 7.5 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6902 Columbia Pike, Annandale, 22003, on approx. 10,910 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((16)) (L) 1A. (Decision deferred from 10/17/12 and 11/28/12) 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 January 30, 2013; 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 applicant is in compliance with A through G set forth in Sect. 8-914.
3. Staff recommends approval, and the Board adopts its rationale.

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

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

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

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

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

1. This special permit is approved for the one story garage addition located 5.7 feet from the side lot line, location of fences in the front yard, and pillars at the maximum heights as shown on the special

permit plat, prepared by Alexandria Surveys, LLC dated January 2, 2012, as sealed through June 11, 2012, as submitted with this application and is not transferable to other land.

2. All applicable permits and final inspections shall be obtained for the addition and deck enclosure within six (6) months of approval of this special permit.
3. The applicant shall obtain approval from the Zoning Administrator for a reduction of minimum yard requirements for a deck in the rear yard or the deck shall be removed or brought into conformance with the Zoning Ordinance.
4. The lattice work located underneath 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.

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

//

~ ~ ~ January 30, 2013, Scheduled case of:

9:00 A.M. BRANDON W. WINFREY, VC 2012-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.0 feet from rear lot line and 1.4 feet from side lot line and to permit greater than 30 percent minimum rear yard coverage. Located at 2200 Windsor Rd., Alexandria, 22307, on approx. 9,421 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 32.

Ms. Gibb called the applicant to the podium.

Ms. Gibb 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.

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

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart and Ms. Gumkowski discussed the pool dimensions, the decking, the patio area, the fireplace, the open space shown on the drawings, and the nature of the complaint.

Mr. Blackwell presented the variance request as outlined in the statement of justification submitted with the application. He said the applicant purchased the property in 2003, and there was an existing deck in the rear that covered approximately 90 percent of what was proposed. He requested decking around the pool for safety reasons. Mr. Blackwell said the lot was unique because there was only 25 feet from the back of the house to the rear property line. He discussed the children's play area, the area by the fireplace for the parents to sit and watch the children, and the area where there was generally standing water.

In response to a question from Mr. Beard regarding whether there were health department requirements with respect to grass abutting a swimming pool area, Mr., Blackwell stated that there was no requirement.

Mr. Hart and Mr. Blackwell discussed the size of the pool which was larger than shown on the building permit, the 57.7 percent rear coverage, and the proposed raised wood deck three inches above the ground in the area where water ponded. Mr. Hart said he thought the Board needed more information.

In response to a question from Ms. Gibb regarding whether the pool would have to be reduced if the variance was not granted, Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that the applicant would have to come into compliance. She suggested that the application could be approved-in-part with respect to the coverage and the pool.

In response to questions from Ms. Gibb, Mr. Blackwell indicated that by Chesapeake Bay Ordinance 118, wood decking was qualified as pervious, but was considered coverage in the Zoning Ordinance.

Mr. Byers noted that there were two complaints on file, one closed and the other involving drainage still under investigation. He said the drainage issue was associated with the 33.5 percent coverage, less than what was being requested, and he wanted to know the status of the drainage issue so the development conditions could be modified.

In response to a question from Mr. Smith regarding whether there was any material that could be used for the pool deck that would not count toward the 30 percent coverage, Ms. Langdon said there was not.

As there were no speakers, Ms. Gibb closed the public hearing.

Mr. Hart moved to defer decision on VC 2012-MV-006 to March 6, 2013, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Hammack were absent from the meeting.

//

~ ~ ~ January 30, 2013, Scheduled case of:

9:00 A.M. ROGER L. LEMIEUX, SP 2012-BR-066 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 and 9.0 ft. from side lot line and addition 21.1 ft. from rear lot line. Located at 5503 Kathleen Pl., Springfield, 22151, on approx. 10,890 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (14) 39. (Admin. moved from 12/12/12 for ads.)

Ms. Gibb called the applicant to the podium.

Ms. Gibb 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 Lemieux, 5503 Kathleen Place, Springfield, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-066, subject to the proposed development conditions.

Mr. Lemieux presented the special permit request as outlined in the statement of justification submitted with the application. He said the very small house he purchased in 1968 was built in 1958, and he lived there for seven years, but after his second child, it became too small. After moving to another location and living there for 36 years, his wife passed away, and he no longer needed the larger house, so he rented it to his son and decided to move back into the smaller house. He said he wanted the addition because it was too small to continue their Monday night dinner tradition.

As there were no speakers, Ms. Gibb closed the public hearing.

Mr. Smith moved to approve SP 2012-BR-066 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER L. LEMIEUX, SP 2012-BR-066 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 and 9.0 ft. from side lot line and addition 21.1 ft. from rear lot line. Located at 5503 Kathleen Pl., Springfield, 22151, on approx. 10,890 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (14) 39. (Admin. moved from 12/12/12 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 January 30, 2013; 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-3.
3. The Board has determined that the application meets all the submission requirements in Sect. 8-922.
4. Staff recommends approval, and the Board adopts the rationale identified by staff in the staff report.
5. There appears to be similar additions to this that have been approved by the Board in this general neighborhood.
6. The material, size, and the scale of the proposed additions are going to be compatible with the dwelling.
7. The Board does not think it will have a negative impact on the neighbors.
8. It is a somewhat modest request.
9. The bulk of the additions are going to be in the rear of the dwelling.

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 additions (approximately 952.0 square feet and 195.0 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated April 28, 2011, as revised through November 19, 2012, 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 (1,301.0 square feet existing + 1,951.5 square feet (150%) = 3,252.5 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to commencement of and during the entire construction process, the applicant shall install tree protection fencing around existing trees in the northwest corner of the property and trees that are located along a portion of the rear property line close to the proposed additions, to protect these trees from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
5. The addition shall be generally 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 5-0. Chairman Ribble and Mr. Hammack were absent from the meeting.

//

~ ~ ~ January 30, 2013, Scheduled case of:

9:00 A.M. BAHRAM SADEGHIAN, SP 2012-DR-076 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 1823 Gilson St., Falls Church, 22043, on approx. 14,990 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 101.

Ms. Gibb called the applicant to the podium.

Ms. Gibb 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.

Bahram Sadeghian 1823 Gilson Street, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-DR-076, subject to the proposed development conditions.

In response to questions from Mr. Hart, Mike Caudle, Department of Code Compliance, stated that the complaint originally came in for a shed in the rear yard, and on a return visit, the fence was discovered. Ms. Horner stated that the shed was moved to meet the required setback, but in its new location, it exceeded the maximum yard coverage, so staff proposed a development condition to move it to another area.

Mr. Hart, Mr. Beard, and Susan C. Langdon, Chief, Special Permit and Variance Branch, discussed the portion of the fence which was located in the right-of-way, and the Board was acting only on the portions of the fence located on the application property.

Mr. Sadeghian presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted privacy for his children, and none of his neighbors objected to the fence.

As there were no speakers, Ms. Gibb closed the public hearing.

Mr. Beard moved to approve SP 2012-DR-076 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BAHRAM SADEGHIAN, SP 2012-DR-076 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in a front yard of a corner lot. Located at 1823 Gilson St., Falls Church, 22043, on approx. 14,990 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 101. 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 January 30, 2013; 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 14,990 square feet.
4. This is a situation that came in as a peripheral issue based upon another complaint about a shed that has been brought into compliance, so this was not a complaint as such.
5. The Board notes that well over a dozen of the neighbors in the proximity have signed in support of this.
6. The Board thinks it is relevant that this is outside the required sight distance for a corner lot.
7. This is a security issue for the applicant's children which should be given some consideration notwithstanding what the law is.

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 6.0 feet wooden fence as shown on the plat prepared by Moran Surveys, dated October 30, 2012, submitted with this application and is not transferable to other land.
2. The minimum required rear yard coverage shall be reduced to comply with Sect. 10-103 Par. 3 of the Zoning Ordinance to be no more than 30%, within 90 days of approval of this 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 5-0. Chairman Ribble and Mr. Hammack were absent from the meeting.

//

~ ~ ~ January 30, 2013, Scheduled case of:

9:00 A.M. RN GOLF MANAGEMENT, LLC, A 2012-HM-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that redevelopment of property in the PRC District from a golf course to residential uses would require an amendment to the Reston Master Plan, a development plan amendment, and Planned Residential Community Plan approval from the Board of Supervisors. Located at 11875 Sunrise Valley Dr. and 2018 Soapstone Dr., Reston, 20191, on approx. 166.11 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-4 ((11)) 4A, 26-2 ((2)) 8 and 26-2 ((5)) 4. (Admin. moved from 10/24/12 at appl. req.)

Ms. Gibb noted that A 2012-HM-020 had been administratively moved to May 22, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ January 30, 2013, After Agenda Item:

Approval of September 19, 2006 Minutes


Mr. Beard moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Hammack was absent from the meeting.

//

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

Minutes by: John W. Cooper

Approved on: January 28, 2015



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, February 6, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Thomas Smith and Norman P. Byers were 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 6, 2013, Scheduled case of:

9:00 A.M. GEORGE KARSADI, SP 2012-MV-077 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from the rear lot line. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with VC 2012-MV-007).

9:00 A.M. GEORGE KARSADI, VC 2012-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure greater than 200 sq.ft., fence greater than 7.0 ft. in height in side and rear yards and fence greater than 4.0 ft. in height to remain in front yard. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with SP 2012-MV-077).

Chairman Ribble noted that SP 2012-MV-077 and VC 2012-MV-007 had been administratively moved to April 24, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 6, 2013, Scheduled case of:

9:00 A.M. MICHAEL C. WARREN, SP 2012-LE-079 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 33.1 ft. from the front lot line and to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 7232 Constantine Ave., Springfield, 22150, on approx. 26,390 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((6)) 40. (Concurrent with VC 2012-LE-008).

9:00 A.M. MICHAEL C. WARREN, VC 2012-LE-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 7232 Constantine Ave., Springfield, 22150, on approx. 26,390 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((6)) 40. (Concurrent with SP 2012-LE-079).

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 Warren, 7232 Constatine Avenue, Springfield, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-LE-079, subject to the proposed development conditions.

Mr. Hammack asked whether the staff report's statement of justification for a temporary structure, gazebo, and patio was part of this application. Ms. Gumkowski stated that was correct.

Mr. Warren presented the special permit and variance requests as outlined in the statements of justification submitted with the application. The shed was white with black trim and was located at the end of the secondary driveway. He lived at the property for 21 years. Most of the property was front yard, which had restricted what they could do on the property.

Mr. Hart made a disclosure, and recused himself from the public hearing.

Mr. Warren continued with more information. The house was old, and the bedrooms were very small. His application asked for approval to build a two-story addition—a two-car garage with a master bedroom above the garage. The neighborhood was relatively quiet, but with the growth and construction, there was a lot of noise. What they wanted was quiet with something which would provide noise abatement. Mr. Warren stated that he agreed with the development conditions in the staff report.

Answering Mr. Hammack's question, Mr. Warren said he did not remember the updated unbalanced appearance with the home and yard.

Mr. Hammack stated that he was not sure that the applicant had met the required standards to grant the variance. He did not see anything about the property that made it that unique. Mr. Warren asked whether the Board would prefer that he put the garage in a different spot by the second driveway, which was there when he purchased the home.

Mr. Hammack asked whether the shed could be approved under an error in building location. Ms. Langdon stated that it could not, because it was a locational requirement, and it could not be in the front yard of a lot less than 36,000 square feet in size. This was not a setback issue.

In response to a question from Mr. Beard, Ms. Gumkowski said there was a complaint received concerning the shed. Russell Munion, Inspector, Department of Code Compliance, stated that approximately four years prior, the original complaint was about outdoor storage, parking in the grass and a POD on the property. When he investigated, there was outdoor storage under the carport, there was a POD, and there were inoperable vehicles that were parked in the grass. He spoke with the property owner, who said he was being activated for deployment.

Mr. Hammack stated that it was a violation for the accessory storage structure, as shown in Appendix 5 of the staff report where the violations were listed, but these were protected by the Soldiers and Sailors Act. Mr. Munion said that a complaint had come in for the storage container and vehicles in the front yard. The POD had been removed after the work from the basement was complete. There were permits for the updated electrical, and the parking in the grass was due to not having enough gravel down. The grass grew up in the yard around the gravel.

In response to a question from Ms. Gibb, Mr. Munion stated that when a complaint was not pursued due to the Soldiers and Sailors Act, things would stay that way until there was another complaint.

Chairman Ribble called for speakers.

Joan Donahue, 7225 Constantine Avenue, Springfield, Virginia, came forward stating that she submitted a letter signed by herself and five other neighbors in support of the special permit and the variance. She said the applicant was a good neighbor and citizen, and admired him for his patriotism in serving. She stated that the fence was not creating an impediment to traffic, and she strongly supported it.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-LE-079 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL C. WARREN, SP 2012-LE-079 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 33.1 ft. from the front lot line and to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 7232 Constantine Ave., Springfield, 22150, on approx. 26,390 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((6)) 40. (Concurrent with VC 2012-LE-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 6, 2013; and

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

1. The applicant is the owner of the land.
2. The Board does not have a problem with the reduction in the yard requirements.
3. The majority of the addition would be within the setback lines as part of one side and one corner of the proposed addition would extend into the setback, but it would still be 33.5 (sic) feet to the eave, which is well back from the lot line.
4. It is the only place you could put this kind of addition on the house in its existing configuration.
5. The fence is also pulled back and does not impede sight lines, so the Board has no problem with granting the special permit.
6. The Board has determined that the applicant has met the requirements of Subsections 1 through 6 outlined in the Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the addition and the height and location of fences as shown on the plat prepared by William E. Ramsey, dated July 25, 2012, signed October 19, 2012, and revised 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 (1,188.0 square feet existing + 1,782.0 square feet (150%) = 2,970.0 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally 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 4-0. Mr. Hart recused himself from the hearing. Mr. Smith and Mr. Byers were absent from the meeting.

//

Mr. Hammack stated that he did not believe that a double front yard requirement in and of itself justified a variance. He stated that the lot seemed flat, there was nothing exceptional about the lot, and there was a lot of room where the shed could be relocated. He stated that this would be more of a convenience.

Mr. Hammack moved to deny application VC 2012-LE-008. The motion failed for lack of a second.

Ms. Gibb stated that she would like to look at the property as it was a close case. She stated that it may very well meet the requirements.

Ms. Gibb moved to defer decision on VC 2012-LE-008 to February 13, 2013, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Mr. Smith and Mr. Byers were absent from the meeting.

//

~ ~ ~ February 6, 2013, Scheduled case of:

9:00 A.M. PAMELA M. BROUDER, SP 2012-BR-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 13.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of an addition 13.8 ft. from rear lot line. Located at 10514 Indigo Ln., Fairfax, 22032, on approx. 12,521 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((7)) 22A.

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.

Mark Crain, the applicants' agent, reaffirmed the affidavit. Pamela Brouder, 10514 Indigo Lane, Fairfax, Virginia came forward to state that she wanted Mark Crain to act as her agent.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-078, subject to the proposed development conditions.

Mr. Hart asked whether the problem with the old part was that there was an enclosure under the deck, which was not approved. Ms. Horner said that was correct. There were building permit records for the multi-leveled deck which stated an open deck, so it appeared that there was a misunderstanding. When the existing portion was enclosed, it became a part of the primary dwelling, and no longer met the setback requirements. Mr. Hart asked whether the problem was the wall. Ms. Horner stated that it was the enclosed shed that housed the equipment for the hot tub.

Mr. Hart and Ms. Horner had a discussion about the distance from the enclosure and if it would be included as part of the structure and whether it was equipment or not.

Mr. Hart asked if the applicant would be getting a building permit for the equipment underneath the deck. Ms. Langdon, Branch Chief, Special Permit and Variance Branch, stated that there was not a condition which required them to get a building permit, but the last paragraph stated that the approval did not exclude them from coming under compliance.

Ms. Brouder presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the structure was a hot tub, and the enclosure just hides the bottom. Since it was a multilevel deck, the tub sat on the top level, and the enclosure hid the base and the mechanics of it.

Chairman Ribble called for speakers

Mark Crain, 9114 Industry Drive, Manassas Park, Virginia, came forward, and thanked staff for their work.

Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2012-BR-078 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAMELA M. BROUDER, SP 2012-BR-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 13.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of an addition 13.8 ft. from rear lot line. Located at 10514 Indigo Ln., Fairfax, 22032, on approx. 12,521 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 68-4 ((7)) 22A. 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 6, 2013; 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 mistake section resolution, the applicant has presented testimony showing compliance with the required standards.
3. The magnitude of the error with respect to the underneath part is relatively modest.
4. What appears to have happened is that a small area beneath the hot tub has been enclosed.
5. It is difficult to see. It is largely concealed by the existing deck and the steps, and the location of it is actually significantly further away from the lot line than the 13.2 feet, which apparently corresponds to the corner of the step extension.
6. There would not be any significant negative impact on anyone by allowing that to remain. In fact, it would be ugly if you removed the panels so as to expose the machinery or underneath of the hot tub.
7. With respect to the Sect. 8-922 resolution and the addition, it is really adding a screened porch on top of an existing deck at the rear of the property.
8. It is heavily concealed.
9. It sticks out less than the existing structures.
10. There would not be any significant negative impact on anyone.
11. It would not significantly change the impact from what is there already.
12. With the development conditions as modified, any impacts have been satisfactorily addressed.
13. The Board has a favorable staff recommendation at least with respect to the screened porch component of this, and the Board adopts the rationale in the 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 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 only for the location of the existing enclosed deck addition and the proposed screened porch addition (approximately 441 square feet), as shown on the plat prepared by Harold A. Logan Associates, P.C., dated July 3, 2012, as revised through December 28, 2012, signed by Harold A. Logan, Land Surveyor, 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 (2,800 square feet existing + 4,200 square feet (150%) = 7,000 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 generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. All accessory structures shall be subject to the use limitations of Sect. 10-103 and 10-104 of the Zoning Ordinance.
6. The applicant shall obtain permits and inspections for the enclosure beneath the deck within 180 days.

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

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

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

//

~ ~ ~ February 6, 2013, Scheduled case of:

9:00 A.M. RAJESH KALE, SP 2012-SP-082 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 4.0 ft. from rear lot line and accessory storage structure to remain 2.1 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of an addition 17.7 ft. from rear lot line. Located at 4207 Majestic Ln., Fairfax, 22033, on approx. 8,775 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (24) 13.

Chairman Ribble called the applicant to the podium.

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

Rajesh Kale, 4207 Majestic Lane, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-SP-082, subject to the proposed development conditions.

Mr. Hart asked whether there was a photo of the shed area, and if it was the one on the right that was the problem. Ms. Horner stated there were more photos, and it was the one on the right with the problem.

Mr. Kale presented the special permit request as outlined in the statement of justification submitted with the application. He said that the deck and the shed was an error on his part, because he and his wife constructed the deck under the understanding that if it was a patio they did not need permission. The lot is a small lot, so the shed was built to put lawn equipment and bicycles in. There was no other place to put the shed. He stated that he did discuss it with his neighbor, who was fine with it. He did not know the height regulations.

Mr. Hart asked whether the applicant knew the percent of coverage of the minimum rear yard was. Ms. Horner stated that she asked the surveyor to calculate the percentage, and it was less than the maximum allowed which included the shed and patio.

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

Ms. Gibb moved to approve SP 2012-SP-082 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAJESH KALE, SP 2012-SP-082 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 4.0 ft. from rear lot line and accessory storage structure to remain 2.1 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of an addition 17.7 ft. from rear lot line. Located at 4207 Majestic Ln., Fairfax, 22033, on approx. 8,775 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-3 ((2)) (24) 13. 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 6, 2013; 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 that he has met the Standards A through G.
3. The applicant has the support of or at least not the objection of the next-door neighbor upon whom there would be the most impact.
4. It will not create an unsafe condition and will not be detrimental to the use of the property immediately adjacent.
5. To force compliance with the minimum yard requirements would cause unreasonable hardship on the owner.
6. With respect to the addition, the applicant has met the standards required by Sect. 8-922.
7. The Board has 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 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 only for the location of the accessory storage structure, and the sunroom addition (approximately 299 square feet), as shown on the plat prepared by B.W. Smith and Associates, Inc., dated August 22, 2012, signed by Timothy J. Farrell, Land Surveyor, 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 (2,515 square feet existing + 3,772.5 square feet (150%) = 6,287.5 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 generally 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 5-0. Mr. Smith and Mr. Byers were absent from the meeting.

//

~ ~ ~ February 6, 2013, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC. C/O GARCIA ARIAS, ZULMA, A 2012- LE-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a commercial recreation use, which is not a permitted use, on property in the C-6 and H-C Districts in violation of Zoning Ordinance provisions. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 19,135 sq. ft. of land zoned C-6 and H-C. Lee District. Tax Map 81-3 ((5)) 4. (Admin. moved from 9/26/12 and 11/28/12 at appl. req.)

Chairman Ribble noted that A 2012- LE-013 had been administratively moved to April 24, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ February 6, 2013, Scheduled case of:

9:00 A.M. HAJIMOHAMMAD REVOCABLE TRUST, MOHAMMAD HAJIMOHAMMAD, TRUSTEE AND FLORA HAJIMOHAMMAS, TRUSTEE, A 2012-LE-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a vehicle sale, rental and ancillary service establishment to operate on property in the C-6 District without Special Exception approval or a valid Non-Residential Use Permit, in violation of Zoning Ordinance provisions. Located at 5630 South Van Dorn St., Alexandria, 22310, on approx. 32,210 sq. ft. of land zoned C-6. Lee District. Tax Map 81-2 ((3)) 8A. (Admin. moved from 10/3/12 and 11/28/12 at appl. req.)

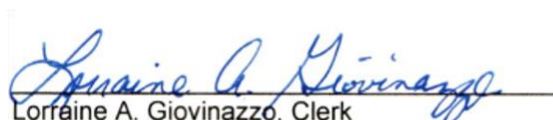
Chairman Ribble noted that A 2012- LE-017 had been administratively moved to April 24, 2013, at 9:00 a.m., at the appellants' request.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: John W. Cooper

Approved on: May 8, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, February 13, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Absent from the meeting was 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, so Chairman Ribble called for the first scheduled case.

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. MICHAEL C. WARREN, VC 2012-LE-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 7232 Constantine Ave., Springfield, 22150, on approx. 26,390 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((6)) 40. (Concurrent with SP 2012-LE-079). (*Decision deferred from 2/6/13.*)

Chairman Ribble noted VC 2012-LE-008 had been deferred for decision only.

Mr. Hart made a disclosure at the original hearing, and indicated that he would again recuse himself from the public hearing.

Mr. Byers moved to approve VC 2012-LE-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL C. WARREN, VC 2012-LE-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 7232 Constantine Ave., Springfield, 22150, on approx. 26,390 sq. ft. of land zoned R-1. Lee District. Tax Map 90-3 ((6)) 40. (Concurrent with SP 2012-LE-079) (Decision deferred from 2/6/13). 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 6, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 26,390 square feet.
4. The subject property was acquired in good faith.
5. It has at least one of the following characteristics: It does have exceptional narrowness at the time of the effective date of the Ordinance; and a case could be made for exceptional shape and an extraordinary condition.
6. There are a couple things that have consistently concerned Board members.
7. This shed has been in existence for a significant period of time.
8. It is less than 200 square feet, which means that when it was built, it would not have required a building permit.
9. It does not contain either electricity or plumbing.
10. When it was built 20 years ago, DPWES would not have referred a case like this to Zoning to get some kind of interpretation about the location of the shed.
11. Twenty years ago, the County did not have a website where people could look and make a determination whether something was placed correctly or not.
12. Most people, particularly in corner lots, believe that those sheds are in a side yard because most

people who are citizens of Fairfax County really do not realize what the situation is, whether it is a front or side yard.

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

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

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

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

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

1. This variance is approved for the location of a shed in the front yard as shown on the plat prepared by William E. Ramsey, dated July 25, 2012, signed October 19, 2012, and revised 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 including requirements for building permits.

Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hart recused himself from the hearing. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, SP 2012-MV-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23 ft. from front lot line. Located at 8101 Cinder Bed Rd., Lorton, 22079, on approx. 6.25 ac. of land zoned I-4. Mt. Vernon District. Tax Map 99-2 ((15)) 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, and the public hearing was opened.

Luis F. Pitarque, Project Manager, Department of Public Works and Environmental Services (DPWES), Building Design & Construction Division, 12000 Government Center Parkway Suite 530, Fairfax, Virginia, the applicant's agent, 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 of SP 2012-MV-083 for the addition with adoption of the Proposed Development Conditions.

Mr. Pitarque presented the special permit request as outlined in the statement of justification submitted with the application. He explained enclosing the operations would result in increased efficiency, enhanced security, and improved safety. In addition, he stated that he spoke with the Newington Civic Association, and had received their support.

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

Mr. Hart moved to approve SP 2012-MV-083 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, SP 2012-MV-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 23 ft. from front lot line. Located at 8101 Cinder Bed Rd., Lorton, 22079, on approx. 6.25 ac. of land zoned I-4. Mt. Vernon District. Tax Map 99-2 ((15)) 2. 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 13, 2013; 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 staff recommendation of approval and adopts the rationale in the staff report.
3. In the context of what is around this site, this is a very industrial area with barbed wire fences and industrial buildings and parking lots, and it is difficult to see how this very small addition, which is actually on a side street, not even on Cinder Bed Road, would have any significant negative impact on anyone.
4. With the development conditions, there will be landscaping on this site. There are a lot of other things around this that probably need landscaping.
5. The Board has determined that all the criteria in the Sect. 8-922 resolution 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 Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the addition (approximately 2,522 square feet), as shown on the plat prepared by William S. Springer, dated October 16, 2012, 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 (19,750 square feet existing + 49,375 square feet (150%) = 69,125 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Landscaping shall be provided as depicted on page 2 of the special permit plat. The applicant shall work with Urban Forest Management to identify areas along the southern lot line to provide additional trees and/or shrubs to help screen and soften the appearance of the proposed addition. Numbers, type, size and location of additional plant material shall be provided as determined in consultation with Urban Forest Management.
5. The addition shall be generally 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. Hammack was absent from the meeting.

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. ABOLHASSAN ZARANDAZCHI, SP 2012-HM-081 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 10.0 ft. from rear lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 10240 Brittenford Dr., Vienna, 22182, on approx. 37,761 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 18-4 ((13)) 126.

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.

Abolhassan Zarandazchi, 10240 Brittenford Drive, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. If the Board chose to approve SP 2012-HM-081, staff recommended they do so subject to the proposed development conditions.

Mr. Hart asked whether this had started with a complaint. Ms. Horner stated that she believed the nature of the complaint started with something other than the subject fence.

Discussion ensued regarding the lack of records verifying the history of the fence, and whether the County had any rules from the standpoint of safety when it came to the height of a fence combined with having a pool.

Mr. Zarandazchi presented the special permit request as outlined in the statement of justification submitted with the application. He said the pool was built 12 years prior, and was told that one of the requirements of the County was that he had to build a fence. He stated that when the inspectors came to his house, they stressed that, saying that because he had a deep pool, he had to build a tall fence.

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

Ms. Gibb moved to approve SP 2012-HM-081 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ABOLHASSAN ZARANDAZCHI, SP 2012-HM-081 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 10.0 ft. from rear lot line (**LOCATION PERMITTED, REQUEST WITHDRAWN**) and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 10240 Brittenford Dr., Vienna, 22182, on approx. 37,761 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 18-4 ((13)) 126. 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 13, 2013; and

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

1. The applicant is the owner of the land.
2. Based on the applicant's testimony, the fence has been in place since 2002.
3. There is a good rationale for having a fence this high with a pool in the backyard.
4. The fence is very attractive.
5. The fence does not have a negative impact on anyone in the neighborhood.
6. There is no sight distance issue.
7. For those reasons, there is no reason that this special permit could not be granted.

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:

- 5. This special permit is approved for the location of a fence in the front yard, a maximum 6.0 feet in height, as shown on the special permit plat prepared by Sunil Taori, Professional Engineer, dated January 10, 2013, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. CHRISTOPHER A. HARRIS AND ABIGAIL M. HARRIS, SP 2012-PR-069 Appl. under Sect(s). 8-914, 8-922 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure with attached roofed deck 2.4 ft. from side lot line and 1.4 ft. from rear lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 2622 Shelby Ln., Falls Church, 22043, on approx. 13,735 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((7)) 13. (Indefinitely deferred from 1/9/13 at appl. req.) (Reactivated on 12/20/12).

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.

George Sales, the applicant's agent, 2622 Shelby Lane, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Should the Board choose to approve SP 2012-PR-069, staff recommended they do so subject to the proposed development conditions.

Mr. Sales presented the special permit request as outlined in the statement of justification submitted with the application. He explained the history of the shed, and was told that since he did not have an HOA it was permitted. As for the shed, it had previously been destroyed when a tree limb fell on it, but had since been rebuilt. Mr. Sales stated both the fence and the shed were aesthetically pleasing and conforming to the nature of the neighborhood.

There was discussion regarding electricity and plumbing in the shed, and possible sight distance issues with the fence.

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

Mr. Smith moved to approve SP 2012-PR-069 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER A. HARRIS AND ABIGAIL M. HARRIS, SP 2012-PR-069 Appl. under Sect(s). 8-914, 8-922 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure with attached roofed deck 2.4 ft. from side lot line and 1.4 ft. from rear lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 2622 Shelby Ln., Falls Church, 22043, on approx. 13,735 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((7)) 13. (Indefinitely deferred from 1/9/13 at appl. req.) (Reactivated on 12/20/12) 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 13, 2013; 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 storage structure with attached roof and deck, it is going to have relatively minimal impact on neighboring property owners.
3. Looking at the statement of justification, it mentions a number of different houses with similar structures.
4. This is on a corner lot.
5. There will not really be any impact on others.
6. It was done in good faith.
7. As referenced by the applicant, the shed was replacing a prior shed that was old and rotting in the same location.
8. Relative to the fence, as noted in the statement of justification and by staff, it does not have any issues with sight distance requirements.
9. It is on a corner lot.
10. As referenced with the shed on the first variance case the Board had at this meeting, it feels like a side yard as you are looking at the house.
11. It is not inconsistent at least with the neighborhood.
12. It is not going to adversely impact the community.

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 fences in the front yards, a maximum 6.0 feet in height as shown on the special permit plat, and an accessory storage structure (shed) with attached roofed deck as shown on the plat prepared by GeoEnv Engineers dated December 19, 2012, as revised through December 21, 2012, signed by Ibrahim A. Chehab, Professional Engineer, as submitted with this application and is not transferable to other land.
- 2. The applicants shall obtain applicable building permits and inspections for the shed within 180 days of approval of 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.

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

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. KREATIVE MINDS, LLC T/A KID JUNCTION, SP 2012-SU-080 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit a commercial recreation use within an existing building. Located at 4090 Lafayette Center Dr., Chantilly, 20151, on approx. 5.11 ac. of land zoned I-4, I-3, AN, HC and WS. Sully District. Tax Map 33-2 ((4)) 1A.

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.

Mark Mittereder, 12198 Henderson Road, Clifton, Virginia, the applicant's agent, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-SU-080, subject to the proposed development conditions.

Mr. Mittereder presented the special permit request as outlined in the statement of justification submitted with the application. He described the operations of the subject business.

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

Mr. Beard moved to approve SP 2012-SU-080 for the reasons stated in the Resolution.

Mr. Hart noted that the applicant had met with Sully District council and the West Fairfax County Citizens Association's land use committee. They voted not to oppose the application, and recommended that the Board approve it.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KREATIVE MINDS, LLC T/A KID JUNCTION, SP 2012-SU-080 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit a commercial recreation use within an existing building. Located at 4090 Lafayette Center Dr., Chantilly, 20151, on approx. 5.11 ac. of land zoned I-4, I-3, AN, HC and WS. Sully District. Tax Map 33-2 ((4)) 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 February 13, 2013; and

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

1. The present zoning is I-3, I-4, HC, AN, and WS.
2. The area of the lot is 5.11 acres of land.
3. Staff has recommended approval of this, the proposed development conditions and the application.
4. This blends in perfectly with the area.
5. There is already an academy and/or child care facility located there, other offices and light retail.
6. This makes a good addition.

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

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

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

1. This approval is granted to the applicant, Kreative Minds, LLC T/A Kid Junction, only and is not transferable without further action of this Board, and is for the location indicated on the application, at 4090 Lafayette Center Drive, Suite E, Chantilly, 20151, 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 Arch Group, dated September 30, 2012, revised through February 1, 2013, 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 occupancy is limited to 162 customers and seven employees on-site at any one time.
5. Parking shall be provided in accordance with Article 11 of the Fairfax County Zoning Ordinance. If required by DPWES, a parking tabulation shall be submitted to and approved by the Director which shows that the required parking for all uses can be provided for on Lot 1A as shown on the special permit plat. All parking for this use shall be on site.
6. The maximum gross floor area of the commercial recreation shall be 9,313 square feet, as shown on the special permit plat.
7. The floor plan shall be constructed in substantial conformance as shown in 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 outline above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation use in conjunction with a place of worship by right. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. (Admin. moved from 5/25/11 and 6/29/11 at appl. req.) (Indefinitely deferred from 8/10/11 at appl. req.) (Reactivated on 11/20/12 at appl. req.).

Chairman Ribble noted that SP 2011-SU-011 had been administratively moved to April 3, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. NAIEM A. SHERBINY, A 2012-DR-030 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 District in violation of Zoning Ordinance provisions. Located at 7402 Paxton Rd., Falls Church, 22043 on approx. 10,399 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (K) 17.

Chairman Ribble noted that A 2012-DR-030 had been administratively moved to March 6, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ February 13, 2013, Scheduled case of:

9:00 A.M. TRANG P. MAI, A 2012-MA-032 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a commercial vehicle (vending trailer) that exceeds allowable height restrictions to be parked on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 4620 Backlick Rd., Annandale, 22003 on approx. 589 ac. of land zoned R-1. Mason District. Tax Map 71-1 ((8)) 2A.

Chairman Ribble called the appellants to the podium.

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

Richard Nguyen, the appellant's agent, 6402 Arlington Boulevard, Suite 371, Falls Church Virginia, came forward.

Roger Marcy, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report.

Mr. Beard asked whether the violation was the same at the appellant's other location. Mr. Marcy stated that was correct, and it had been removed.

Discussion ensued regarding the relevance of commercial vehicle height given previous interpretations, and the definition and interpretation of a commercial vehicle

Mr. Nguyen presented the arguments forming the basis for the appeal. He submitted a handout for distribution to the Board. Mr. Nguyen clarified the aspect of the notice of violation which was appealed which was whether a height requirement could be added by the County. In addition, he addressed the relevance of several ancillary issues, which seemed to have been brought forward following the original filing of the appeal.

Mr. Marcy explained the policy-based actions taken by the County in relation to the violation notice and the subsequently filed appeal.

Discussion ensued regarding the history of the violation notice, the lack of dwelling occupancy, and the appellant having conceded to the commercial classification of the subject vehicle, with the appellants' agent going into detail with regard to written definitions.

Chairman Ribble called for speakers.

Daniel Jay-Kellogg, 4716 Backlick Road, Annandale, Virginia, came forward to speak in support of the appellant.

John Tark, 7227 Auburn Strret, Annandale, Virginia came forward in opposition. He explained his opposition to the commercialization of his neighborhood and the appeal process.

Andrew Thane, neighbor to the appellant, came forward to speak. He explained the transient history of the property tenants, and expressed his enthusiasm with the appellant's long-term plans for the property.

Mike Congleton, Department of Code Compliance, reiterated staff's position regarding the parking of a commercial vehicle on the subject residential property.

Chairman Ribble closed the public hearing.


Mr. Byers moved to uphold the determination of the Zoning Administrator. He stated there was no appeal of the original determination from the standpoint of the trailer being a commercial vehicle, and there was a determination made on May 25, 2010 in support of what the Fairfax County Board of Supervisors had indicated. Mr. Hart seconded the motion, which carried by a vote of 4-1. Ms. Gibb voted against the motion. Mr. Smith was not present for the vote. Mr. Hammack was absent from the meeting.


//

As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: May 15, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, March 20, 2013. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb and V. Max Beard were absent from the meeting.

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

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. DIANE G. SPITTLE, SP 2012-MV-089 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 8.1 ft. from side lot line. Located at 8115 Cooper St., Alexandria, 22309, on approx. 13,451 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((2)) 600.

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.

Dianne Spittle, 8115 Cooper Street, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hammack, Mr. Hart, and Ms. Gumkowski discussed the lack of permits for the shed addition that contained the pump equipment which serviced the pool, that the addition had not been shown on the plat, and all that was in the records was the signed building permit for the pool and the sunroom.

Ms. Gumkowski reported to Mr. Hart and Mr. Byers that after the addition existed for 27 years, a complaint had been received, and because the shed addition was less than 200 square feet, it would not have required a building permit if it were not connected to the house. Because it was attached, it was considered an addition, and a permit was required.

Nancy Stallings, Department of Code Compliance, stated that a complaint was received on June 29, 2012, regarding the shed, along with numerous other complaints about sheds and whether or not they were attached or detached to the houses in the neighborhood. She said the assumption was that a notice of violation had been written to someone else in the neighborhood, who then filed the other complaints.

Ms. Spittle presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition was built by her husband and his father 27 years ago, and they both were deceased. She stated that if it had been known that a permit was needed, they would have gotten the permit since they already had for the pool and the porch. Ms. Spittle said the shed was not viewed as an addition since it could not be entered through the house. She stated that none of the neighbors had previously complained, and most did not even know the shed was there until they received the letters for the hearing because there was a large pine tree at the corner of the house that blocked the view to that side. In response to questions from Mr. Hammack, Ms. Spittle stated that the shed had been built at the same time as the other structures, and it was framed in the back against the house.

Chairman Ribble called for speakers.

Donald Hood, 8114 Cooper Street, Alexandria, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-MV-089 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DIANE G. SPITTLE, SP 2012-MV-089 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 8.1 ft. from side lot line. Located at 8115 Cooper St., Alexandria, 22309, on approx. 13,451 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((2)) 600. 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 20, 2013; and

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

1. The applicant is the owner of the land.
2. This addition, if it is an addition, assuming there is some sort of attachment to the house, has been there for 27 years and was constructed following the issuance of a valid building permit for the pool and the equipment associated with the pool.
3. It has not been a problem since that time until recently.
4. It does not have any impact on the neighbors, except for the complaining party.
5. The Board has a number of letters in support, including the most adjacent neighbors.
6. The Board has determined that the applicant has satisfied the specific standards set forth in Subsections A through G of the code section, in particular, Subsection B, that the non-compliance was done in good faith that through no fault of the property owner, was a result of an error in the location of the building subsequent of the issuance of a building permit.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and 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:

4. This special permit is approved for the location of the shed addition as shown on the plat prepared by Alexandria Surveys LLC, dated September 5, 2012, signed September 14, 2012, as submitted with this application and is not transferable to other land.
5. All applicable permits and final inspections shall be obtained for the shed addition within 180 days of 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.

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

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. NRL FEDERAL CREDIT UNION, SP 2013-MA-001 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 20.17 ft. from front lot line and 21.35 ft. from the curb line of Patuxent Vista Dr. Located at 5440 Cherokee Ave, Alexandria, 22312, on approx. 2.41 ac. of land zoned I-6. Mason District. Tax Map 81-1 ((1)) 19B.

Chairman Ribble noted that SP 2013-MA-001 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF SECOND BAPTIST CHURCH, SP 2012-PR-088 Appl. under Sect(s). 3-403 of the Zoning Ordinance for an existing place of worship to permit construction of an addition. Located at 6626 Costner Dr., Falls Church, 22042, on approx. 3.43 ac. of land zoned R-4. Providence District. Tax Map 50-2 ((1)) 52,54 and 58; 50-2 ((9)) 30-33, 95 and 96.

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.

Paris Phelps, 39 Proper View Drive, Stafford, Virginia, the applicant's agent, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-PR-088, subject to the proposed development conditions.

Mr. Phelps presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the improvement was due to the elderly members of the congregation. The church wanted to make sure it supported free movement into the building by the installation of an elevator and wanted to improve the façade.

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

Mr. Byers moved to approve SP 2012-PR-088 for the reasons stated in the Resolution.

//

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF SECOND BAPTIST CHURCH, SP 2012-PR-088 Appl. under Sect(s). 3-403 of the Zoning Ordinance for an existing place of worship to permit construction of an addition. Located at 6626 Costner Dr., Falls Church, 22042, on approx. 3.43 ac. of land zoned R-4. Providence District. Tax Map 50-2 ((1)) 52,54 and 58; 50-2 ((9)) 30-33, 95 and 96. 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 20, 2013; 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 3.43 acres.
4. Staff recommends approval.
5. The Board adopts its rationale.

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

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

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

1. This approval is granted to the applicant, Trustees of Second Baptist Church, and is for the location indicated on the application, 6626 Costner Drive (3.43 acres), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dickerson Survey and Arborist Services, dated February 8, 2012, as revised through December 3, 2012, 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 Pa. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum number of 225 seats in the sanctuary.
6. Parking shall be provided as shown on the special permit plat. All parking shall be on site.
7. Limits of clearing and grading shall be the minimum possible and shall be no greater than shown on the special permit plat as may be qualified by these development conditions.
8. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

9. The landscaping shall generally be consistent with the landscape plan as shown on Attachment 2 to these conditions.
10. Transitional screening and barrier requirements shall be modified along all lot lines 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 construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. SUBWAY, A 2012-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating a Fast Food Restaurant on property in the C-8 and SC Districts without a valid Non-Residential Use Permit or Special Exception approval, in violation of Zoning Ordinance provisions. Located at 6711 Spring Mall Rd., Springfield, VA 22150 on approx. 5.04 ac. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51. (Admin. moved from 12/12/12 at appl. req.)

Chairman Ribble noted that A 2012-LE-016 had been administratively moved to April 24, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. BOYD TRISTAN CLOERN REVOCABLE TRUST FN, DARA ALDERMAN REVOCABLE TRUST FN, BOYD TRISTAN CLOERN, CO-TRUSTEE, DARA RAE ALDERMAN, CO TRUSTEE, A 2012-DR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have altered the drainage swale, which is impeding the water pattern, and have erected an accessory structure (a playset) that does not meet size and location requirements on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1850 MacArthur Dr., McLean, 22101 on approx. 10,043 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 31. (Admin. moved from 1/16/13 at appl. req.)

Chairman Ribble noted that A 2012-DR-028 had been administratively moved to May 8, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. 8921 PROPERTIES, L.L.C., A 2011-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and is allowing the operation of a contractor's offices and shops and the establishment of outdoor storage that does not meet size or location requirements, all on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 8921 Telegraph Rd., Lorton, 22079, on approx. 42,057 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 10. (Admin. moved from 12/14/11, 5/16/12, 11/7/12, and 2/27/13 at appl. req.)

Chairman Ribble noted that A 2011-MV-030 had been withdrawn.

//

~ ~ ~ March 20, 2013, Scheduled case of:

9:00 A.M. SANJEEV KAPOOR, A 2010-HM-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a use not permitted (a truck rental establishment) to operate on property in the PRC District without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr. on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7. (Admin. moved from 3/2/11, 9/14/11, 12/14/11, 4/18/12, 9/12/12, 11/7/12, 12/5/12, and 2/27/13 at appl. req.)

Chairman Ribble noted that A 2010-HM-015 had been withdrawn.

//

~ ~ ~ March 20, 2013, After Agenda Item:

Approval of November 14, 2006 Minutes
(Moved from March 6, 2013, due to meeting cancellation for inclement weather)

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

//

~ ~ ~ March 20, 2013, After Agenda Item:

Approval of December 19, 2006 Minutes


Mr. Smith moved to approve the Minutes. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Beard and Ms. Gibb were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 9:32 a.m.

Minutes by: John W. Cooper

Approved on: December 10, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, April 3, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m.

Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Board of Zoning Appeals pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:01 a.m. and reconvened at 9:10 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

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 3, 2013, Scheduled case of:

9:00 A.M. ARTHUR E. KOPELMAN, TRUSTEE AND LORETTA M. KOPELMAN, TRUSTEE, SP 2013-DR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 10.5 ft. from side lot line. Located at 1432 Waggaman Ci., McLean, 22101, on approx. 30,504 sq. ft. of land zoned R-2 and HC. Dranesville District. Tax Map 30-2 ((29)) 1.

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.

Paul Hoofinagle, 3949 Pender Drive, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-DR-003, subject to the proposed development conditions.

Mr. Hoofinagle presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicants were concerned about their health and wanted to have an enclosed garage for the winter months where there was a safe entrance into the house without going outside. The addition to the house and the carport would not extend the house, but would be putting siding on the back to match the house, with a front entrance-single-car garage. The applicants had interviewed the neighbors, who were all supportive as they thought it would make the community look better.

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

Mr. Byers moved to approve SP 2013-DR-003 for the reasons stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR E. KOPELMAN, TRUSTEE AND LORETTA M. KOPELMAN, TRUSTEE, SP 2013-DR-003 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 10.5 ft. from side lot line. Located at 1432 Waggaman Ci., McLean, 22101, on approx. 30,504 sq. ft. of land zoned R-2 and HC. Dranesville District. Tax Map 30-2 ((29)) 1. 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 3, 2013; 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 application meets all the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval and the Board adopts its rationale.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 265 square feet) of the garage addition, as shown on the plat prepared by Michael L. Flynn, Land Surveyor, dated June 25, 2012, as revised through January 3, 2013, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,048 square feet existing + 6,072 square feet (150%) = 10,120 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 generally be consistent with the architectural renderings and materials as shown on the special permit 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.

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

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. LUIS M. PEREZ, SP 2013-MV-002 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from side lot line and 7.9 ft. from rear lot line and to permit reduction in certain yard requirements to permit construction of addition 10.7 ft. from side lot line. Located at 2104 Wakefield St., Alexandria, 22308, on approx. 14,110 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (7) 7

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.

Luis Perez, 2106 Wakefield Street, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MV-002 subject to the proposed development conditions.

Mr. Hart asked whether or not all of the lot was in the Resource Protection Area (RPA), because it looked like the house was in it. Ms. Gumkowski stated that staff talked to the engineer, and it was just the front of the lot which goes through the middle of the house. She continued to say that the house was built before the RPA, which was not in place until 1993. Mr. Hart asked whether there was an additional layer of review required because of the addition partly being in the RPA. Ms. Gumkowski stated that in the development conditions, there was a condition to have the Department of Public Works and Environmental Services (DPWES) review the garage addition.

Mr. Hart asked whether there were any Chesapeake Bay implications for this addition to which Ms. Gumkowski stated there were none.

Mr. Hart stated that on the drawings, it showed the patio 9.6 feet from the right side. He asked that if the patio was touching the house, would it still be a permitted extension. Ms. Gumkowski stated that it would be permitted as close as 5 feet from the side lot line.

Mr. Hart asked whether there was an RPA in the back of the back yard and if there was a stream underground that caused the RPA to go through the middle of the house. Ms. Gumkowski stated there was no RPA in the back yard. There was a culvert in the front of the house, and the RPA ran through that separation in the road.

Mr. Hammack asked whether Development Condition 4 was necessary and what was meant by the word plan. Ms. Gumkowski stated that staff wanted to make sure that there was a DPWES review on the property because of the RPA. Through staff's research they found an infill lot grading plan was a more complex review, and after talking with DPWES the details of the review and plan would be up to them.

Mr. Hammack asked whether the review be satisfied by the applicant submitting construction or building plans. Ms. Gumkowski stated that it may not be a building plan, but can be a grading plan or a walk-thru, but it would be up to the discretion of DPWES.

Mr. Hammack asked whether the applicant would still be required to comply if the development condition were deleted. Ms. Gumkowski stated that was correct, but it was up to DPWES to decide the type of plan they wanted.

Mr. Perez presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit was a relatively simple matter as he just wanted to enclose the

existing carport. This would be on the existing footprint that was established in 1955 when the house was built. He stated that although it was in the RPA, he was still unsure that this would affect any grading that was not already there, and asked if a condition relating to that be taken away from the approval process due to the considerable amount of time which it would take to be compliant.

Mr. Hammack asked whether the applicant was doing any grading, or if he was simply enclosing the existing carport with no new footers. Mr. Perez stated that it was the latter.

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

Mr. Hammack moved to approve SP 2013-MV-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUIS M. PEREZ, SP 2013-MV-002 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from side lot line and 7.9 ft. from rear lot line and to permit reduction in certain yard requirements to permit construction of addition 10.7 ft. from side lot line. Located at 2104 Wakefield St., Alexandria, 22308, on approx. 14,110 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (7) 7. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 3, 2013; 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 swing set, the board cannot see how it would have any detrimental impact on any of the adjoining neighbors.
3. It is sited pretty far from the rear and side lot lines.
4. With respect to the reduction of certain yard requirements under 8-922, the Board has a favorable staff recommendation.
5. The applicant proposes to enclose an existing carport on an existing slab.
6. The encroachment into the setback is about as minimal as you can get on something like this.
7. The Board thinks both applications are approvable.
8. The Board has determined that the applicant has satisfied Subsections A through G, in particular Subsection D; it will not be detrimental to the use and enjoyment of property in the immediate vicinity.
9. The Board has determined the applicant has satisfied the six subsections under Sect. 8-922.

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

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

- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the garage addition and play equipment located as shown on the special permit plat, prepared by Dominion Surveyors Inc., dated September 25, 2012, as submitted with this application and is not transferrable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,457 square feet existing + 6,685.5 square feet (150%) = 11,142.5 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. Every effort shall be made to protect offsite trees during construction of the garage. If needed, the applicant shall hire a certified arborist to assess and make recommendations on tree protection measures.
5. The addition shall be generally 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 7-0.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. SALLY COLER, SP 2013-LE-004 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 6401 Hayfield Pl., Alexandria, 22310, on approx. 19,527 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (K) 23. (Concurrent with VC 2012-LE-001).

9:00 A.M. SALLY COLER, VC 2013-LE-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in the front yard of a lot containing 36,000 sq. ft. or less. Located at 6401 Hayfield Pl., Alexandria, 22310, on approx. 19,527 sq.ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (K) 23. (Concurrent with SP 2013-LE-004).

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.

Jonathan Puvak, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-LE-004, subject to the proposed development conditions.

Mr. Hart asked how close the wood of the trellis was to the house, and if it touched the house would that make it by right. Ms. Horner stated that the definition of the structure was an accessory structure, and if it were attached to the house, it would be considered an addition.

Mr. Hart asked since the trellis was attached to the patio which was attached to the house, would it be part of the house. Ms. Horner stated that portion was the driveway.

Mr. Hart stated that he asked the questions because it did not fit the provisions for a variance, but it ought to be by right somehow. He asked how that was considered the driveway. Ms. Horner stated that it was shown as a driveway on the variance plat. Mr. Hart asked if the applicant called it a patio, could it be by right? Ms. Horner stated that she would have to ask Zoning Administration.

Mr. Hart asked if there were a piece of wood that connected the trellis to the house, would it then be by right. Ms. Horner stated that if it was an addition to the dwelling and it met the setback, it would be by right.

Mr. Byers asked whether the application was a result of a complaint or inspection of other items on the property. Ms. Horner stated that the Notice of Violation (NOV) was issued through review of the plat in the acceptance process.

Mr. Puvak presented the special permit and variance request as outlined in the statement of justification submitted with the application. He said the applicant acquired the home in 2001, and through the help of an architect the addition was put in place in 2005. The addition was put in for additional value of the home and for future use as the applicant aged. He continued to state that the applicant was not aware of any of the zoning issues until she received the NOV in August of 2012. That was when she became aware of the issues for the use of the addition. The applicant had been renting out the addition to a military couple. The NOV was issued related to overcrowding and outdoor storage, due to her stepson living with her, using the space, and also parking extra cars on the road. Since her stepson moved out, the outdoor storage issue had been resolved. During the inspection of the NOV, the trellis was redefined as a pergola, which was a freestanding structure that was not allowed. The structure had been located on the driveway, and had been there for 10 years. It was used for outdoor seating. Mr. Puvak stated that the applicant was a classic example of why the regulations for accessory dwellings were put in place by the Board of Supervisors (BOS).

Mr. Byers asked if the original violation was for cars parked on the street, and whether it was a public street. He stated that the rule was that the car had to be 10 feet away from the mouth of any driveway. Mr. Puvak said he thought the original reason for the notice was for overcrowding and storage.

Al Sanchez, Department of Code Compliance, stated that the original complaint that was received was for multiple occupancy, not for parking.

In answering Mr. Hart's questions, Mr. Puvak stated there was a building permit for the addition which was issued in 2000. He was not sure how the kitchen was put together or if it was on the permit. It seemed that the addition was permitted, but somehow a kitchen was put in.

Ms. Langdon stated that Development Condition 7 was put into the conditions, which stated that the applicant had to get approval of the kitchen components.

Mr. Hart asked under what circumstances the kitchen was put in without a permit, as it did not seem likely that if the contractor was doing it under the original plans. Ms. Horner stated that the building permit indicated zero under the number of kitchens and also stated the description of the work as an addition with two floors and one bath.

Mr. Puvak stated that the kitchen was added afterwards.

Mr. Hart asked whether a licensed contractor put the kitchen in, and if so, why the contractor not get a permit for the kitchen. Mr. Puvak stated that the contractor was licensed, but was not sure why he did not get the permit. The contractor was no longer in the area.

A discussion ensued between Mr. Hart, Ms. Langdon and Mr. Puvak about the possibility of connecting the trellis to the house with a permit or annotating on the plat to show it as a covered patio, and whether that would satisfy the Zoning Administrator.

Mr. Hammack asked since the trellis occupied the driveway, whether it presented a problem with parking. Mr. Puvak stated that there was still space to park in the driveway.

Mr. Hammack stated that the plat did not show a path or walkway to the accessory dwelling unit, and wondered whether it was accessed through the interior of the house. Mr. Puvak stated there was access in the house, and there is an exterior door, but no path.

Mr. Hammack asked whether a path was required for an accessory dwelling unit. Ms., Langdon stated that it was not required, and it could be accessed through the main dwelling.

A discussion ensued between Ms. Gibb and Mr. Puvak about how this application might meet Condition Number 6, and whether it would qualify as a hardship.

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

Mr. Hart moved to approve SP 2013-LE-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SALLY COLER, SP 2013-LE-004 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 6401 Hayfield Pl., Alexandria, 22310, on approx. 19,527 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (K) 23. (Concurrent with VC 2012-LE-001). 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 3, 2013; and

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

1. The applicant is the owner of the land.
2. There is a favorable staff recommendation on the accessory dwelling unit.

3. The Board adopts the rationale in the staff report.
4. It seems to be a large lot.
5. The addition in question is in the back and is well concealed.
6. There is plenty of parking on the lot.
7. It does not seem like it will have any significant negative impact on anyone.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Sally A. Coler, and is not transferable without further action of this Board, and is for the location indicated on the application, 6401 Hayfield Place, (19,527 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Dominion Surveyors, Inc., dated September 25, 2012, as signed and sealed by George M. O'Quinn, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 872 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit.
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 dwelling 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.
11. All parking shall be provided on site as shown on the special permit 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, six (6) months after the date of approval unless the use has been established as noted 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.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. SAIRA AND FARHAN ALI, SP 2013-LE-005 Appl. under Sect(s). 8-914, 8-918 and 8-923 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 4.9 ft. from side lot line, to permit an accessory dwelling unit within an existing dwelling and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6232 Park Ter., Alexandria, 22310, on approx. 19,654 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((5)) 39A.

Chairman Ribble noted that SP 2013-LE-005 had been administratively moved to April 17, 2013, at 9:00 a.m., because the notices were not in order.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, SP 2012-PR-071 Appl. under Sect(s). 8-917 and 8-922 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from the front lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Deferred from 1/16/13 at appl. req.)

Chairman Ribble noted that SP 2012-PR-071 had been administratively moved to April 17, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation use in conjunction with a place of worship by right. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. (Admin. moved from 5/25/11, 6/29/11, and 2/13/13 at appl. req.) (Indefinitely deferred from 8/10/11 at appl. req.) (Reactivated on 11/20/12 at appl. req.)

Chairman Ribble noted that SP 2011-SU-011 had been administratively moved to July 10, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. CHARLES B. MOLSTER, III; SHARON B. MOLSTER, A 2012-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Riding/Boarding Stable on property in the R-E District without an approved special permit in violation of Zoning Ordinance provisions. Located 815 Blacks Hill Rd, Great Falls, 22066,

on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26. (Admin. moved from 10/24/12 at appl. req.) (Continued from 10/31/12 and 11/28/12)

Mr. Hammack moved to defer A 2012-DR-019 to October 9, 2013, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. BELVEDERE DR. HOMES LLC, A 2013-MV-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a hotel/motel, which is a use not permitted, on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 7800 Belvedere Dr., Alexandria, 22306 on approx. 26,211 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-1 ((6)) 13A.

Chairman Ribble noted that A 2013-MV-002 had been administratively moved to April 24, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. BEYER I LLC, A 2012-PR-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, which is a use not permitted, on property in the C-8 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7113 Shreve Rd., Falls Church, 22043, on approx. 33,787 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 40-3 ((12)) 11. (Admin. moved from 1/16/13 at appl. req.)

Chairman Ribble noted that A 2012-PR-029 had been administratively moved to June 19, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 3, 2013, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN & ALLYSON G. BLOOM, A 2012-DR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure (a playset) contributes to the coverage of over 30% of the minimum rear yard on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 2090 Grace Manor Ct., McLean, 22101 on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Deferred from 1/9/13 at appl. req.)

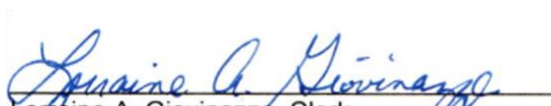
Chairman Ribble noted that A 2012-DR-025 had been administratively moved to May 15, 2013, at 9:00 a.m., at the appellants' request.

//

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

Minutes by: John W. Cooper

Approved on: July 24, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, April 17, 2013. 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 9:04 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 17, 2013, Scheduled case of:

9:00 A.M. HEMAMALINI PARAVASTU, SP 2013-DR-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.1 ft. from side lot line. Located at 7109 Sea Cliff Rd., McLean, 22101, on approx. 12,857 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((10)) 3.

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.

Hemamalini Paravastu, 7109 Sea Cliff Road, McLean, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-DR-006, subject to the proposed development conditions.

Staff responded to questions regarding the material to be used by the applicant for construction of the addition.

Ms. Paravastu presented the special permit request as outlined in the statement of justification submitted with the application. She explained the need for a garage for the purposes of personal safety and asset protection, and the intention to extend the master bathroom and relocating the laundry room to the upstairs.

Chairman Ribble called for speakers.

Sandy Gorur, designer of the proposed addition, came forward. She explained that the reason for the size of the garage footprint was due to compliance with County requirements.

Discussion ensued regarding changes which would impact storm water drainage.

Srivatsan Chellam, 7109 Sea Cliff Road, McLean, Virginia, came forward. He clarified that the proposed addition was only slightly larger in size than the existing structure.

John Draper, 1710 Margie Drive, McLean, Virginia, came forward in opposition. As he was not sworn in earlier, the Chairman directed the clerk to administer the oath to Mr. Draper, who swore or affirmed that his testimony would be the truth. Mr. Draper discussed how the proposed addition did not satisfy the requirement of being a harmonious fit with the surrounding neighborhood.

Katherine Wint, 7015 Sea Cliff Road, McLean, Virginia, came forward in opposition. As she was not sworn in earlier, the Chairman directed the clerk to administer the oath to Ms. Wint, who swore or affirmed that her testimony would be the truth. Ms. Wint discussed how the size of the home after the addition would be large and imposing.

Ms. Paravastu explained her efforts to communicate with her neighbors regarding the addition.

Ms. Gorur detailed the measurements of the proposed design for the addition, and responded to Board questions regarding the materials and dimensions demonstrated in the submitted design drawings, potential roof designs, the height of the addition, and potential design modifications.

Discussion ensued regarding staff's recommendation being inclusive of the height of the addition.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision on SP 2013-DR-006 to May 1, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-2. Chairman Ribble and Mr. Beard voted against the motion.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. DWIGHT FULLER, SP 2013-BR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.5 ft. from the rear lot line. Located at 9659 Boyett Ct., Fairfax, 22032, on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((9)) 19.

Chairman Ribble called the applicant to the podium.

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

Dwight Fuller, 9659 Boyett Court, Fairfax, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-BR-016, subject to the proposed development conditions.

Vice Chairman Hammack assumed the chair.

Mr. Fuller had nothing to add to the special permit request as outlined in the statement of justification submitted with the application.

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

Mr. Byers moved to approve SP 2013-BR-016 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DWIGHT FULLER, SP 2013-BR-016 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.5 ft. from the rear lot line. Located at 9659 Boyett Ct., Fairfax, 22032, on approx. 10,529 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((9)) 19. 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 17, 2013; 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. Staff recommends approval, and the Board adopts its rationale.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the screened porch addition (approximately 252 feet), as shown on the plat prepared by Thomas G. Lutke, L.S., of NoVA Surveys, dated January 10, 2013, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,615 square feet existing + 6922.5 (150%) = 11,537.5 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to commencement of and during the entire construction process, the applicant shall install tree protection fencing around existing trees located on either side of the brick patio in the rear yard to protect these trees from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
5. The addition shall be generally 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. Chairman Ribble was not present for the vote.

//

Chairman Ribble resumed the chair.

//

~ ~ ~ April 17, 2013, Scheduled case of:

- 9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, SP 2012-PR-071 Appl. under Sect(s) 8-917 and 8-922 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from the front lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Concurrent with VC 2013-PR-002) (Deferred from 1/16/13 at appl. req.) (Admin. moved from 4/3/13)
- 9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, VC 2013-PR-002 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure (chicken coop) 10.2 ft. from rear

lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Concurrent with SP 2012-PR-071)

Chairman Ribble noted that SP 2012-PR-071 and VC 2013-PR-002 had been administratively moved to May 15, 2013, at 9:00 a.m., for not properly advertising.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. RICHARD SCHRADER, SP 2013-DR-007 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirement based on error in building location to permit accessory structure to remain 2.3 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 1474 Kingsvale Ci., Herndon, 20170, on approx. 14,389 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((17)) 278.

Chairman Ribble noted that SP 2013-DR-007 had been administratively moved to May 15, 2013, at 9:00 a.m., for notices.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. THOMAS D. AND CHRISTINA U. DAVIS, SP 2013-DR-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit roofed deck to remain 9.7 ft. from side lot line. Located at 1859 Patton Ter., McLean, 22101, on approx. 11,113 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 24.

Chairman Ribble called the applicants to the podium.

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

John Tuvet, the applicants' agent, 2200 Clarendon Boulevard, Arlington, Virginia reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Should the Board choose to approve SP 2013-DR-008, staff recommended they did so subject to the proposed development conditions.

Discussion ensued regarding the history of the installation of the accessibility ramp.

Mr. Tuvet clarified the permit and construction history of the ramp, and the applicants' lack of awareness of the violation.

There was discussion regarding the reason the accessibility ramp was originally needed.

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

Mr. Hart moved to approve SP 2013-DR-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS D. AND CHRISTINA U. DAVIS, SP 2013-DR-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit roofed deck to remain 9.7 ft. from side lot line. Located at 1859 Patton Ter., McLean, 22101, on approx.

11,113 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 24. 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 17, 2013; and

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

1. The applicants are the owners of the land.
2. This would not have a significant negative impact on anyone.
3. It is a little confusing how this happened, but the Board does not think the problems are attributable to these purchasers.
4. There does not seem to have been a complaint.
5. From the photographs, it does not seem like this would bother anyone.

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

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

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

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

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

1. This special permit is approved for the location of the roofed deck addition as shown on the special permit plat prepared by Dominion Surveyors, Inc., dated October 23, 2012, as revised through December 26, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the roofed deck within six months of this special permit approval.

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

Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. SALLY COLER, VC 2013-LE-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in the front yard of a lot containing 36,000 sq. ft. or less. Located at 6401 Hayfield Pl., Alexandria, 22310, on approx. 19,527 sq.ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (K) 23. (Concurrent with SP 2013-LE-004) (Decision deferred from 4/3/13).

Chairman Ribble called the applicant to the podium.

Rebecca Horner, Senior Staff Coordinator, stated the applicant had submitted a request to withdraw the application.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D. (Admin. moved from 4/6/11, 6/8/11, 9/14/11, 11/16/11, 4/18/12, and 9/26/12 at appl. req.)

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to October 9, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. CORNELIA GIBBS, SP 2013-SU-015 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of a roofed deck 15.8 ft. from side lot line and to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.2 ft. from side lot line. Located at 6235 Hidden Canyon Rd., Centreville, 20120, on approx. 10,531 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 73.

Chairman Ribble noted that SP 2013-SU-015 had been administratively moved to May 15, 2013, at 9:00 a.m., for notices.

//

~ ~ ~ April 17, 2013, Scheduled case of:

9:00 A.M. SAIRA AND FARHAN ALI, SP 2013-LE-005 Appl. under Sect(s). 8-914, 8-918 and 8-923 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 4.9 ft. from side lot line, to permit an accessory dwelling unit within an existing dwelling and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6232 Park Ter., Alexandria, 22310, on approx. 19,654 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((5)) 39A. (Admin. moved from 4/3/13 for notices.)

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.

Saira Ali, 6232 Park Terrace, Alexandria, Virginia, and Farhan Ali, 6232 Park Terrace, Alexandria, Virginia came forward. At the direction of the Chairman, Mr. Fahran Ali swore or affirmed that his testimony would be the truth, as he did not take the oath earlier. Mr. Ali 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 of SP 2013-LE-005 for the accessory dwelling unit subject, to the proposed development conditions.

Discussion ensued regarding the permitted fence height at its present location versus the adjacent townhouse lot.

Mrs. Ali presented the special permit request as outlined in the statement of justification submitted with the application. She stated the accessory dwelling unit (ADU) was for use by her parents.

There was discussion regarding the playset on the subject property, the subject of the original complaint being for the ADU and multiple occupancy, the history of the installation of the second kitchen by a licensed contractor, and the lack of a written contract with the contractor.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2013-LE-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SAIRA AND FARHAN ALI, SP 2013-LE-005 Appl. under Sect(s). 8-914, 8-918 and 8-923 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 4.9 ft. from side lot line, to permit an accessory dwelling unit within an existing dwelling and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6232 Park Ter., Alexandria, 22310, on approx. 19,654 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((5)) 39A. (Admin. moved from 4/3/13 for notices.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 17, 2013; and

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

1. The applicants are the owners of the land.
2. The applicant's testimony is that they hired a licensed contractor, and they did not understand that they needed a permit for a kitchen in the basement.
3. The unit is currently unoccupied and will be presently occupied by the residents' parents who are over the age of 55, so they do comply with all the required standards for a special permit for an accessory dwelling unit.
4. With respect to the playground equipment, the equipment has been there for several years, and there has not been a complaint.
5. It does not seem to have an impact, and it is behind a fence.
6. With respect to the fence, as Mr. Hart indicated, if it were a foot or so more on the townhouse association property, it would be allowed to be seven feet.
7. It does not seem to have any sight distance issue or impact on the neighbors.

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 applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
- 2. This approval is granted to the applicants only, Saira F. Ali and/or Farhan A. Ali, and is not transferable without further action of this Board, and is for the location indicated on the application, 6232 Park Terrace (0.45 acres), and is not transferable to other land.
- 3. This special permit is approved for the location of the accessory structure (play equipment), the accessory dwelling unit and the fence in the front yard as shown on the special permit plat.
- 4. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
- 6. The accessory dwelling unit shall contain a maximum of 275 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
- 7. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.

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 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.
11. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) 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.


//

As there was no other business to come before the Board, the meeting was adjourned at 10:28 a.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: September 25, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, April 24, 2013. 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. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. BRANDON W. WINFREY, VC 2012-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.0 feet from rear lot line and 1.4 feet from side lot line and to permit greater than 30 percent minimum rear yard coverage. Located at 2200 Windsor Rd., Alexandria, 22307, on approx. 9,421 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 32. (Decision deferred from 1/30/13) (Admin. moved from 3/6/13 due to inclement weather.)

Chairman Ribble noted the case had been deferred for decision only.

Mr. Byers moved to deny VC 2012-MV-006, which died for lack of a second.

Mr. Hart moved to approve VC 2012-MV-006 for the reasons stated in the Resolution.

Chairman Ribble disclosed the applicant may have been taught by his wife, but indicated this would not affect his decision.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRANDON W. WINFREY, VC 2012-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.0 feet from rear lot line and 1.4 feet from side lot line and to permit greater than 30 percent minimum rear yard coverage. Located at 2200 Windsor Rd., Alexandria, 22307, on approx. 9,421 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 32. (Decision deferred from 1/30/13) (Admin. moved from 3/6/13 due to inclement weather.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2013; and

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

1. The applicant is the owner of the land.
2. This is a close and difficult case.
3. It has improved significantly from the original application.
4. The problem with the minimum rear yard coverage was caused primarily by the pool and not the deck.
5. There was a building permit issued for the pool, although it appeared from the paperwork that the size of the pool was significantly smaller in the approval, and it was somewhat unclear as to how the pool got bigger.
6. When the application first came in, basically the whole backyard was covered up with the deck.
7. The Board expressed concerns to the applicant about the conflicts with the standards.
8. Reading the revised plat, the deck that is now proposed is a very minimal ring or frame right around the edges of the pool.
9. Although it is still over the 30 percent, it has been reduced from 57.3 percent to 48.3 percent.

10. Looking at the drawing, it does not appear to be possible to reduce that any more unless the size of the pool was reduced.
11. The variance standards are somewhat more severe than for building in error or some other type of application that the Board would be reviewing the situation under.
12. The Board gets past the exceptional characteristic standards in two ways.
13. Under 2B, exceptional shallowness at the time of the effective date of the Ordinance, this is a lot in Bell Haven. The house was built in 1952, but it only has a 25-foot deep backyard, which makes any accessory structures or additions very difficult.
14. For someone to have a swimming pool in a backyard, there is perhaps going to be some conflict with Ordinance provisions.
15. It is to be expected that someone is going to want to have a deck, patio, or something in a rear yard.
16. The other way in which the Board gets past Standard 2 is 2F, an extraordinary situation or condition of the subject property.
17. However it came about, the swimming pool is taking up the bulk of the backyard, almost half of it, and that is what puts it over the 30 percent.
18. The applicant did apply for the swimming pool and got a building permit, and somehow the paper trail is a little bit sketchy, but there appear to have been some inspections and processing of whatever the project was pursuant to that permit.
19. It is not reasonable to expect that someone would put a swimming pool in the backyard and it would have just grass right up to the edge of the pool. There has got to be some little covered over area for a deck, patio, or something to walk up to the pool or put a chair on.
20. At least with the new plat, it is reduced to just a little ring right around the edges.
21. It does not appear that it could be any smaller.
22. The other standards are satisfied.
23. Under 6B, if they were coming in fresh, the Board would probably say no, but the situation is that the house is more than 60 years old and is almost as far back on the lot as it could possibly go. A building permit got approved for a swimming pool, and the swimming pool is already in. The hardship would be that if the Board denied the variance, the problem is not the deck. It is still the swimming pool, and the swimming pool would have to come out.
24. Given all that, the Board believes it clears the hurdles, just barely.
25. This is not a situation that the Board is going to see repeated. This is a unique mess.
26. Even though it is difficult sometimes to justify going over 30 percent for something new, a swimming pool and a deck in the backyard, on the unique circumstance that were presented with this record and with the modifications that have been made, they clear the bar.
27. The character of the zoning district would not be changed. Bell Haven is what it is, and there are plenty of things in backyards in Bell Haven.
28. At least from the photograph the Board has seen, the backyard is screened, and it would not particularly bother anyone whether the ground level pool and deck is the size it is or the size that was on the building permit.
29. It is not sticking up or something that someone is going to be looking at out their window.
30. Under 9, it will not have a significant effect on anyone.
31. What this is has been carefully vetted.
32. There was a case-by-case review of this.
33. Under these unique circumstances, some relief is appropriate, maybe not what the applicant originally asked for, but as it has been modified, it is within the standards.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a

general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for the deck and rear yard coverage (48.3%) as shown on the plat prepared by William Blackwell, titled "Variance Plat, Belle Haven, Block 21, Section 7, Lot 32" dated March 27, 2013, as submitted with this application and is not transferable to other land.
2. Prior to commencement of and during the entire construction process, the applicant shall install tree protection fencing around an existing tree in the grass area to the east of the existing pool, to protect this tree from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
3. The applicant shall submit an Infill Grading Plan or Land Conservation Plan, whichever is applicable, to the Department of Public Works and Environmental Services for their analysis and review.

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.

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 5-1-1. Mr. Byers voted against the motion. Mr. Hammack abstained from the vote.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. DAVID AND MARIANNE BLEICKEN, SP 2012-SP-085 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 10504 Beaver Pond Ct., Fairfax Station, 22039, on approx. 5.75 ac. of land zoned R-C and WS. Springfield District. Tax Map 96-4 ((6)) 11A. (*Admin. moved from 3/6/13 due to inclement weather.*)

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.

Bill Baskin, the applicants' agent, no address given, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-SP-085, subject to the proposed development conditions.

Discussion ensued concerning the location of the septic tank and whether the Board needed to address it as a part of the application.

Mr. Baskin presented the special permit request as outlined in the statement of justification submitted with the application. He stated the deck was in place when the applicants purchased the property, and discussed the review submitted by the Homeowner's Association.

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

Mr. Hammack moved to approve SP 2012-SP-085 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID AND MARIANNE BLEICKEN, SP 2012-SP-085 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 10504 Beaver Pond Ct., Fairfax Station, 22039, on approx. 5.75 ac. of land zoned R-C and WS. Springfield District. Tax Map 96-4 ((6)) 11A. (Admin. moved from 3/6/13 due to 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 24, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable recommendation by staff on the application, and the findings and analysis contained 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 the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, David Bleicken and/or Marianne Bleicken, and is not

transferable without further action of this Board, and is for the location indicated on the application, 10504 Beaver Pond Court (5.75 acres), and is not transferable to other land.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance, which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 702 square feet, and the layout shall be generally 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 kitchen in the accessory dwelling unit.
7. There shall be a maximum of two kitchens in the dwelling, one in the main dwelling unit and one in the basement accessory dwelling unit, generally as depicted on the floor plan included as Attachment 1.
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 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.
11. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) 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.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. GEORGE KARSADI, SP 2012-MV-077 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from the rear lot line. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with VC 2012-MV-007.) (Admin. moved from 2/6/13 at appl. req.)

9:00 A.M. GEORGE KARSADI, VC 2012-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure greater than 200 sq.ft. in size, fence greater than 7.0 ft. in height to remain in side and rear yards and fence greater than 4.0 ft. in height to remain in front yard. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with SP 2012-MV-077.) (Admin. moved from 2/6/13 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.

George Karsadi, the applicant, 8356 Wagon Wheel Road, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended denial of VC 2012-MV-007, and made no recommendation for SP 2012-MV-077. Should the Board choose to approve these applications, staff recommended they do subject to the proposed development conditions.

Discussion ensued regarding the court order, the specific location and height of the subject fence variance request, the authority of the Department of Public Works and Environmental Services (DPWES) to remove the shed whether the Board approved or denied the application, the potential of moving the existing easement, benefit of removing lattice on the fence, and the method of measuring the fence height.

There was further discussion concerning the easement, DPWES' indication that the shed needed to be removed, the property on lot 18, and the orientation of the fences.

Mr. Karsadi presented the special permit and variance requests as outlined in the statement of justification submitted with the application. He explained the construction history of the shed and the justification for its placement, his lack of previous knowledge of the easement, and his need for storage. He also discussed how he had not known about the fence height issue, but all the modifications he had made were in an effort to improve the appearance of the fence. He noted that there had been no complaints from his neighbors.

There was discussion about past cases with easement issues, the position of DPWES that the shed had to be removed, the classification of the shed as a permanent structure, and the history of development and accuracy of the subject property plat.

Mr. Karsadi noted recent work done by Fairfax County related to the easement.

Chairman Ribble called for speakers.

Robert Reynolds, 8333 Bound Brook Lane, Alexandria, Virginia, President of Riverside Civic Association, came forward to speak in opposition. He explained the history of the community, existing covenants, the safe environment of the neighborhood, and the applicant's commercial use of the property. He noted that legal action would be taken to enforce the covenants should the Board choose to approve the application.

Pursuant to Board questions there was discussion regarding notice by the civic association to the applicant, other fences in the neighborhood, specific objections by the civic association as related to the community covenants, and the actions taken by the applicant to abide by the covenants.

Mr. Karsadi came forward to offer his rebuttal. He explained he had not been informed the property was part of a civic association prior to purchase, the fence was built as a result of a verbal agreement, the absence of complaints from neighbors, the lack of notification from the civic association, and the increase in his property value.

Steve Mason, Department of Code Compliance, noted there had been a complaint which originated from a member of the neighborhood regarding a business operating, structures, and the fence. He explained the complaint relevant to the business operation and the subsequent action taken to resolve that portion of the original complaint.

Staff clarified the fence height regulations as applicable to the subject property.

Ms. Gibb moved to defer decision on SP 2012-MV-077 and VC 2012-MV-007 to May 15, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 7-0.

The Board noted the additional documentation and information they would like to receive for the next hearing of the concurrent cases.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. SANTOS G. AMAYA, SP 2013-PR-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 6.8 ft. from side lot line. Located at 7212 Tyler Ave, Falls Church, 22042, on approx. 8,968 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 18.

Chairman Ribble called the applicant to the podium.

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

Schuyler Ahrens, the applicant's agent, 4393 Kevin Walker Drive #156, Dumfries, Virginia, reaffirmed the affidavit.

Laura Gumkowski, 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 explained the applicant had rebuilt a previously existing structure but had extended it. Mr. Ahrens also noted that the applicant was the owner of the neighboring property which was being encroached upon.

Mr. Ahrens submitted pictures of other properties in the neighborhood.

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

Mr. Smith moved to approve SP 2013-PR-009 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANTOS G. AMAYA, SP 2013-PR-009 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit addition to remain 6.8 ft. from side lot line. Located at 7212 Tyler Ave, Falls Church, 22042, on approx. 8,968 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 18. 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 24, 2013; 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 does meet the requirements in Section 8-914.
3. As was testified to, one could see how something like this could happen with the angled placement of the structure in this case.

4. If the lines were all parallel to the side lot lines, there would not have been a problem here, not a problem with the front yard setback.
5. Relatively minor impact particularly in this case, the person most directly impacted is the applicant who owns the property adjacent.
6. This would not be detrimental to the use and enjoyment of other property in the immediate vicinity as was shown by the applicant with the examples in the neighborhood.
7. It will not create an unsafe condition with respect to property or public streets.
8. To force compliance with the yard requirements would cause an unreasonable hardship upon the owner in removing the structure in this case, which was constructed to be parallel and not go past the east side of the house.

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:

6. This special permit is approved for the location of the addition as shown on the plat, titled "Special Permit Plat, Lot 18, Section 1, Tyler Park," prepared by Scartz Surveys, dated August 28, 2012, and revised through January 8, 2013, as submitted with this application and is not transferable to other land.
7. All applicable permits and final inspections shall be obtained for the addition within 180 days of 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.

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

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. MARK D. EMLET, SP 2013-SP-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.5 ft. from rear lot line. Located at 13925 South Springs Dr., Clifton, 20124, on approx. 9,791 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 65-4 ((4)) 425.

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.

Mark Emlet, 13925 South Springs Drive, Clifton, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SP-010, subject to the proposed development conditions.

Mr. Emlet had nothing to add to 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. Beard moved to approve SP 2013-SP-010 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK D. EMLET, SP 2013-SP-010 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.5 ft. from rear lot line. Located at 13925 South Springs Dr., Clifton, 20124, on approx. 9,791 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 65-4 ((4)) 425. 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 24, 2013; and

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

1. The applicant is the owner of the land.
2. The lot size is 9,791 square feet.
3. This is a pretty straightforward application.
4. It backs up to and the property actually falls off into a wooded area.
5. This is a 38 percent reduction that is requested, which falls well within the parameters.
6. Staff has recommended approval of the application with the development conditions.
7. The Board has determined that the applicant meets all the submission requirements as 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 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 144 square feet) of the addition, as shown on the plat prepared by Thomas G. Lutke, Land Surveyor, dated November 21, 2012, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,279 square feet existing + 6,418.5 square feet (150%) = 10,697.5 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 generally 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 7-0.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. ERIC EDWARDS, SP 2013-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 5.1 ft. from rear lot line. Located at 4116 Ferry Landing Rd., Alexandria, 22309, on approx. 13,611 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((2)) (F) 140A.

Chairman Ribble noted that SP 2013-MV-011 had been administratively moved to May 15, 2013, at 9:00 a.m., for notices.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. CLEBURNE BRUCE BRINKMAN, SP 2013-MA-013 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of additions 6.4 ft. and 8.1 ft. from side lot line. Located at 6825 Westlawn Dr., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 378.

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.

Cleburne Bruce Brinkman, 6825 Westlawn Drive, Falls Church, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MA-013, subject to the proposed development conditions.

Mr. Brinkman presented the special permit request as outlined in the statement of justification submitted with the application. He clarified the intent was to improve the appearance of the property and to avoid leaks.

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

Mr. Hammack moved to approve SP 2013-MA-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CLEBURNE BRUCE BRINKMAN, SP 2013-MA-013 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of additions 6.4 ft. and 8.1 ft. from side lot line. Located at 6825 Westlawn Dr., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 378. 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 24, 2013; 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 applicant has satisfied the six required subsections set forth under Sect. 8-922.
3. There is a favorable staff recommendation, and the Board adopts their rationale in support of the motion.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 screen porch (approximately 308 square feet) and gable roof as shown on the plat prepared by James D. Thurber, dated March 27, 2012, signed October 14, 2012, 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 (1,617 square feet existing + 2,425.5 square feet (150%) = 4,042.5 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 generally 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.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. REUBEN R. WERNER, TRUSTEE & MARY M. WERNER, TRUSTEE, SP 2012-PR-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.0 ft. from rear lot line. Located at 3201 Holly Berry Ct., Falls Church, 22042, on approx. 16,314 ac. of land zoned R-3 (Cluster). Providence District. Tax Map 59-2 ((21)) 5. (*Admin. moved from 3/6/13 due to inclement weather.*)

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.

Bill Reames, the applicants' agent, 10595 Furnace Road, Lorton, 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 of SP 2012-PR-086, subject to the proposed development conditions.

Mr. Reames presented the special permit request as outlined in the statement of justification submitted with the application. He explained the efforts to make the minimum request necessary for the construction project.

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

Mr. Byers moved to approve SP 2012-PR-086 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

REUBEN R. WERNER, TRUSTEE & MARY M. WERNER, TRUSTEE, SP 2012-PR-086 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 21.0 ft. from rear lot line. Located at 3201 Holly Berry Ct., Falls Church, 22042, on approx. 16,314 ac. of land zoned R-3 (Cluster). Providence District. Tax Map 59-2 ((21)) 5. (*Admin. moved from 3/6/13 due to 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 24, 2013; 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 application meets all the submission requirements set forth in Section 8-922.
3. Staff recommends approval, and the Board adopts its rationale.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, approximately 261 square feet for the sunroom addition, as shown on the plat prepared by Scartz Surveys, dated July 11, 2012, as revised through October 26, 2012, 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 (1,120 square feet existing + 1,680 square feet (150%) = 2,800 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 generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.

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

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

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

//

The meeting recessed at 11:00 a.m. and reconvened at 11:05 a.m.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2004-LE-053 previously approved for church to permit the addition of a private school of general education, site modifications and building addition. Located at 5901 Wilton Rd., Alexandria, 22310, on approx. 2.0 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. (Admin. moved from 11/7/12 and 12/5/12 at appl. req.) (Deferred from 1/16/13 at appl. req.) (Admin. moved from 3/6/13 due to inclement weather.)

Chairman Ribble called the applicant to the podium.

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

Freddie Mitchell, 5020 13th Street North, Arlington, Virginia, came forward. As Mr. Mitchell was not on the affidavit, Reynaldo De Guzman, 6124 Squire Lane, Alexandria, 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 of SPA 2004-LE-053, subject to the proposed development conditions.

Discussion ensued regarding the expansion of the play area, the addition of a trench, whether there was sufficient parking on the property, the impact of changing the hours of operation, the parking location of school buses and vans, the absence of a bathroom in the school building, and the potential traffic impacts.

Mr. De Guzman presented the special permit amendment request as outlined in the statement of justification submitted with the application. He explained community outreach efforts, and addressed concerns expressed by community members concerning the play area, property value, traffic, bathroom facilities, and parking of buses.

Discussion ensued concerning the existing play area and the applicant's intent to expand it, the plan for bus parking, and the school generated traffic.

Vice Chairman Hammack assumed the Chair.

Further discussion ensued regarding the plat as pertaining to the play area, topographic requirements and realities, the process for buses dropping off students, parking requirements and availability, and the shared parking agreement.

Chairman Hammack called for speakers.

Mr. Mitchell came forward in opposition to speak on behalf of a community member.

Chairman Ribble resumed the Chair.

Mr. Mitchell explained the inadequate use of the church as a school due to safety concerns and insufficient classroom and parking accommodations. He also noted the applicant had not addressed community concerns.

The following speakers also came forward in opposition: Robert Mitchell, 3507 Wilton Hall Court, Alexandria, Virginia; Rita Newbegin, 3513 Wilton Hall Court, Alexandria, Virginia; Larry Dempsey, President of the Greater Wilton Woods Citizen Association, 4213 Shannon Hill Road, Alexandria, Virginia; Helen Davis, 3502 Wilton Hall Court, Alexandria, Virginia; and Julia Vanzetta, Homeowner Association representative, 3509 Wilton Hall Court, Alexandria, Virginia. Their main points included the encroachment of the buses into the proposed expanded play area, the nature of the existing verbal shared parking agreement, the current traffic issues and relevant exacerbation by the proposed school use, the dissatisfaction of a large percentage of the neighborhood residents, impact on property values, the inadequate land for the play area, and the hazardous impact of the buses when not on-site.

Mr. De Guzman offered his rebuttal. He expressed the intent of the church to be a benefit to the community.

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

Mr. Hart moved to defer decision on SPA 2004-LE-053 to July 24, 2013, at 9:00 a.m, with the record left open for the submission of written and verbal comments. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

The Board requested specific additional information with regard to concerns raised at the hearing.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. HAJIMOHAMMAD REVOCABLE TRUST, MOHAMMAD HAJIMOHAMMAD, TRUSTEE AND FLORA HAJIMOHAMMAD, TRUSTEE, A 2012-LE-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a vehicle sale, rental and ancillary service establishment to operate on property in the C-6 District without Special Exception approval or a valid Non-Residential Use Permit, in violation of Zoning Ordinance provisions. Located at 5630 South Van Dorn St., Alexandria, 22310, on approx. 32,210 sq. ft. of land zoned C-6. Lee District. Tax Map 81-2 ((3)) 8A. (Admin. moved from 10/3/12, 11/28/12, and 2/6/13 at appl. req.)

Chairman Ribble noted that A 2012-LE-017 had been administratively moved to October 23, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC. C/O GARCIA ARIAS, ZULMA, A 2012- LE-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a commercial recreation use, which is not a permitted use, on property in the C-6 and H-C Districts in violation of Zoning Ordinance provisions. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 19,135 sq. ft. of land zoned C-6 and H-C. Lee District. Tax Map 81-3 ((5)) 4. (Admin. moved from 9/26/12, 11/28/12, and 2/6/13 at appl. req.)

Chairman Ribble noted that A 2012- LE-013 had been administratively moved to July 24, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. SUBWAY, A 2012-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating a Fast Food Restaurant on property in the C-8 and SC Districts without a valid Non-Residential Use Permit or Special Exception approval, in violation of Zoning Ordinance provisions. Located at 6711 Spring Mall Rd., Springfield, VA 22150 on approx. 5.04 ac. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51. (Admin. moved from 12/12/12 and 3/20/13 at appl. req.)

Chairman Ribble noted that A 2012-LE-016 had been administratively moved to October 23, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 24, 2013, Scheduled case of:

9:00 A.M. BELVEDERE DR. HOMES LLC, A 2013-MV-002 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a hotel/motel, which is a use not permitted, on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 7800 Belvedere Dr., Alexandria, 22306 on approx. 26,211 sq. ft. of land zoned

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.

Robert Calhoun, the appellant's agent, 510 King Street, Alexandria, Virginia, came forward.

Jill Cooper, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. Staff recommended upholding the Zoning Administrator's determination.

Discussion ensued regarding the origin and intent of the relevant Zoning Ordinance restrictions and definitions, the standards which classify a bedroom, the transient occupancy of the subject property, permitted uses, and the policy for determining uses not specifically defined in the Zoning Ordinance.

Mr. Calhoun presented the arguments forming the basis for the appeal. He explained there was no deceptive intent in attempting to eliminate one bedroom by the addition of the pool table, the appellant's lack of awareness of existing regulations, and the rental of the property to families for short periods of time.

There was discussion concerning the reviews from previous tenants being individuals rather than families and the contractual procedure between the appellant and tenants.

Chairman Ribble called for speakers.

Danny Shipp, 7738 Schelhorn Road, Alexandria, Virginia, came forward in opposition. He noted his observations of the comings and goings of tenants and the common vacancy of the property. Mr. Shipp mentioned the recent court case settled by the appellant, and insisted all zoning regulations be abided by and enforced.

In response to Board questions there was discussion regarding whether there was a systematic cleaning service for the property and the nature of the complaint received for the property.

The following speakers also came forward in opposition: Lisa Gibbs, 7816 Liberty Spring Circle, Alexandria, Virginia; Nannie King 7808 Belvedere Drive, Alexandria, Virginia; William Hyman, 7825 Belvedere Drive, Alexandria, Virginia; Ronald Chase, 2908 Douglas Street, Alexandria, Virginia; and Melbourne Bailey, 7833 Fordson Road, Alexandria, Virginia. Their main points included the history of the property's use and development, parking issues, noise concerns, rowdy tenants, excess trash production, security and safety concerns, intentional disregard by the appellant of zoning regulations, the observation of non-family tenants, the involvement of the community in conservation development efforts, and the desired community environment.

There was discussion concerning other potential classifications of the property, the issue of transient occupancy, classification of sleeping accommodations, the language in the original notice of violation and staff report, the Zoning Ordinance definition of a hotel, and the history of the appeal application.

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

Ms. Gibb moved to uphold the determination of the Zoning Administrator. Her reasons included the agreement with the Zoning Administrator's determination that the property was operating as a hotel/motel use, which was not permitted in a residential district, the property having provided sleeping accommodations in six rooms on a short-term basis, and the testimony from neighbors, the appellant, and online reviews which provided evidence of issues related to parking, trash, and security. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.


Mr. Hart commented on the non-specific definition of transient occupancy.


//

As there was no other business to come before the Board, the meeting was adjourned at 1:45 p.m.

Minutes by: Kathleen A. Knoth/Emily J. Armstrong

Approved on: July 24, 2019


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 1, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. SILVIA PIZARRO, SP 2013-MV-014 (home child care and error in bldg. location)

Chairman Ribble noted that SP 2013-MV-014 had been indefinitely deferred.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. ROBERT M. GRIMS AND YUNG H. KIM, SPA 2011-PR-083 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on errors in building locations to permit additions to remain 16.3 ft. and 11.6 ft. from rear lot line. Located at 9750 Hatmark Ct., Vienna, 22181, on approx. 7,571 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 48-1 ((25)) 10. (*Admin. moved from 3/6/13 due to inclement weather.*)

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.

Jane Kelsey, the applicant's agent, 4041 Autumn Court, Fairfax, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to a previously approved special permit to allow reductions in minimum yard requirements based on errors in building locations of two additions which were both previously approved in SP 2011-PR-083. Should the Board approve the application, staff recommended they do so subject to the proposed development conditions.

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

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the application did look straight forward and it was now, but there were some technical issues that caused it to be complicated. She said staff had indicated what the amounts of the errors were, but she wanted to tell the Board the actual amount of inches and feet.

Ms. Kelsey stated that for the addition in the sunroom, there was an error of 2.5 inches. The overhang then put it out to 9 3/4 inches. She continued to say that they were not very big errors. She stated that the gable roof was changed to a shed roof, and the slope of the roof is what caused the error to be made. For the deck and the stairs, they both already existed and were reconstructed to line up with the sunroom. The stairs had to be widened and lengthened, because of the slope and the steepness of the old stairs. She indicated that the applicant did not realize this when they had come before the Board previously, so the stairs extended farther into the rear yard. Since it is a distance more than 50 percent it could not be approved as an extension. The sides of the stairs are 10 feet from the side lot line.

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

Mr. Hammack moved to approve SPA 2011-PR-083 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT M. GRIMS AND YUNG H. KIM, SPA 2011-PR-083 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on errors in building locations to permit additions to remain 16.3 ft. and 11.6 ft. from rear lot line. Located at 9750 Hatmark Ct., Vienna, 22181, on approx. 7,571 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 48-1 ((25)) 10. (Admin. moved from 3/6/13 due to 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 May 1, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have satisfied provisions Subsections A through G set forth thereunder, that the non-compliance was done in good faith or through no fault of the property owner.
3. It satisfies the other standards as well.
4. In particular, these improvements were approved two years ago.
5. It appears that due to construction changes and to meet code compliance, in order to do that, minor additional setbacks or encroachments are required to be approved.
6. The Board found that the additions in the original special permit application were in conformance and justified at that time.
7. Due to the circumstances of construction and the way these additional minor encroachments occurred, it satisfies the Ordinance at this time.

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

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

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

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

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

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

1. This special permit is approved for the location and size of the additions, as shown on the plat prepared by Scartz Surveys, dated June 28, 2011, as revised through October 11, 2012 submitted with this application and is not transferable to other land.

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

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

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. HEMAMALINI PARAVASTU, SP 2013-DR-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.1 ft. from side lot line. Located at 7109 Sea Cliff Rd., McLean, 22101, on approx. 12,857 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((10)) 3. (*Decision deferred from 4/17/13.*)

Chairman Ribble noted that this was for decision only.

Mr. Byers moved to deny SP 2013-DR-006 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HEMAMALINI PARAVASTU, SP 2013-DR-006 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.1 ft. from side lot line. Located at 7109 Sea Cliff Rd., McLean, 22101, on approx. 12,857 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((10)) 3. (*Decision deferred from 4/17/13.*) 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 1, 2013; 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 does not meet all nine of the submission requirements as set forth in Sect. 8-922 of the Zoning Ordinance.
3. After looking at some of the emails and letters that came in, there are a couple things to consider.
4. There can be disagreement or reasoned discussion about all of the other standards in Sect 8-922; however, the key provision is Number 9, which is specifically whether this is the minimum necessary.
5. If we are talking about the minimum reduction that is necessary, for example, we are looking at a garage that is 38 feet deep that essentially would accommodate two cars. That is not the minimum necessary to enclose a carport.
6. The Board has looked at this particular section when we are talking about much smaller properties.
7. This property is 12,857 square feet.

8. There are alternate locations on the property itself and on the home where the actual addition could be added.
9. One of the emails the Board had, and it is relevant to this, is that the upstairs right now is 700 square feet, and we are talking about adding another 600 square feet, almost doubling the size.
10. It is not in keeping with the characteristics of whatever is in the neighborhood right now.
11. There are probably two other standards that are very, very iffy.
12. The Board would like to see something that is much smaller, something that is much less intrusive and is much more in keeping with the way this neighborhood was built and what is in the neighborhood at the present time.

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 4-3. Mr. Beard, Ms. Gibb and Mr. Smith voted against the motion. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. ANTHONY AND DEANNA DESANTE, SP 2012-LE-084 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit addition to remain 21.0 ft. and 13.0 ft. from rear lot line. Located at 5508 Layne Estates Ct., Alexandria, 22310, on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((36)) 5. (*Admin. moved from 3/6/13 due to inclement weather.*)

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.

Deanna Desante and Anthony Desante 5508 Layne Estates Court, Alexandria Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. If the Board decided to approve the application, staff recommended they do so subject to the proposed development conditions.

Ms. Desante presented the special permit request as outlined in the statement of justification submitted with the application. She said there had been a misunderstanding between the county and the builders about what the 50 percent surface area meant. The builders thought they had enough room, and did not learn about the error until after the windows were installed. The builders measured the rough openings of the windows instead of just the glass. She said they had spoken with the neighbors, and only three of them could see the addition. None of them were in opposition. When the house was purchased, the deck was as is, and it already had the lattice work on it.

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

Mr. Hart moved to approve SP 2012-LE-084 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY AND DEANNA DESANTE, SP 2012-LE-084 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit additions to remain 21.0 ft. and 13.0 ft. from rear lot line. Located at 5508 Layne Estates Ct., Alexandria, 22310, on approx. 10,500 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((36)) 5. (Admin. moved from 3/6/13 due to inclement weather.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2013; and

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

1. The applicants are the owners of the land.
2. This is a typical case and this is why there is a mistake section resolution.
3. All these issues, as explained by the applicant, were done in good faith.
4. The deck issue is the easiest. The deck has lattice underneath, and the Board has seen that many times.
5. It probably looks better with the lattice under it, it would not affect anyone, and it does not change the bulk of the structure.
6. The window issue has to do with the calculation of the area of glass and the area of wood.
7. It would not have changed the structure any particularly if the window design was a little different.
8. The eave issue is fairly slight.
9. With the explanation about the surveys and the photographs that were seen, it fits the standards.

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

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

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

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

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

1. This special permit is approved for the location of the additions as shown on the special permit plat prepared by Dominion Surveyors, Inc., dated November 9, 2012, as revised through February 12, 2013, 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 7-0.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. SOUTH SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 2013-MV-012
(place of worship)

Chairman Ribble noted that SP 2013-MV-012 had been administratively moved to June 5, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. JANICE HABER, SP 2012-SU-087 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to certain yard requirements for R-C lots to permit construction of an addition 12.4 ft. from a side lot line. Located at 15304 Harmony Hill Ct., Centreville, 20120, on approx. 10,518 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 63. *(Admin. moved from 3/6/13 due to inclement weather.)*

Chairman Ribble called the applicant to the podium.

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

Janice Haber, 15304 Harmony Hill Court, Centreville, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. If the Board chose to approve the application, staff recommended they do so subject to the proposed development conditions.

Ms. Haber presented the special permit request as outlined in the statement of justification submitted with the application. She said she would like to convert the existing carport, and there would be no footprint changes to the existing structure.

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

Ms. Gibb moved to approve SP 2012-SU-087 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JANICE HABER, SP 2012-SU-087 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to certain yard requirements for R-C lots to permit construction of an addition 12.4 ft. from a side lot line. Located at 15304 Harmony Hill Ct., Centreville, 20120, on approx. 10,518 sq. ft. of land zoned

R-C and WS. Sully District. Tax Map 53-4 ((5)) 63. (Admin. moved from 3/6/13 due to inclement weather.)
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 1, 2013; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. Specifically, just a carport is being enclosed, and the footprint is not being expanded.
7. There will not be any impact on neighbors.
8. If it had been done during the previous zoning, this permit would not have been necessary.

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

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

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

1. This special permit is approved for the location and size of a garage addition as shown on the plat entitled "House Location Survey, Lot 63, Section One, Pleasant Hill" prepared by B.W. Smith and Associates, Inc., dated September 2, 2010, revised by Janice Haber, dated December 5, 2012, 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.

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.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. JOHN J. LA JEUNESSE, TRUSTEE, SP 2013-MV-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 14.9 ft. from rear lot line. Located at 8315 Frosty Ct., Lorton, 22079, on approx. 7,856 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 99-4 ((5)) 149.

Chairman Ribble called the applicants to the podium.

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

John La Jeunesse, 8315 Frosty Court Lorton, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2013-MV-018, subject to the proposed development conditions.

Mr. La Jeunesse presented the special permit request as outlined in the statement of justification submitted with the application. He said he needed this addition, because his family had grown with the addition of two great grandchildren, and the family room was too small for the family activities. The addition was in conformance with the neighborhood covenant and in character with the other homes in the area.

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

Mr. Smith moved to approve SP 2013-MV-018 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN J. LA JEUNESSE, TRUSTEE, SP 2013-MV-018 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 14.9 ft. from rear lot line. Located at 8315 Frosty Ct., Lorton, 22079, on approx. 7,856 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 99-4 ((5)) 149. 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 1, 2013; and

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

1. The applicant is the owner of the land.
2. This is a relatively modest addition, as was testified, to accommodate the applicant's family.
3. Staff favorably recommended approval.
4. The Board agrees with the analysis of staff in the staff report.
5. The architecture and material will match the existing house.
6. There would be no adverse impact on the use or development of neighboring properties.
7. It is in the most logical location to add an addition like this, utilizing a portion of the existing deck.
8. It has a modest size and scale.

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 an addition (approximately 240 square feet) as shown on the plat prepared by William E. Ramsey, P.C., dated August 1, 2012, revised January 2, 2013, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,115 square feet existing + 7,672.5 square feet (150%) = 12,787.5 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 generally 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 7-0.

//

~ ~ May 1, 2013, Scheduled case of:

9:00 A.M. ROBERT M. CORRIE, ELLEN CORRIE, SP 2013-SP-017 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of deck 12.8 ft. and addition 12.6 ft. from rear lot line. Located at 10629 Summersweet Ct., Fairfax Station, 22039, on approx. 33,349 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((10)) 43.

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.

Ellen Corrie, 10629 Summersweet Court, Fairfax Station, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2013-SP-017 subject to the proposed development conditions.

Mr. Hart asked whether there was a different provision since this was on an RC lot. Ms. Langdon stated that there were only certain subdivisions which are subject to the provisions for an RC lot. Those are subdivisions that were platted prior to the downzoning. This subdivision did not fit into that criteria.

Mr. Hart said that the application stated that it was an RC, but not RC cluster. If it were a post downzoning creation, it would have to be about five times larger than it was. The post 1982 RC lots were around 200,000 square feet, and this one was around 33,000 square feet. He asked if this a grandfathered lot, and whether it was a cluster lot that had to be on sewer. Ms. Langdon stated that it did not say that it was cluster, however if it were one of those lots, it would still have to be 25 feet from the rear lot line, so it did not meet that criteria either.

Ms. Corrie presented the special permit request as outlined in the statement of justification submitted with the application. She said they built a deck that needed repair. She purchased the home in 2007, and the deck was in place as it was presently, but needed repairs to maintain the safety of the structure. The intent was to use the footprint of the current structure, but with the new County requirements, some modifications were necessary. In building the new deck it gave the opportunity to plan a single-level deck. The current deck had multi-levels with many steps. The house backed to the woods, which belonged to the Homeowners Association (HOA), and on the far side of the woods were several ponds which made mosquitoes a problem. That was why part of the deck would be used as a screen porch. Currently, there was a small copula where the deck would be, but it is a small step down. In order to meet the requirements, a surveyor and architect were hired to help with the process. The new deck will be the same size with modifications for County requirements. The deck would give access to the pool area and the back yard. The new deck is comparable with other homes in the area, and would complimented the home. When the leaves are out, the home is not visible to the other homes. The intended building materials will match the current home. The neighbors do not have objections.

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

Mr. Beard moved to approve SP 2013-SP-017 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT M. CORRIE, ELLEN CORRIE, SP 2013-SP-017 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of deck 12.8 ft. and addition 12.6 ft. from rear lot line. Located at 10629 Summersweet Ct., Fairfax Station, 22039, on approx. 33,349 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((10)) 43. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2013; and

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

1. The applicants are the owners of the land.
2. It is in the zoning district R-C.
3. Staff recommends approval.
4. This is more or less a reconfiguration of an existing footprint.
5. It has no effect on proximity property owners.
6. It will be done architecturally in accord with what is existing.
7. The Board has determined that the applicant has met all the submission requirements as 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 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 deck and screen porch (approximately 852 square feet) as shown on the plat prepared by Alexandria Surveys, LLC, dated April 13, 2012, signed February 7, 2013, 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 (6,744 square feet existing + 10,116 square feet (150%) = 16,860 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 generally 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.

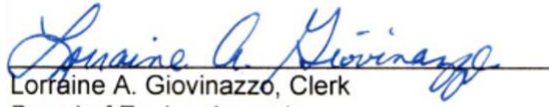
Ms. Gibb seconded the motion, which carried by a vote of 7-0.


//

As there was no other business to come before the Board, the meeting was adjourned at 10:02 a.m.

Minutes by: John W. Cooper and Lorraine A. Giovinazzo

Approved on: September 25, 2019


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, May 15, 2013. 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 9:03 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.

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. JOHN M. YOUNG, SP 2013-LE-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory structure to remain 0.5 ft. from side lot line. Located at 7503 Mendota Pl., Springfield, 22150, on approx. 16,308 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (57) 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

John Young, 7503 Mendota Place, Springfield, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation.

Mr. Hart asked whether there was a complaint. Ms. Gumkowski said there was a complaint about the location of the shed, but was unaware of any more details.

Mr. Young presented the special permit request as outlined in the statement of justification submitted with the application. He said he thought the workshop was very nice and useful, and it was an improvement to the neighborhood standards. He said he accidentally located it where it was presently, and did not mean any harm.

Mr. Byers said he noticed it had been in place since 1998, and it had replaced a shed which was originally built in 1956, but became dilapidated. Mr. Young said that was correct. Mr. Byers said they had not received a complaint on it until 2012, and wanted to know what had changed in the intervening 14 years. Mr. Young said he did not know, but someone had filed another complaint about him about two years ago. The police had come around and said he was harboring illegal immigrants in his house. He told them that was ridiculous, and thought somebody was angry about something, although he did not know what it could be about.

In response to a questions by Mr. Hammack, Mr. Young said to the best of his knowledge, when he bought the house, the survey showed a smaller shed in about the same location. The new shed was somewhat bigger, and so the location was a little different. He said it was approximately the same distance from the side line, but the roof extended out about 3 feet from the sides of the building. He said the building itself was between 3.5 and 6 feet from the property line. It was the eaves of the roof that were too close, and it was a little higher than the old shed, because he did not want it to have a flat roof.

Mr. Hart asked whether it was visible from any direction. Mr. Young said it was visible very marginally. He said the lots were deep, and went back quite a way. There were a lot of trees in the neighborhood, and from many places it could not be seen from any street, or from anyone's back yard.

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

Mr. Hammack moved to approve SP 2013-LE-021 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN M. YOUNG, SP 2013-LE-021 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory structure to remain 0.5 ft. from side lot line. Located at 7503 Mendota Pl., Springfield, 22150, on approx. 16,308 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (57) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; and

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

1. The applicant is the owner of the land.
2. A shed has been in the same or almost an identical location since 1956.
3. The current shed, being a replacement shed, has a slightly larger footprint and may be a little taller than the original shed.
4. The applicant reconstructed or replaced a dilapidated original shed with the current one without realizing that it would not be in conformance with the Zoning Ordinance.
5. The shed is located to the rear of the property.
6. Only a corner of the shed is a half foot from the side lot line, and that is an eave.
7. The rest of the shed is several feet off the property line, allowing maintenance of the shed.
8. Under the circumstances, the applicant satisfied the standards under Sect. 8-914.
9. The Board has determined that the applicant has satisfied the specific standards set forth in Subsections A through G of the Ordinance, in particular, Subsection B.
10. Given the length of time a shed has been at that location, the Board cannot find that there will be any impairment in the use or intent of the Ordinance or that it will be detrimental to the use and enjoyment of other property in the immediate vicinity.
11. According to the statement, there is no electricity attached and no utilities.
12. It is used for storage and for some woodworking activities.

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

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

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning

Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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

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

1. This special permit is approved for the locations of the vinyl workshop/shed as shown on the plat prepared by NoVA Surveys, titled "Plat, Showing Improvements on Lot 12, Section 17, Block 57, Springfield" dated September 25, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the workshop within 6 months of 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.

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

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, SP 2012-PR-071 Appl. under Sect(s) 8-917 and 8-922 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from the front lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Concurrent with VC 2013-PR-002) (*Deferred from 1/16/13 at appl. req.*) (*Admin. moved from 4/3/13.*) (*Admin. moved from 4/17/13 for ads.*)

9:00 A.M. STEPHANIE D. CLARK AND DAVID A. WILKEY, VC 2013-PR-002 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure (chicken coop) to remain 32.0 feet from side lot line and 10.2 ft. from rear lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Concurrent with SP 2012-PR-071) (*Admin. moved from 4/17/13 for ads*)

Chairman Ribble noted that VC 2013-PR-002 had been administratively withdrawn, and then 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 Wilkey and Stephanie Clark, 6906 Jackson Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-PR-071 for the addition subject to the proposed development conditions.

Answering Mr. Hart's questions, Ms. Gumkowski said there was a complaint received, which was just about the chickens, and the complaining party was a neighbor directly connected to the property.

Ms. Clark presented the special permit request as outlined in the statement of justification submitted with the application. She said with regard to the porch, they hoped they could get a roof over their heads when it rained.

With regard to the chickens, Ms. Clark gave the following information. They had gotten approval from all of their neighbors at the time they got the chickens, including the people who lived in the house where they

believed the complaint came from. They thought the complaint had come from the owner of that house behind them, because the renters of the house knew about the chickens, and were fine with the chickens being there. Soon after, the house was sold, and the current owners were quite happy with the chickens.

Ms. Clark said they would like to keep the chickens for pets. They were vegetarians, so they were not intended for dinner. They took good care of their chickens, and although they took precautions to make sure they stayed healthy, they did have a local veterinarian who could see the chickens if they fell ill. The coop was insulated and heated, the chickens were fed every day, and let out into the yard when they were home.

Mr. Wilkey said he heard from the renters who were behind them that, because they were getting ready to sell the house, the owner's real estate agent filed the complaint. He never met the owner, and they did not live in the immediate neighborhood.

With questions from Mr. Hart, it was determined that the coop had electricity for heating, there was a window in it, and the top of the coop was open. There was an insulation sheet underneath the roof, and in the summer they took it out, so it was well ventilated. There were no other utilities in the structure, and it was built to be predator and rodent proof. The chicken coop was cleaned out once a week, the waste went into a compost bin, and there was no smell. There were just three hens, no roosters, and did not they want a rooster.

Mr. Hart said separate from the chicken issues, it seemed like there were some issues on the plat. Ms. Clark said there was a portion of the concrete from their patio which was there when they got there, so she did not know how long it was there. In answer to Mr. Hart's question, Ms. Clark said they were okay with removing it.

Mr. Hammack asked the applicants whether they read the proposed development conditions and were going to be able to comply with them, particularly with regard to the daily cleaning. Ms. Clark said yes. Mr. Hammack said in earlier testimony they mentioned cleaning out the straw weekly, but the condition required it be done daily. Ms. Clark said that was in the coop and hen house, and they had to differentiate between the coop and the yard. She said the coop they cleaned out weekly, and the yard they clean up as necessary, but if they needed to do something different, they would.

Jonathon Goslin, 6908 Jackson Avenue, Falls Church, Virginia, came forward to speak. His main points were they had lived next door since 2004; when the applicants wanted to get the chickens, they went around with flyers and information packets; the neighbors all wanted to see the chickens when they arrived, and there was no noise or smell, or anything you would not want.

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

Mr. Byers moved to approve SP 2012-PR-071 for the reasons stated in the Resolution.

Discussion ensued regarding replacing the chickens if they died. It was decided Development Condition 3 should be changed to say the approval would be for a maximum of three hen chickens, and they would delete Development Condition 6.

Mr. Beard asked the applicants if they agreed with that, and they indicated they did agree.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHANIE D. CLARK AND DAVID A. WILKEY, SP 2012-PR-071 Appl. under Sect(s). 8-917 and 8-922 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals and to permit reduction of certain yard requirements to permit construction of addition 16.8 ft. from the front lot line. Located at 6906 Jackson Ave., Falls Church, 22042, on approx. 8,369 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 119. (Concurrent with VC 2013-PR-002) (Deferred from 1/16/13 at appl. req.) (Admin. moved from 4/3/13.) (Admin. moved from 4/17/13 for ads.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; 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 application meets all the submission requirements as set forth in all of the applicable sections of the Code and also 8-922.
3. Staff recommends approval of the addition.
4. The Board adopts staff's rationale.

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

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

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

1. This special permit is approved only for the keeping of animals (fowl), location of the existing chicken coop, and proposed addition as shown on the plat prepared by Alexandria Surveys, LLC, dated June 8, 2012, as submitted with this application and is not transferable to other land.
2. The applicants shall make this special permit property available for inspection by County Officials during reasonable hours of the day.
3. This approval shall be for a maximum of three hen chickens.
4. The yard used by the chickens shall be cleaned of animal debris daily and disposed of in a method approved by the Health Department.
5. The porch addition shall be generally 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. Ms. Gibb was absent from the meeting.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. GEORGE KARSADI, SP 2012-MV-077 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from the rear lot line. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with VC 2012-MV-007.) (*Admin. moved from 2/6/13 at appl. req.*) (*Decision deferred from 4/24/13.*)

9:00 A.M. GEORGE KARSADI, VC 2012-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure greater than 200 sq.ft. in size, fence greater than 7.0 ft. in height to remain in side and rear yards and fence greater than 4.0 ft. in height to remain in front yard. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with SP 2012-MV-077.) (*Admin. moved from 2/6/13 at appl. req.*) (*Decision deferred from 4/24/13.*)

Chairman Ribble noted that SP 2012-MV-077 and VC 2012-MV-007 had been deferred for decision only, as they had requested some more information from staff.

Ms. Gumkowski, Staff Coordinator, said they had Bill Schell from the Department of Public Works and Environmental Services (DPWES), and Cynthia Bailey from the County Attorney's Office with them to answer questions.

Ms. Bailey said she was there on the behalf of the Board of Supervisors, and gave the following information. She understood they had a variety of questions related to the storm sewer easement at issue in the case. She outlined the applicable law with respect to the easement, and invited the Board's attention to the language of the easement, which appeared on the plat. Ms. Bailey did a lot of research to find out what the parameters were of an easement like this, where there was not a lot of language to specifically delineate what was included. She said the case law was clear, and there were two conclusions. When an easement specified an actual width, there could not be a material encroachment into the width and the narrowing of that width. With this particular structure, where at one point it almost completely traversed the width of the easement, it created an illegal problem.

Secondly, the case law spoke to what was a material encroachment. Ms. Bailey said she had asked Bill Schell there, because he could best describe how this particular structure would constitute a material encroachment and would be unreasonable in light of all of the different kinds and types of work which were potentially at issue, particularly with respect to the language of maintenance and operation.

As some of the participants were not sworn in at the earlier hearing and it was not done earlier, 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.

Ms. Bailey said that for the record, she wanted to reaffirm everything she had just said was under oath.

Bill Schell, DPWES, Maintenance and Stormwater Management Division, said they were responsible for maintaining over 1,300 miles of storm sewer, and in doing so, they come across these encroachments. He said they thought it was a permanent structure, and would not know how the homeowner could move it. It almost crossed the complete easement, sat on the sewer itself, and was right up against a large fence. He said he did not think one of his fork lifts would be able to pick it up without destroying it.

Mr. Schell said it blocked their access to the sewer. Often they came across areas where there were utility borings, so they had to dig, drop structures, and had to deal with all sorts of cave ins. He said it was clearly an encroachment to their easement, and did not allow them to freely maintain the sewer. The sewer was over 50 years old in the neighborhood, and would have to be rehabilitated.

Mr. Beard said there was testimony in the last hearing about the new technology they had incorporated with linings. He asked whether there was some way it could work from a standpoint that if they had to get in there, then the applicant would have to remove it, or was it that Mr. Schell was concerned about an emergency type of situation. Mr. Schell said they were going to line the pipe, which would all be internal. He said, however, at some point, the liner could fail, and then they would probably have to come in and dig it.

Ms. Bailey said she might best answer the question about whether the structure could remain there until such time they might have to go in. She said she thought there was a big distinction between allowing a use there if they did not have to remove it, and actually sanctioning it by a special permit. She continued that it appeared to her once the board had granted a special permit and variance, than the property owner had an actual right to be there. That posed all kinds of concerns from a liability perspective, and more importantly, constituted a real, almost sanctioned, encroachment within the County's easement.

Mr. Beard asked whether this could be termed adverse possession, or could it lead to that. Ms. Bailey said because they were the County, there was no cause of action of adverse possession against the County. It was an action which in former days, under common law, you could not adversely possess against the king, and the County stands in the shoes of the king.

Ms. Bailey said the County did not try to be difficult with property owners when there were encroachments, and they did not have the resources to fight every single encroachment that was encountered, but it was a far cry from approving a legislative action, particularly of this magnitude and severity.

Mr. Byers said she had given a compelling argument, but asked whether it had gone to court. Ms. Bailey said it went to court, based on the notice of violation. She said there was a zoning action that was taken, and the Zoning Administrator entered an order which permitted the applicant to apply to this body for a special permit. Unbeknownst to the Zoning Administrator, the structure was located within an easement. She said in her 14 years of practice with the County, they had never encountered a situation like this one. In their Zoning Enforcement actions, they frequently allowed property owners to apply for a special permit for error in building location, and recognize people made mistakes, but they never encountered a situation where a structure at issue was located within a County easement. They now instructed the attorneys in their office to make clear in their orders, they would not agree to a special permit if there was an easement. From a legal perspective, she was there representing the Board of Supervisors, and they had a separate and distinct interest in the easement, which was apart from whatever the Zoning Administrator may have had. Ms. Bailey said she was representing to them that they were not constrained by the order, notwithstanding the fact, it did give the applicant the right to come in for a special permit.

Mr. Byers asked if, when the case went to the Circuit Court judge, whether the judge was not aware that the shed was in a stormwater easement, and that the issue of the stormwater easement came back up after the judge executed the order saying they could go back and apply for a special permit. Ms. Bailey said that was correct.

Mr. Hart asked whether there was some middle ground through development conditions, where it would be possible to say it was not approved and would have to come out, but could be left there subject to a 30- or 60-day notice, or something from DPWES which had a sunset provision to it. Ms. Bailey said she was loath to say there was no way they could do that. She said when the County was trying to manage a storm sewer system of 1,300 miles, crafting creative solutions for every homeowner could be really burdensome from both administrative and engineering perspectives. In this instance, she said, this was an egregious type of encroachment within the easement. She said it posed so much of an obstacle, which was evidenced by the fact they had to come in to get a special permit and a variance in order to have it remain. She said this was not one of those situations in which some kind of creative solution could be effectuated to make everybody happy.

Mr. Hart asked if they did not approve the shed, how much time would the applicant would have to get rid of it or shift it somewhere. Ms. Bailey said the order said it was 30 days pursuant to Paragraph 7.

There was more discussion on policy and guidelines about what was allowable within a storm sewer easement, and what constitutes a lawful building. It was determined that written permission, were it asked of the County Attorney's office, would not have been given in this circumstance. There was no building permit that anyone was aware of. The Zoning Administrator's problem when the case went to court was the fence was too high, the shed was too big, and the applicant had violated the Zoning Ordinance. It was not that it was the Board of Supervisors saying to get his encroachment out of their easement.

In answer to questions from Mr. Hart regarding the fence, Susan Langdon, Chief, Special Permit and Variance Branch, said the fence varied so much in height that it could not be applied for under the special permit. Everything was wrapped into the variance for the fence, she said.

Mr. Hart moved to deny SP 2012-MV-077 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE KARSADI, SP 2012-MV-077 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.4 ft. from the rear lot line. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with VC 2012-MV-007.) (Admin. moved from 2/6/13 at appl. req.) (Decision deferred from 4/24/13.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; 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 special permit, the Board has clarification with respect to the 20-foot storm sewer easement conflicting with the structure.
3. The easement is currently in use by the County.
4. There is a pipe underneath it.
5. The Board had testimony regarding the need for access and maintenance and the fact that there was no building permit for the structure applied for.
6. The Board had testimony regarding the difficulties with allowing the structure to remain in its current location notwithstanding the easement.
7. With respect to Ordinance provision 8-006, the applicant has not presented testimony showing compliance with Subsections 2 and 3 in particular, the general purpose and intent of the applicable zoning district regulations and that the use would be harmonious with and not adversely affect the use or development of neighboring properties, et cetera.
8. The access and maintenance of the storm sewer easement, both for this property and adjacent properties, would be a governmental function.
9. The location of the shed conflicting with the easement, that was of record.
10. The Board had a copy of the plat showing with a light dashed line.
11. It may not have been explained very clearly to Mr. Karsadi, and it probably was not a big topic of discussion at a settlement. Easements like that probably are rarely discussed, but it seems to have been properly given in the subdivision plat, and it presents a problem for the Board.
12. With respect to Sect. 8-914 regarding the approval of an error in building location, under Sect. 2B, there has not been evidence shown that this was done through no fault of the property owner; under 2C, that it would not impair the purpose and intent of the Ordinance; or be detrimental to the use and enjoyment of other property in the immediate vicinity, under Subsection D.
13. It is recognized that this will present some hardship to the owner, which is one of the reasons the Board spent so much time trying to come up with a solution or at least trying to define the problem.
14. Given the difficulties the Board has with the other standards, it cannot find that they are satisfied, even if one of the subsets has been met. They all have to be satisfied.

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

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

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

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

//

Mr. Hart moved to approve-in-part VC 2012-MV-007 for the reasons stated in the Resolution, with an addition to the development conditions.

Discussion ensued regarding exactly what they were being asked to approve and what they were denying.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE KARSADI, VC 2012-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure greater than 200 sq.ft. in size, fence greater than 7.0 ft. in height to remain in side and rear yards and fence greater than 4.0 ft. in height to remain in front yard. **(THE BZA DID NOT APPROVE THE SHED AND PORTIONS OF THE FENCE IN THE FRONT YARD)**. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with SP 2012-MV-077.) (Admin. moved from 2/6/13 at appl. req.) (Decision deferred from 4/24/13.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; and

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

1. The applicant is the owner of the land.
2. This is a difficult application.
3. As the Board has discussed many times, the standards for a variance are somewhat more vigorous than those for a special permit or a mistake section special permit.
4. The Board had some testimony regarding the topography both on the subject site and immediately adjacent to it.
5. With respect to the topography issue at the edges of the property, the applicant has shown that some relief is appropriate.
6. With the changed contour lines and the way the property drops down, on the technical rear of the subject property facing Lots 18 or 69, those fences in places exceed 7.0 feet and are as high as 8.4 feet in some locations.
7. The applicant has met the standards for those areas.
8. With respect to the fences in the front yard, however, the topographic issue is not germane to the height of those fences.
9. There is really nothing particularly extraordinary about the property or unusual in that respect for either a fence along the driveway or the patio facing Wagon Wheel Road, which was the subject of some opposition.
10. If the Board is going by the required standards for a variance, there has not really been evidence shown to the Board that those standards have been met, at least with those portions of the fences.
11. Those would have fit better with a mistake section kind of special permit, if that were appropriate, or at least that kind of analysis.
12. In some respects, perhaps on the driveway side, if there had been a special permit for a fence up to 6.0 feet, there might have been some justification for doing that.
13. What the Board is left with is just a variance. The only application for the fence is under the variance section, and it does not give the Board much to work with.
14. The fence could be approved-in-part and disapproved-in-part.
15. With respect to the size of the shed, because the special permit has been denied, there is no basis to approve the variance related to the size of the shed.
16. Under Sect. 18-404, with the analysis described by Mr. Hart regarding whether the property was exceptional in some way, with respect to the fences along the perimeter, it is, and with respect to the fences in the front yard, it is not.
17. The Board cannot conclude that the application of the Ordinance would produce undue hardship at least with respect to the courtyard fence on the Wagon Wheel Road side or the fence along the driveway on that side.
18. The Board cannot conclude that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.

19. This would be a special privilege or convenience rather than alleviating a hardship.
20. There were some mistakes made, things went up that probably should not have been put up, and everything kind of snowballed from there.

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

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

1. This variance is approved for the location and height of the fences as shown on the plat prepared by Dominion Surveyors Inc., dated August 28, 2012, as submitted with this application, and is not transferable to other land. Notwithstanding anything shown on the plat, the only fences that are approved for the location and height are the fences along Lot 18 and Lot 69 that are in a side or rear yard. The front yard fences on the plat are not approved, with the exception of the fencing between Lot 18 and the subject dwelling to close off the backyard as shown in Attachment 1.

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

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

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. RICHARD SCHRADER, SP 2013-DR-007 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirement based on error in

building location to permit accessory structure to remain 2.3 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 1474 Kingsvale Ci., Herndon, 20170, on approx. 14,389 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((17)) 278. (Admin. moved from 4/17/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William Everett, the applicant's agent, 9707 Ashby Road, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. The applicant requested two special permit approvals. Staff recommended approval of SP 2013-DR-007 for the addition, subject to the proposed development conditions.

Mr. Everett presented the special permit request as outlined in the statement of justification submitted with the application. He said the hoop was not facing the lot line, but facing out towards the driveway. There was a question about whether they were playing on the other person's property. Mr. Everett said it did not appear they were playing on the neighbor's property, but rather in the street.

There were questions about how far away the houses on Lots 277 and 279 were from the basketball standard. Mr. Everett said it was maybe only about 15 to 20 feet away from the basket. Discussion ensued regarding the ingress/egress easement location.

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

Mr. Smith moved to approve SP 2013-DR-007 for the reasons stated in the Resolution.

Discussion ensued regarding the basketball standard. There was concern about having a basketball standard close to other houses, as it could be quite a noise nuisance. Susan Langdon, Chief, Special Permit and Variance Branch, pointed out that the Ordinance limited the use of this type of basketball standard to not be used between the hours of 8:00 p.m. and 8:00 a.m.

Mr. Beard said to clarify for the record, he wanted to know whether there was such a thing as by-right in cul-de-sacs, if the by-right would be the same as any property owner, back 15 feet and 12 feet from the side. Ms. Langdon said that was correct. Mr. Smith said he saw these frequently in driveways and lived in a cul-de-sac. He said if it was out in the street, which you do see a lot, then it definitely was not permissible, but usually no one enforced it unless there was a compliant.

Mr. Smith suggested adding the Ordinance language in regarding the hours of use. Chairman Ribble asked if the Second accepted that, and Mr. Beard said he did.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD SCHRADER, SP 2013-DR-007 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirement based on error in building location to permit accessory structure to remain 2.3 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 1474 Kingsvale Ci., Herndon, 20170, on approx. 14,389 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((17)) 278. (Admin. moved from 4/17/13 for notices.) 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 15, 2013; 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 and the error in building location for the basketball standard, looking at the photographs, it was placed so it would be on a flat surface.
3. There is a pretty good distance between the basketball net and the house on Lot 277.
4. It appears that while it is located on Lot 278, people who would be using it would be on Lot 278 or within the 30-foot ingress/egress easement.
5. It will not have a significant impact on others.
6. The Board had a public hearing with no opposition voiced following the hearing notice that was provided to the adjoining property owners.
7. With respect to Sect. 8-922 and the construction of an addition 13.2 feet from the rear lot line, the screened deck will be significantly over a portion of an existing deck and will not have any impact on neighboring property owners.
8. There is a favorable staff recommendation.
9. The Board adopts the rationale identified by staff in the 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 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 (approximately 216 square feet) of the addition and the basketball standard, as shown on the plat prepared by Patrick A. Eckert, Land

Surveyor, dated October 22, 2012, as revised through December 18, 2012, 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 (3,391 square feet existing + 5,086.5 square feet (150%) = 8,477.5 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 generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The basketball standard shall not be used between the hours of 8:00 p.m. and 8:00 a.m.

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 5-1. Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. JANE E. LAGES, TRUSTEE, SP 2013-PR-022 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. from the side lot line and to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from rear lot line. Located at 2538 Villanova Dr., Vienna, 22180, on approx. 10,746 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (G) 16.

Chairman Ribble called the applicant to the podium.

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

Jane Lages, 2538 Villanova Drive, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. The applicant requested two special permit approvals. Staff recommended approval of SP 2013-PR-022 for the garage, subject to the proposed development conditions.

Vice Chairman Hammack assumed the chair.

Ms. Lages presented the special permit request as outlined in the statement of justification submitted with the application. With respect to the playhouse, she said it was solid wood, and would be expensive to have it moved. With respect to the proposed garage, it would be enclosing the carport and ripping out the attached shed, which was disintegrating, and included the area in the garage to allow for storage of the items which were in the shed. She said she had done everything possible to expand the addition to the minimal amount necessary to allow for ingress and egress into the car, and to allow storage of waste receptacles, and tried to

keep to the Zoning Ordinance to the best of her ability.

Ms. Lages said she pled ignorance of the Zoning Ordinance rules for a child's play structure. Mr. Beard asked whether it was a complaint, and she said she had zero complaints.

Mr. Hart said 30 feet and something was a little long, and asked if the reason was to stay under the existing roof for the carport. Ms. Lages said it would actually come out a little bit, and she was looking to have additional storage area. She said the proposed garage was being pulled forward about 4 feet to be even with the main part of the house. Mr. Hart asked whether the part in the back, which was the 7.5 feet, was in that location currently. Ms. Lages said yes, they were not going any further back, but just to where the end of the shed was currently.

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

Mr. Beard moved to approve SP 2013-PR-022 for the reasons stated in the Resolution.

Discussion ensued regarding the Tax Map Reference Number, which may have had a typographical error in it. Chairman Hammack said Mr. Beard's motion had the correct tax reference number.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JANE E. LAGES, TRUSTEE, SP 2013-PR-022 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft. from the side lot line and to permit reduction in certain yard requirements to permit construction of addition 7.5 ft. from rear lot line. Located at 2538 Villanova Dr., Vienna, 22180, on approx. 10,746 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (G) 16. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; 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 for the approval of the reduction to the minimum yard requirements based on an error in building location, the Board has determined that the application meets the outlined criteria in the standard resolution.
3. With respect to Sect. 8-922, staff recommended approval of the application.
4. The Board adopts staff's rationale.
5. This is in accordance with the Comprehensive Plan and meets the criteria of the Comprehensive Plan.
6. The Board has determined that all applicable requirements have been met as set forth in Sect. 8-922.

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

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved only for the location of the accessory structure (playhouse), and the garage addition (approximately 455 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated October 23, 2012, as revised through February 13, 2013, signed by George M. O'Quinn, 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 (2,728 square feet existing + 4,092 square feet (150%) = 6,820 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 generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF SHILOH BAPTIST CHURCH, SPA 83-V-090-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-090 previously approved for church to permit site modifications and building addition. Located at 10704 Gunston Rd., Lorton, 22079, on approx. 6.72 ac. of land zoned R-E. Mt. Vernon District. Tax Map 114-4 ((1)) 21, 22 and 22A.

Chairman Hammack noted that SPA 83-V-090-02 had been administratively moved to July 10, 2013, at 9:00 a.m., at the applicant's request.

//

Chairman Ribble reassumed the chair.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. ERIC EDWARDS, SP 2013-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 5.1 ft. from rear lot line. Located at 4116 Ferry Landing Rd., Alexandria, 22309, on approx. 13,611 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((2)) (F) 140A. (*Admin. moved from 4/24/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Brian Rosenheim, 11320 Aristotle Drive, Unit 108, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Byers asked if the location was in compliance with the fire code, and Ms. Horner said she was not sure. She said the fire code would be reviewed at the time of the building permit.

Mr. Hart asked whether anything with a chimney or a fireplace required a building permit. He said he assumed they would want to inspect those. Susan Langdon, Chief, Special Permit and Variance Branch, said she did not know about that specifically, but anything with a foundation did require one, and it had a foundation. He asked whether we knew if they had applied for a building permit, and Ms. Horner said they had no record of it.

Mr. Rosenheim had nothing to add to the special permit request as outlined in the statement of justification submitted with the application, and was just there to answer questions. With questions from staff it was determined that the applicant had gotten permits for this. The applicant's company built the fireplace, but he was not sure if they got a building permit. He was intending to build a 7-foot fireplace, but it went 9 inches too high. Once it exceeded 7 feet, it had to be further away from the rear yard line. This was an error in the height of the structure, rather than the placement in the yard. When applying for a special permit for the deck, it was determined the fireplace was in violation. Then it was determined they did not need a special permit for the deck.

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

Mr. Hammack moved to approve SP 2013-MV-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC EDWARDS, SP 2013-MV-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 5.1 ft. from rear lot line. Located at 4116 Ferry Landing Rd., Alexandria, 22309, on approx. 13,611 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((2)) (F) 140A. (Admin. moved from 4/24/13 for notices.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2013; and

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

1. The applicant is the owner of the land.
2. Based on the testimony of the applicant's agent, the intention was to build a seven-foot fireplace, which would be in compliance under the Zoning Ordinance.
3. Due to some changes during the construction of it, the height of the chimney was increased by nine inches, which brings it into non-compliance.
4. The mistake was unwitting, done in good faith, and through no fault of the property owner.
5. It could have been corrected, had they known, by moving the fireplace in .9 feet, and a special permit would not have been needed.
6. Inasmuch as the development conditions require the applicant to meet building code requirements, including anything that would be applicable to fireplaces for safety purposes, the applicant has satisfied the standards under Sect. 8-914 to allow it to remain in its present location.
7. The Board has determined that the applicant has satisfied Subsections A through G of Sect. 8-914, in particular B, C, and D.

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

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

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other

properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location of the stone fireplace as shown on the special permit plat prepared by Alterra Surveys, dated March 9, 2012, as revised through December 19, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the accessory structure (outdoor fireplace) within six months of the approval of the 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. CORNELIA GIBBS, SP 2013-SU-015 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of a roofed deck 15.8 ft. from side lot line and to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.2 ft. from side lot line. Located at 6235 Hidden Canyon Rd., Centreville, 20120, on approx. 10,531 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 73. *(Admin. moved from 4/17/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

William Everett, the applicant's agent, 9707 Ashby Road, Fairfax, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. If it was the Board's intention to approve the application, staff recommended they do so subject to the proposed development conditions.

Mr. Everett presented the special permit request as outlined in the statement of justification submitted with the application. He said there were several porches like this one in the neighborhood, and it seemed like many neighbors had gotten approved for similar structures.

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

Mr. Byers asked whether they were doing this under R-C lot approval or under 8-914, because one provision is applicable to R-C lots and the other one was not. Ms. Langdon said they were doing it under both provisions. The shed would not meet the provision under R-C lot, so that was why it was filed as a building in error. The proposed front porch was filed under the R-C provisions. She said it would be one motion, but both sections of the Ordinance should be referenced.

Mr. Byers moved to approve SP 2013-SU-015 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CORNELIA GIBBS, SP 2013-SU-015 Appl. under Sect(s). 8-913 and 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of a roofed deck 15.8 ft. from side lot line and to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 4.2 ft. from side lot line. Located at 6235 Hidden Canyon Rd., Centreville, 20120, on approx. 10,531 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 73. (Admin. moved from 4/17/13 for notices.) 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 15, 2013; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The Board has determined that the applicant has met Standards A through G under Sect. 8-914.

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

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

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

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

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

1. This special permit is approved for the location and size of the covered porch addition and shed as shown on the plat entitled "Special Permit Plat, Lot 73, Section 1, Pleasant Hill" prepared by Patrick A. Eckert, dated October 22, 2012, signed October 31, 2012, 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.

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.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. ADOLFO L. TROITINO, PIEDAD S. L. TROITINO, A 2013-LE-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing contractor's offices and shops, which is not a permitted use, to be operated on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 7926 Russell Rd., Alexandria, 22309 on approx. 11,600 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((3)) 113.

Chairman Ribble noted that A 2013-LE-004 had been withdrawn.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN & ALLYSON G. BLOOM, A 2012-DR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure (a playset) contributes to the coverage of over 30% of the minimum rear yard on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 2090 Grace Manor Ct., McLean, 22101 on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Deferred from 1/9/13 at appl. req.) (Admin moved from 4/3/13 at appl. req.)

Chairman Ribble noted that A 2012-DR-025 had been administratively moved to November 6, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ May 15, 2013, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2011-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an existing horse boarding operation and associated buildings and storage may continue on property in the R-C and WS Districts without special permit approval. Located at 10810, 10810A, 10812, 10814, and 10816 Henderson Rd., 22039-2226 on approx. 27.8 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((15)) 1, 2, 3, 4, and 5. (Admin. moved from 9/14/11, 3/28/12, 5/16/12, 7/18/12, and 10/17/12 at appl. req.)


Chairman Ribble noted that A 2011-SP-013 had been indefinitely deferred.


//

As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Kathleen A. Knoth/Lorraine A. Giovinazzo

Approved on: November 6, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 5, 2013. 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 9:02 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.

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. BRETT CROZIER, SP 2013-MA-025 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit an accessory structure (treehouse) to remain 3.0 ft. from the side lot line and 1.7 ft. from the rear lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line with total side yards of 14.9 ft. Located at 6100 Larstan Dr., Alexandria, 22312 on approx. 8,940 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 72-2 ((9)) 80.

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.

Brett Crozier, 6100 Larstan Drive, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MA-025 for the addition, subject to the proposed development conditions.

Discussion ensued with regard to the park land and the concern of the Park Authority, the existing resource protection area (RPA), the layout of the subject yard currently and after the intended modifications, and the tree house built in error.

Mr. Crozier presented the special permit request as outlined in the statement of justification submitted with the application. He explained he was unaware of the need for a building permit, and the proposed addition was within the footprint of the existing retaining wall.

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

Mr. Byers moved to approve SP 2013-MA-025 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRETT CROZIER, SP 2013-MA-025 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit an accessory structure (treehouse) to remain 3.0 ft. from the side lot line and 1.7 ft. from the rear lot line and to permit reduction of certain yard requirements to permit construction of addition 5.0 ft. from side lot line with total side yards of 14.9 ft. Located at 6100 Larstan Dr., Alexandria, 22312 on approx. 8,940 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 72-2 ((9)) 80. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 2013; 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 under 8-914 that the application meets A thru G.
3. Staff recommends approval of the addition.
4. 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 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 kitchen addition and the treehouse located as shown on the special permit plat, prepared by NoVA Surveys Inc., dated March 9, 2013, as submitted with this application and is not transferrable 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 (2,846 square feet existing + 4,269 square feet (150%) = 7,115 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. Every effort shall be made to protect offsite trees during construction of the garage. If needed, the applicant shall hire a certified arborist to assess and make recommendations on tree protection measures.
5. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. CAROL C. ROBINSON, SP 2013-SU-024 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of addition 11.6 ft. from the side lot line. Located at 6503 Flowerdew Hundred Ct., Centreville, 20120 on approx. 13,333 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 8.

Chairman Ribble called the applicant to the podium.

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

Carol Robinson, 6503 Flowerdew Hundred Court, Centreville, 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 the Board use the proposed Development Conditions if they chose to approve the application.

Ms. Robinson had nothing to add to 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 2013-SU-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAROL C. ROBINSON, SP 2013-SU-024 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of addition 11.6 ft. from the side lot line. Located at 6503 Flowerdew Hundred Ct., Centreville, 20120 on approx. 13,333 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 8. 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 5, 2013; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant has satisfied the five required standards specifically set forth under Sect. 8-913.
7. The proposed addition is to build a screened porch.
8. With the eave of the porch following the extension of the existing side lot line, the Board does not see that it will make any adverse impact on public health, safety, or welfare or the existing development in the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance.

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

1. This special permit is approved for the location and size (approximately 18 x 14) porch addition, as shown on the plat prepared by Apex Surveys, dated November 15, 2012, as signed by Carol Robinson, Owner, on February 22, 2013, 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.

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.

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. *(Decision deferred from 11/28/12 and 1/16/13) (Admin. moved from 3/6/13 due to inclement weather.)*

Chairman Ribble noted that SP 2012-SP-059 had been administratively moved to August 7, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. MARY JANE LEE, SP 2013-PR-023 Appl. under Sect(s). 8-914 and 8-919 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line and deck 2.7 ft. from rear and 2.4 ft. from side lot lines and to permit a noise barrier. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with VC 2013-PR-003).

9:00 A.M. MARY JANE LEE, VC 2013-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9207 Briary Ln, Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with SP 2013-PR-023).

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 Jane Lee, 9207 Briary Lane, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. If the Board chose to approve the application, staff recommended they do so subject to the proposed development conditions.

Discussion ensued regarding the rear-yard classification, variations between plats, the focus of the building permit inspection, the hot-tub, the fence related complaint, relevant noise barrier details, Zoning Ordinance regulations for decking in pool areas, the history of decking on the property, drainage, and staff's procedure upon acceptance of new plat submissions.

Ms. Lee presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. She explained the history of the property and its modifications, her initial efforts to be compliant, the change between the pool plat she approved with the contractor and the one submitted for permit approval, and the ability to move the gazebo if necessary.

There was discussion concerning the history of the fence, the fence height, the installation of the gazebo and hot tub, calculating yard coverage, the scope of work of the applicant's pool contract, the relief provided by removing the existing stone walkway, the utility lines located beneath concrete, options for reducing coverage, and swimming-pool-related requirements.

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

Mr. Hart moved to defer decision on SP 2013-PR-023 and VC 2013-PR-003 to July 24, 2013, at 9:00 a.m.

The Board noted the additional information they would like to receive from staff, and their reasons for supporting and opposing the motion.

At Mr. Hammack's request the hearing was re-opened.

In response to Board questions, Ms. Lee noted the decking was constructed when the pool was constructed, and both were inspected. Staff explained the differences between inspections which follow building code and those which follow the Zoning Ordinance.

Chairman Ribble closed the public hearing.

Mr. Hart re-stated his motion to defer decision on SP 2013-PR-023 and VC 2013-PR-003 to July 24, 2013, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Beard voted against the motion.

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. SOUTH SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 2013-MV-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 8701 and 8713 Pohick Rd., Springfield, 22153, on approx. 3.56 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 58 and 60. (*Admin. moved from 5/1/13 at appl. req.*)

Chairman Ribble noted that SP 2013-MV-012 had been administratively moved to July 24, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. THOMAS D. AND CHRISTINA DAVIS, A 2012-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have allowed the construction of a roof over a deck that extends into the minimum required side yard and have failed to submit required as-built house location surveys for construction on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1859 Patton Ter., McLean, 22101 on approx. 11,113 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 24. (*Admin. moved from 1/9/13 at appl. req.*)

Chairman Ribble noted that A 2012-DR-026 had been administratively moved to July 10, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ June 5, 2013, Scheduled case of:

9:00 A.M. ROBERT L. WELSH, A 2013-MV-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that property located at Tax Map 102-2 ((18)) 9B in the R-2 District is not a buildable lot. Located at 7843 Southdown Rd., Alexandria, 22308 on approx. 13,024 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((18)) 9B.

Chairman Ribble called the appellant to the podium.

Mr. Hart made a disclosure that over one year ago he had been hired as an expert witness by other attorneys from the appellant's agent's law firm, 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.

Sarah Hall, the appellant's agent, 4020 University Drive, Fairfax, Virginia, came forward.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. Staff recommended the Board uphold the determination of the Zoning Administrator.

Staff noted the appellant had been informed of available relief which could be obtained through a variance application.

Laura Gori, Assistant County Attorney, representing the Zoning Administrator, added to staff's presentation.

Discussion ensued regarding the authenticity of the determination that the lot is unbuildable compared to plat notations which state the contrary, the methods for distance measurements, the requirements for lot subdivisions, previous procedures for obtaining a buildable lot determination, the appellant's inheritance of the property, the involvement of the Department of Tax Administration (DTA), the history of the lot, and the information presented in online records.

Vice Chairman Hammack assumed the Chair, and soon after Chairman Ribble resumed the Chair.

There was additional discussion concerning the history of the lot, the process that ensues when a deed is recorded, subdivision requirements, communication between the Department of Planning and Zoning and DTA, and the tax history of the property.

Ms. Hall presented the arguments forming the basis for the appeal. She discussed the history of the property, the events which resulted in decreased tax value of the property, and information which supported the enforceability of the buildable lot determination made by a past Fairfax County employee.

There was discussion regarding whether there was a recent and accurate survey of the property, and if there were any pertinent case law or relevant evidence. Ms. Hall explained her reasoning for advising the appellant to get a new buildable lot determination for the property, the degree of development on other neighborhood lots, and her position regarding the applicability of the 60-day rule.

The meeting recessed at 12:11 p.m. and reconvened at 12:27 p.m.

Due to a power outage, the Board recessed and entered into Closed Session.

The Board returned from the Closed Session in order to continue the remaining agenda items.

A 2013-MV-005 was continued to June 12, 2013, due to a power outage.

//

~ ~ ~ June 5, 2013, After Agenda Item:

Requests for Reconsideration
George Karsadi, VC 2012-MV-007 and SP 2012-MV-077

VC 2012-MV-007 and SP 2012-MV-077 were deferred to June 12, 2013 due to a power outage.

//

~ ~ ~ June 5, 2013, After Agenda Item:

Presentation by Leslie B. Johnson, Zoning Administrator
Pending Zoning Ordinance Amendment for Home Child Care Facilities


Mr. Hammack moved to defer the presentation by Leslie B. Johnson, Zoning Administrator, due to a power outage.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:28 p.m.

Minutes by: John W. Cooper and Emily J. Armstrong

Approved on: November 6, 2013


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 12, 2013. 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 asked if there were any Board Matters to bring before the Board. Chairman Ribble noted there had been a power outage at the previous meeting, so all unfinished agenda and after agenda items had been continued. As there were no further Board matters, he then discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. ROBERT L. WELSH, A 2013-MV-005 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that property located at Tax Map 102-2 ((18)) 9B in the R-2 District is not a buildable lot. Located at 7843 Southdown Rd., Alexandria, 22308 on approx. 13,024 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((18)) 9B.
(Continued from 6/5/13.)

Chairman Ribble noted there was a continuation request, by the applicant, for A 2013-MV-005.

Mr. Hammack moved to continue A 2013-MV-005 to a date to be determined in February 2014, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

The Board congratulated Jill Cooper, Staff Coordinator, on her promotion to Executive Director of the Planning Commission.

//

~ ~ ~ June 5, 2013, After Agenda Item:

Requests for Reconsideration
George Karsadi, VC 2012-MV-007 and SP 2012-MV-077

Mr. Hammack moved to reconsider VC 2012-MV-007 and SP 2012-MV-077.

The motion died for a lack of second.

Mr. Hart commented on the original Board decisions for VC 2012-MV-007 and SP 2012-MV-077.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. RAYMOND D. HALLQUIST AND JENNIFER C. HALLQUIST, SP 2013-LE-028 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from rear lot line and 3.2 ft. from side lot line and addition to remain 5.5 ft. from side lot line and reduction of minimum yard requirements to permit construction of addition 9.1 ft. from side lot line. Located at 4801 Poplar Dr., Alexandria, 22310, on approx. 14,100 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6H)) 37.

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.

Roger Bohr, the applicants' agent, 3949 Pender Drive #120, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested three special permit approvals. Staff recommended approval of SP 2013-LE-028 for the addition, subject to the proposed development conditions.

Mr. Bohr presented the special permit request as outlined in the statement of justification submitted with the application. He explained the need for carport improvements and that the shed and deck were in their current condition when the applicants purchased the property.

Discussion ensued concerning a submitted letter of opposition, attributes of the shed, the absence of recorded complaints, and the applicants' efforts to address issues expressed by neighbors.

Chairman Ribble called for speakers.

Kenneth Braswell, 4803 Poplar Drive, Alexandria, Virginia, came forward in support.

Mary Richards, 5711 La Vista Drive, Alexandria, Virginia, came forward in opposition. She explained her concern with additional encroachment into her yard and the impact on her view should the applicant install a screen porch.

Mr. Bohr came forward in rebuttal. He noted there was no intent to install a screened porch, and clarified the purpose of the application.

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

Mr. Hammack moved to approve SP 2013-LE-028 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND D. HALLQUIST AND JENNIFER C. HALLQUIST, SP 2013-LE-028 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.4 ft. from rear lot line and 3.2 ft. from side lot line and addition to remain 5.5 ft. from side lot line and reduction of minimum yard requirements to permit construction of addition 9.1 ft. from side lot line. Located at 4801 Poplar Dr., Alexandria, 22310, on approx. 14,100 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((6H)) 37. 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 12, 2013; 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 application under Sect. 8-922, the applicant has presented testimony indicating compliance with general standards for special permit uses as set forth in Sect. 8-006 and the additional standards for provisions for reductions of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.
3. The Board has determined that the application meets the six required subsections specifically set forth in the Ordinance, in particular that the proposed development is harmonious with surrounding offsite uses and structures in terms of location, height, bulk, and scale, topography, existing vegetation.
4. The shed in question has been there for a number of years.
5. It is well maintained.
6. There have been no complaints on it until the subject application came in.
7. Actually to move it to bring it into compliance really would expose it.
8. It does not change anything significantly, from the photographs.

9. With respect to the application made under 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 the approval of reductions of minimum yard requirements based on error in building location.
10. The Board has determined that the applicant has met the requirements set forth in subsections A through G of the Ordinance and specifically that the noncompliance was done in good faith or through no fault of the property owner or was the result of an error in building location.
11. The reduction will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
12. More specifically, the deck is brought into compliance. The only real problem with the deck is the lattice attached to it, which is a very technical reason.
13. The proposal to construct a garage, slightly enlarging the footprint of an existing carport is a minimal intrusion.
14. Looking at the plat, the front of the garage at the street side may be only requiring a foot or less of setback in the rear. This includes the overhang, perhaps two or three feet.
15. Otherwise, the great bulk of this addition is within the existing building envelope.
16. It is reasonable and something the Board approves on a fairly routine basis.
17. With respect to the shed, it has been there for years with no complaints until now.

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 only for the location of the existing deck, shed and the proposed garage addition (approximately 342 square feet), as shown on the plat prepared by Alexandria Surveys, LLC, dated January 7, 2013, as revised through March 25, 2013, signed by Michael L.

Flynn, Land Surveyor, 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 (1,391 square feet existing + 2,086.5 square feet (150%) = 3,477.5 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 generally 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.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. STEVE STEIN AND MARY STEIN, SP 2013-DR-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 1935 Fisher Ct., Falls Church, 22043, on approx. 11,984 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((19)) 2.

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.

Steven Stein, 1935 Fisher Court, Falls Church, Virginia, and Mary Stein, 1935 Fisher Court, Falls Church, Virginia, came forward.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to Board questions, staff noted there had been a complaint about the keeping of dogs and that the dogs would be permitted were the lot size bigger.

Mr. Stein presented the special permit request as outlined in the statement of justification submitted with the application. He noted the length of time he had the dogs and the regular care and upkeep performed for the dogs and the property.

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

Mr. Byers moved to approve SP 2013-DR-030 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVE STEIN AND MARY STEIN, SP 2013-DR-030 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 1935 Fisher Ct., Falls Church, 22043, on approx. 11,984 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((19)) 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 June 12, 2013; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,984 square feet.
4. This property is within 516 square feet of having three dogs allowable at 12,500 square feet.
5. Two of the animals, because they are large animals, are approaching the end of their life.
6. The applicants have one four-year-old dog.
7. The applicants have actually retained these dogs for the full ten years.
8. The applicants have three dogs.
9. The applicants have had the four-year-old dog for the last three years.
10. The applicants have indicated that when one of the two dogs passes away, the dogs will not be replaced. That is at the discretion of the applicants and homeowners.

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

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

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

1. This approval is granted to the applicants only, Steve Stein and Mary Stein, and is not transferable without further action of this Board, and is only for the location indicated on the application, 1935 Fisher Court (11,984 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County Officials during reasonable hours of the day.
3. This approval shall be for the applicants to retain three (3) dogs.
4. The yard used by the dogs shall be cleaned of animal debris daily and disposed of in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of time longer than 30 minutes.

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

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

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. KENNETH A. PRICE & IMELDA G. PRICE, SP 2013-MA-020 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 4500 Braddock Rd., Alexandria, 22312, on approx. 31,745 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((6)) 132. (*Admin. moved from 5/8/13 at appl. req.*)

Chairman Ribble noted that SP 2013-MA-020 had been administratively moved to August 7, 2013, at 9:00 a.m., for notices.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. HEATHER AND BURKE COX, SP 2013-SU-026 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. and deck 11.8 ft. from the rear lot line. Located at 5207 Ellicott Ct., Centreville, 20120, on approx. 9,607 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 54-2 ((4)) 300.

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.

Burke Cox, 5207 Ellicott Court, Centreville, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SU-026, subject to the proposed development conditions.

Mr. Cox 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 2013-SU-026 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HEATHER AND BURKE COX, SP 2013-SU-026 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. and deck 11.8 ft. from the rear lot line. Located at 5207 Ellicott Ct., Centreville, 20120, on approx. 9,607 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 54-2 ((4)) 300. 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 12, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a staff report recommending approval.
3. The Board adopts the rationale in the staff report.
4. This is an oddly shaped lot on a cul-de-sac and is very shallow front to back.

5. It is less than 100 feet from the center of the lot to the back line.
6. The house is turned at an angle to the rear line so that the deck at the rear projects into the minimum yard.
7. The space that this would be backing to is a wooded stream valley and floodplain easement.
8. No one will be able to see it.
9. It would be impossible for anyone to have any significant negative impact from a screened porch on top of the deck that has been there for a long time sticking out towards a space that no one can see.
10. There are not going to be any problems with doing this.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 screen porch addition (approximately 260 square feet) and deck as shown on the plat prepared by Paul A. Garcia, Land Surveyor, dated January 18, 2013, 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 (1,960 square feet existing + 2,940 square feet (150%) = 4,900 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 generally 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 7-0.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. BARBARA M. SCOTT, SP 2013-SU-029 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 16.4 ft. from the front lot line. Located at 13731 Cabells Mill Dr., Centreville, 20120, on approx. 9,600 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 54-2 ((4)) 45.

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.

Barbara Scott, 13731 Cabells Mill Drive, Centreville, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SU-029 for the addition, subject to the proposed development conditions.

Ms. Scott 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 2013-SU-029 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA M. SCOTT, SP 2013-SU-029 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 16.4 ft. from the front lot line. Located at 13731 Cabells Mill Dr., Centreville, 20120, on approx. 9,600 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 54-2 ((4)) 45. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2013; and

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

1. The applicant is the owner of the land.
2. Staff has recommended approval of the application.
3. This is a very modest improvement to the house, nothing dramatic, something that will make the house less naked in the front.
4. It is understandable for the applicant to want a covered porch to have the doorway protected from the elements, and, as the applicant stated, to be able to have a protected way to have her handicapped son come in and out of the house.
5. It will not have an adverse impact on the neighborhood.
6. It looks like it will blend in nicely with the rest of the houses.
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 the Zoning Ordinance.

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

1. This special permit is approved for the location and size of the covered porch addition (approximately 136.5 feet), as shown on the plat prepared by Thomas G. Lutke, L.S., of NoVA Surveys, dated March 5, 2013, as submitted with this application and is not transferable to other land.

2. Prior to commencement of and during the entire construction process, the applicant shall install tree protection fencing around the existing red oak tree located south of the driveway to protect this tree from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
3. The addition shall be generally 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. Hammack was not present for the vote.

//

~ ~ ~ June 12, 2013, 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. AMBROSE CATHOLIC CHURCH AND SCHOOL), SPA 76-M-086-05 Appl. under Sect(s). 8-308 of the Zoning Ordinance to amend SP 76-M-086 previously approved for a place of worship and private school of general education to permit the addition of a nursery school and site modifications. Located at 3825 Woodburn Rd., Annandale, 22003, on approx. 13.68 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1)) 11A. (*Admin. moved from 5/8/13 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.

Lynne Strobel, the applicant's agent, no address given, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 76-M-086-05, subject to the proposed development conditions.

Discussion ensued regarding falling trees, the plan for vegetation, the number of permitted students, Urban Forest Management (UFMD), and inspections and site visits done on the subject property.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She noted the history of the property and the purpose of the application. Ms. Strobel also discussed carpooling, the number of students requested, storm water impacts, concern over the trees, and modification to hours of operation within the proposed development conditions.

There was discussion concerning the number of church attendees and the applicant's risk, and ground maintenance procedures.

The Chairman directed the clerk to administer the oath to Andrew Fisher, 3901 Woodburn Road, Annandale, Virginia, who swore or affirmed that his testimony would be the truth.

Mr. Fisher attested to the consistency of the number of church parishioners.

There was additional discussion regarding carpooling, concerns with the existing easement and trees, and the applicant's present enrollment efforts prior to a Board decision.

Chairman Ribble called for speakers.

Jack Cassidy, President of Winterset Park Homeowner Association, 3813 Shelley Lane, Annandale, Virginia, came forward to speak in support. He discussed traffic and tree related safety concerns, carpooling, poor tree removal procedures, and community desire to work with the applicant.

Ms. Strobel came forward in rebuttal. She commented on the requested enrollment increase.

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

Mr. Smith moved to defer decision on SPA 76-M-086-05 to June 19, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Hammack was not present for the vote.

There was discussion concerning the applicant's desired timeliness of a Board decision and additional information requested by the Board.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. WILLIAM E. CHEN, A 2013-SU-007 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that building permits are required for an addition and garage conversion and that an accessory storage structure (shed) does not meet size or location requirements, all on property in the R-8, H-C and WS Districts in violation of Zoning Ordinance provisions. Located at 4012 Novar Dr., Chantilly, 20151 on approx. 12,897 sq. ft. of land zoned R-8, H-C, and WS. Sully District. Tax Map 45-1 ((2)) 555.

Chairman Ribble noted that A 2013-SU-007 had been administratively moved to August 7, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. DAVID AND PAIGE AUDET, A 2013-LE-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are parking a commercial vehicle (trailer) that exceeds allowable size restrictions on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 6730 S. Kings Hwy., Alexandria, 22306 on approx. 14,698 sq. ft. of land zoned R-3. Lee District. Tax Map 92-2 ((3)) (2) 15.

Chairman Ribble noted that A 2013-LE-006 had been administratively withdrawn.

//

~ ~ ~ June 12, 2013, Scheduled case of:

9:00 A.M. BRIAN BENNETT AND BETSY CRUMP, A 2013-SP-008 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that Site Plan No. 9513-SP-01 has expired. Located at 7600 Clifton Rd., Fairfax Station, 22039 on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15.


Chairman Ribble noted that A 2013-SP-008 had been administratively withdrawn.


//

As there was no other business to come before the Board, the meeting was adjourned at 11:10 a.m.

Minutes by: Kathleen A. Knoth and Emily J. Armstrong

Approved on: November 6, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 19, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Paul W. Hammack, Jr. Absent from the meeting was Norman P. Byers.

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

~ ~ ~ June 19, 2013, 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. AMBROSE CATHOLIC CHURCH AND SCHOOL), SPA 76-M-086-05 Appl. under Sect(s). 8-308 of the Zoning Ordinance to amend SP 76-M-086 previously approved for a place of worship and private school of general education to permit the addition of a nursery school and site modifications. Located at 3825 Woodburn Rd., Annandale, 22003, on approx. 13.68 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1))11A. (Admin. moved from 5/8/13 at appl. req.) (Decision deferred from 6/12/13.)

Chairman Ribble stated that there was one special permit and two appeals to be presented at the meeting.

Mr. Ribble stated SPA 76-M-086-05 was for decision only.

Mr. Smith moved to approve SPA 76-M-086-05 for the reasons stated in the Resolution.

//

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. AMBROSE CATHOLIC CHURCH AND SCHOOL), SPA 76-M-086-05 Appl. under Sect(s). 8-308 of the Zoning Ordinance to amend SP 76-M-086 previously approved for a place of worship and private school of general education to permit the addition of a nursery school and site modifications. Located at 3825 Woodburn Rd., Annandale, 22003, on approx. 13.68 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1)) 11A. (Admin. moved from 5/8/13 at appl. req.)(Decision deferred from 6/12/13.). 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 19, 2013;

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 and R-2.
3. The total area of the lot is 13.68 acres.
4. There has been a great deal of discussion and analysis on this application and rightly so.
5. A number of the Board of Zoning Appeals members, subsequent to last hearing, went out and visited the property. It does require extensive walking on the property. Mr. Smith was out there on Saturday and had an opportunity to speak to the pastor and the school principal and walked through towards the end of the Stations of the Cross and all through the perimeter of the property.
6. There are a significant number of trees that are down, and it is hard to tell why. Some of that is just the natural progression of things. When you see a heavily wooded area like this which provides substantial screening, it does provide a very nice benefit to the surrounding property owners.
7. A key concern of all is the safety issue, and that was the large reason the Board deferred this for a week, to make sure to have the I's dotted and the T's crossed on that issue.

8. Mr. Smith saw a lot of trees that were down and two standing trees that caused concern that were dead.
9. The Board got the December 3, 2012, letter from the Urban Forest Management Division that referenced the number of trees that will be removed. There has been a fair amount of homework that has been done, and the Board is able to cover this issue in a development condition because the Church wants to make sure that those trees are removed and done in compliance with all County requirements and make sure they have the proper approvals to do that.
10. The Board has a development condition that will address that issue because everybody's concerns are aligned on making sure that public health, safety, and welfare are protected and removing any trees that pose any type of a danger.
11. There are a number of fallen trees that just seems to be the natural progression of things and provides some level of wildlife habitat. The issue is things that are going to pose a safety hazard, and that is why the development condition is so important.
12. In the scheme of things, this application itself has very little impact on the surrounding community. There is no change in floor area ratio, no change in the parking lot, no increase in impervious area, and no change in number of employees, so it is a relatively modest impact.
13. The Department of Transportation did not have any concerns.
14. There is a small increase in the number of students up to 10, for a maximum of 260.
15. There is a reference in the staff report that 300 children were approved back when this thing was originally approved.
16. Be that as it may, it is a relatively minor impact from this new development, so the focus has been on making sure that there is compliance with the existing development conditions.
17. With the changes that have been proposed by the applicant in the conditions dated June 15, 2013, the issues have been addressed that were raised last week regarding the carpool program and the additional measures that would be taken by the church to ensure and encourage carpooling of students. That was well covered in the proposed development conditions from the applicant.
18. The concern regarding the transitional screening and vegetation was addressed in proposed Development Condition 20 that was modified by the applicant. There is significantly more screening here in many areas than you would normally require, which is a benefit to the community.
19. The proposed Development Condition 23, which is largely addressing the concerns about the health and safety issues, making sure that any trees that are dead are removed, covers it.
20. The applicant proposed a condition and the County staff revised the condition, and both were distributed at the meeting. The condition as modified by the County is appropriate.

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

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

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

1. This approval is granted to the applicant only, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his successors in office (St. Ambrose Catholic Church and School) and is not transferable without further action of this Board, and is for the location indicated on the application, 3825 Woodburn Road (13.68 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 titled "Special Permit Amendment Plat, Saint Ambrose Parish," prepared by John C. Manganello, P.E., Land Development Consultants, Inc. dated January 9, 2013 and as revised through May 31, 2013 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any

plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the church shall be six hundred (600).
6. All parking shall be on site as depicted on the special permit amendment plat. A parking reduction shall be obtained through DPWES as required for Sect. 11-106.3 of the Zoning Ordinance prior to issuance of a Non-RUP for the nursery school to permit the shared use of the church, parking lot for both the church use and school uses. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the school of general education or nursery school shall be reduced to meet the parking requirements as determined by DPWES.
7. The applicant shall manage a formal carpool program with a goal of 40% of the students in the school and nursery school participating in the program. The applicant shall take the following measures to encourage the carpooling of students:
 - (i) The school shall maintain zip code records and provide a matching service for parents;
 - (ii) A table shall be provided at the welcome back social event to provide information regarding carpooling and to introduce parents with the goal of establishing carpools;
 - (iii) A priority lane shall be established for carpool vehicles; and
 - (iv) Information shall be included on the school's website regarding the benefits of carpooling.
8. The private school of general education and nursery school shall be limited to a total maximum daily enrollment of 260 students between the two uses.
9. The maximum total number of employees between the private school of general education and nursery school shall be limited to 32.
10. The hours of operation for the private school of general education shall be limited to a maximum time period of between 8:15 a.m. and 3:30 p.m. with reasonable accommodation for drop-off and pick-up of students before and after school. Evening hours until 11:00 p.m. shall be permitted for related school activities.
11. The hours of operation for the nursery school shall be limited to a maximum of two sessions of three hours each starting no earlier than 8:15 a.m. and ending by 3:30 p.m.
12. Prior to construction of the playground area and issuance of a Non-RUP for the nursery school, the services of a Certified Arborist or Registered Consulting Arborist shall be retained, and the limits of disturbance marked shall be marked with stakes and a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's Certified Arborist or Registered Consulting Arborist shall walk the limits of disturbance with a Urban Forestry Management Division (UFMD) representative to determine where adjustments 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 disturbance, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed by hand as part of the clearing operation. All trees that are designated to be removed that are within the limits of disturbance shall be removed by hand through the use of a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. Any stump removal shall be done through the use of a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
13. The limits of disturbance shall be limited to the area as shown on the special permit amendment plat, subject to allowances specified in these conditions.
14. All trees outside the limits of disturbance are to be preserved and 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 shall be erected at the limits of disturbance as shown on the SPA.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any tree removals. The installation of all tree protection fencing shall be performed by hand under the supervision of a Certified Arborist or Registered Consulting Arborist and accomplished in a manner that does not harm existing vegetation that is to be preserved.

15. All site work including but not limited to tree and shrub removal, tree pruning, play equipment installation, both tree preservation and playground fencing installation, and wood fiber installation shall be performed by hand, under the supervision of a Certified Arborist or Registered Consulting Arborist, in order to ensure that activities are conducted in a manner that does not negatively impact trees or their critical root zones within and surrounding the playground as approved by the UFMD. No wheeled or tracked equipment shall be used for any work onsite, unless specifically approved in writing by the UFMD.
16. Elevational pruning or pruning to raise, according to the most recent version of the ANSI A300 Pruning Standards, shall be done by an ISA Certified Arborist or Registered Consulting Arborist to provide the minimum clearance necessary for the play equipment.
17. Prior to issuance of the new non-residential use permit (Non-RUP), a field inspection shall be requested and be conducted by UFMD to verify all tree preservation activities have been completed and no additional tree preservation work is necessary.
18. All foundation plantings shall be maintained along the northern and eastern sides of the proposed structure. The species, size and location of the vegetation shall be as determined by the UFMD.
19. Interior parking lot landscaping shall be maintained in accordance with Article 13 of the Zoning Ordinance.
20. The existing vegetation may be utilized to fulfill the requirements for transitional screening on the northern, western and eastern lot lines, including the boundaries of adjacent Lot 18, as determined by the UFMD. Prior to the issuance of a new non-residential use permit (Non-RUP), the applicant shall coordinate an inspection of transitional screening by the UFMD. Replacement plantings as recommended by the UFMD for any vegetation which is dead, dying or less than six (6) feet in height shall be installed in a timely manner, but dependent upon the season in an effort to maximize survival.
21. The barrier requirement shall be waived along the northern, eastern and western lot lines.
22. Stormwater Management Best Management Practices (BMPs) shall be maintained as determined by DPWES.
23. The applicant shall monitor the health of the trees within the existing conservation easement. If it is determined by a Certified Arborist that trees within the conservation easement pose an unacceptable level of risk to the adjacent residential properties, the applicant shall clearly identify these trees in the field and shall contact the Urban Forest Management Division to seek approval for their removal. Subject to concurrence by the UFMD, trees identified as hazardous shall be removed and replacement plantings installed, if required by the UFMD. Said plantings shall be installed in a timely manner, but dependent upon the season in an effort to maximize survival. The applicant shall provide the name and telephone number of a contact person, at both the Parish and the Diocese of Arlington, to the president of the Winterset Varsity Park Civic Association for the purpose of reporting a potentially hazardous tree by an adjacent neighbor. Those trees identified in a letter dated December 3, 2012 to Mr. Paul Moeller from Nick Drunasky of the Urban Forest Management Division shall be removed no later than the issuance of a new non-residential use permit.(See Attachment 1)

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

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Beard seconded the motion, which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote. Mr. Byers was absent from the meeting.

//

~ ~ ~ June 19, 2013, Scheduled case of:

9:00 A.M. GEORGE D'ANGELO, A 2012-DR-033 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 District in violation of Zoning Ordinance provisions. Located at 7422 Howard Ct., Falls Church, VA 22043 on approx. 10,710 sq. ft. of land zoned R-4 and H-C. Dranesville District. Tax Map 40-1 ((6)) (D) 7. (*Admin. moved from 3/6/13 at appl. req.*)

Chairman Ribble called the appellant to the podium.

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

George d' Angelo, 7422 Howard Ct., Falls Church, Virginia, came forward.

Jill Cooper, staff coordinator, Zoning Administration Division, stated that the appellant was requesting a continuance of the public hearing.

Mr. D' Angelo came forward. He explained that he was working with the County to resolve the issues that brought about the case. He explained that if a short continuance of no longer than thirty days was set, he would work with the County to resolve the issues before the next year.

Mr. Ribble asked staff for a date. Ms. Cooper stated that staff supported the appellant's request for a continuance within thirty days.

Mavis Stanfield, Deputy Zoning Administrator explained that the violation had been cleared, and Mr. D'Angelo was planning to sell the property. Staff expected the matter to be resolved. Ms. Stanfield recommended a date of July 17, 2013.

Mr. Beard asked why the decision was being deferred if the violation had been cleared. Ms. Stanfield said that it was the appellant that wanted to continue the case and he would explain. Mr. D'Angelo explained that the case had not been officially dropped, and he was told that it would take a few days for the County to process it. He further explained that he wanted to preserve his rights in the event that there were any issues in closing the case.

Chairman Ribble called for speakers.

Mr. Hammack moved to continue A 2012-DR-033 to July 17, 2013. Ms. Gibb seconded the motion that which carried by a vote 6-0.

//

~ ~ ~ June 19, 2013, Scheduled case of:

9:00 A.M. BEYER I LLC, A 2012-PR-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, which is a use not

permitted, on property in the C-8 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7113 Shreve Rd., Falls Church, 22043, on approx. 33,787 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 40-3 ((12)) 11. (Admin. moved 9/11/13 from 1/16/13 and 4/3/13 at appl. req.)

Chairman Ribble noted that A 2012-PR-029 had been administratively moved to September 11, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ June 19, 2013, Scheduled case of:

9:00 A.M. NAIEM A. SHERBINY, A 2012-DR-030 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 District in violation of Zoning Ordinance provisions. Located at 7402 Paxton Rd., Falls Church, 22043 on approx. 10,399 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (K) 17. (Admin. moved from 2/13/13) (Admin. moved from 3/6/13 due to inclement weather.)

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.

Mr. Naiem A. Sherbiny, 7402 Paxton Rd., Falls Church, 22043 came forward.

Jill Cooper, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. Ms. Cooper presented some pictures for viewing that showed the exterior of the house and the dwelling unit that was located in the basement of the house. Ms. Cooper explained that there were two dwelling units, one in the basement and the other was in the first and second levels of the house. From the pictures, she explained that the kitchen which was located in the basement dwelling unit. She said that the appellant had removed the stove and the additional cabinetry, but the space continued to function as a kitchen. She stated that the appellant believed that since the stove was removed from the basement, the area had satisfied the original approval for a wet bar. The appellant also believed that the removal of cabinetry, counter tops, and appliances as set forth in the Notice of Violation should not be required. The building plan supplied by the appellant showed the wet bar to be a single rectangular counter top with a sink. The basement dwelling unit shown in the pictures showed a full kitchen with a horseshoe configuration of counter tops, full cabinetry, and full size appliances including two refrigerators. The kitchen clearly exceeded the wet bar approved by the building permit.

Ms. Cooper stated that in the past, it had been consistently required that all components of an illegal second kitchen be removed and was upheld by the Board of Zoning Appeals (BZA) and by the Fairfax County Circuit Court. Therefore, staff recommended that BZA uphold this determination of the Zoning Administrator as set forth in the Notice of Violation dated October 2, 2012. Ms. Cooper also noted that two representatives from Code Compliance, Mike Adams and Mike Caudle were on hand to answer any questions.

Mr. Beard asked for clarification on what was a "legal vs. illegal wet bar". Ms. Cooper said that the wet bar shown in the plan included in the staff report showed a single counter top and sink which was permitted under the building permit. She said that the structure constructed included a horseshoe shaped kitchen with full size appliances and cabinetry, which was a full kitchen as opposed to the approved wet bar.

Mr. Hammack asked if there was anything in the code which required that cabinetry and countertops were shown on the building permit or could not be added late without a building permit. He also asked if there was anything in the code that prohibited the construction of additional cabinets and countertops if not shown on a building permit. Ms. Cooper responded that those changes would have be shown on the building plan and would not have passed the wet bar test at building permit. Mr. Hammack stated that the issue had come to the Board before, and the County wanted everything to be demolished even though the issue seemed to revolve around a stove or a 220 line. Ms. Mavis Stanfield, Deputy Zoning Administrator replied that there was no code requirement for that.

Mr. Hammack also asked if there were any code provisions that gave the County authority to require demolition of all of the items other than what was absolutely necessary to bring the property into compliance.

Ms. Stanfield responded that the basis of the appeal was that what was presented by the appellant was a second dwelling unit. She further stated that the County had consistently addressed compliance with these second dwelling units by requiring that all components which make up a kitchen be removed. Mr. Hammack asked whether there was anything in the County's Ordinance that defined a "kitchen." Ms. Cooper stated that there was no additional definition of a "kitchen." Ms. Cooper and Mr. Hammack further discussed whether small appliances which could be unplugged were also considered cooking facilities. Ms. Cooper stated that the overall functioning of the space was usually considered, and if it served the purpose of a full kitchen, then that would be the basis for deeming it so. Ms. Stanfield also added that when the property was inspected, it was impossible to go from the basement to the upper level without calling the people who lived on the upper level to open the doors, so, the units were functioning separately.

Mr. Hart asked Ms. Cooper questions about the unclear handwriting under the comments section of Attachment 4. He also asked Staff for additional attachments such as drawings or plans which would show what was approved, to determine if the appellant built something that was different from the drawing. Staff stated that the drawing that went with the building permit was for the building itself, and did not include the interior layout. The building plan provided by the appellant showed the wet bar. Mr. Hart stated that though a wet bar was not defined in the Ordinance, it would likely include a sink, refrigerator, cabinets and countertops. He stated that the Board had upheld determinations in the past where a microwave was a cooking facility which changed something from being a wet bar to a kitchen. He also expressed concern that once a determination was made that the homeowner has done too much, by installing a stove or microwave or both, there was a requirement that he take out everything to become compliant despite having received approval for the wet bar. He said he was concerned that the appellant was being punished by the Zoning Administration decision to take away something that they had already received approval for. Ms. Stanfield said that the matter had been resolved based on conversations with Mr. Adams. She provided clarification by showing a picture of the house, a wet bar, and a roof deck, and stated the notes were not related to the wet bar.

Mr. Hart further asked if the removal of the microwave would still make it a wet bar. Ms. Stanfield showed pictures of the wet bar for which the appellant had received approval. She said the existing structure did not look like the approved wet bar but a very extensive wet bar and full kitchen. Mr. Hart asked if removing the stove and microwave would make it a wet bar. Mr. Adams, Supervisor of Code Compliance said that the reason for requesting the removal of everything was that the appellant had changed the use from a wet bar into a kitchen. He said in previous cases where only the stove or microwave was removed, they would put them back after they left. Therefore, the Zoning Administrator determined that since the appellant had changed the use from a wet bar to a kitchen, it should all be removed to be in compliance.

Mr. Hammack repeated his question about where in the Ordinance would Code Compliance get the authority to make such a punitive determination that went beyond bringing the offence into compliance. He said that as a Dillon state "if you don't have the authority in the code to do it, you can't do it", which was emphasized by the Courts. Ms. Stanfield said that case had been consistently interpreted based on the definition of a dwelling unit and these were the actions that the Zoning Administrator had consistently taken for many years, which had also been upheld at Circuit Court. Mr. Hammack expressed concerns about things that are permitted but the County later stated that applicants have to go beyond to bring them into compliance. He stated that in the past, persons have applied for accessory dwelling units to bring second dwelling units into compliance. Ms. Stanfield responded that this situation was different, because the appellant did not live at the house and could not apply for a special permit.

Mr. Hart asked staff if the inspections were completed and closed out on the permit. Ms. Stanfield said she did not think a final inspection had been done. Mr. Hart further asked staff what had been inspected and signed off on and whether the inspector had looked at the wet bar, because he could not tell from the paperwork. Ms. Stanfield said it must have received final inspection. Mr. Hart asked whether the inspector looked at the wet bar before the approval. Mr. Adams said that they had opened an unpermitted case to see if permits were given, and found that the appellant had received approvals for the permits since the inspectors went out and verified from previous building permits. He said that inspectors usually looked for what was on the plan and they granted approvals for what was there. Mr. Hart and Ms. Stanfield further discussed what the inspector might have seen at the time of the inspections. Ms. Stanfield said that what the inspectors saw may have been compliant with the plans at the time, but she did not really know. Mr. Adams said that inspectors usually looked to see if structures are done according to the building code for approval.

Mr. Caudle said Mr. Adams was referring to the building inspector that was originally out there. He referred to the plan which showed an island-type cabinet with a sink which was assumed to be built according to the

approved plan. Mr. Beard asked who had done the inspection and whether he had seen a kitchen (including stove, cabinets, refrigerators, sink against the wall) or a wet bar. Mr. Caudle stated that he had done the inspection, and he had seen a kitchen. Mr. Beard further asked what had since been removed. Mr. Caudle said he was not sure, and that Mr. Sherbiny would be better able to provide the answer.

Mr. Sherbiny, the appellant, came forward. He said that just before the financial crisis hit, the house was built for an investment with the idea of having a large family to live in it. He placed the house for sale for over a year and was unable to sell it, so he decided to lease it until the market improved. As a result, he rented the building to a small family, and decided to allow a couple of people to use the wet bar area in the basement. He said that when the couple rented it, they asked if they could put in a stove and he mistakenly agreed. He also said that, he does not believe that mistake justified removing everything. He stated that his idea was to have a large wet bar, and the only thing he did not follow exactly according to plan was the location of the sink. Instead of in the island, he placed the sink against the wall. He said that Mr. Caudle came in and said he was to take out everything, to which he said no. He stated that he had spent thousands of dollars on the wet bar, had been paying taxes, and he did not violate the law. He said if there was an objection to the existence of tenants he would have removed them along with the stove.

He said it did not take more than three weeks for him to ask the violating tenants to move and take out the stove. The originals were left as before and he was requesting that the situation be viewed within the larger context of a property that was going to be sold. He stated that it was not a permanent arrangement, and it was something that had helped him pay his mortgage during the last couple of years. He had brought in a real estate agent to look at the entire house, and she said it was not advisable that he sell this year. He further stated that what he had downstairs was a wet bar, though the tenants may have added a couple of things of their own, which will be removed by the end of August. In response to a question from Mr. Beard about what was removed from the downstairs kitchen, Mr. Sherbiny stated that the stove was removed, and currently he had everything remaining. He noted there was never a dishwasher.

Ms. Gibb asked questions about a picture dated January 31, 2013, 16:08 and an item in the room. Mr. Sherbiny said the item in question was a cooler which was used to cool drinks. Ms. Gibbs asked Mr. Caudle whether he had seen the cooler at the time of the inspection. Mr. Caudle stated that he had observed two refrigerators, and he had not seen the cooler. Mr. Hart asked Mr. Sherbiny about when the microwave was added to the space. Mr. Sherbiny said that the microwave was present at the time of the inspection and when he received the permit. He said whatever came after the approval had to go and only the stove came after the approval, which he had removed.

Mr. Hammack said that the issue of the microwave was difficult, because it is considered an appliance. He raised the issue of whether or not small appliances like microwaves or toaster ovens which were not hardwired were considered cooking facilities, since people used them in different rooms other than the kitchen. He expressed concern that these appliances bought for convenience may cause potential violations. Mr. Adams responded that there was nothing in the Zoning Ordinance that distinguished between the size and character of what a cooking appliance is. He stated that staff was directed through interpretation of the Zoning Administrator, and that was the reason for their citation. Mr. Hammack asked for a copy of the interpretation, and Mr. Adams responded that it was included in "How to Comply" which was attached to the Notice of Violation. Mr. Hammack asked Mr. Sherbiny if the microwave was hard wired in or plugged in. Mr. Sherbiny said it was plugged in.

Mr. Beard asked Mr. Sherbiny about the number of tenants he had and whether he lived at the property. Mr. Sherbiny stated that he currently had two tenants that he collected rent from and that he did not live at the property. Mr. Caudle said that when he originally visited the property, there were four people living in the basement, two of which were asked to leave by Mr. Sherbiny after his first visit. Mr. Beard asked Mr. Caudle to clarify whether the appellant had two sets of people on the property using kitchen facilities upstairs and downstairs. Ms. Stanfield confirmed that there was a family upstairs who lived independently of the two persons downstairs and the appellant had testified the same. Mr. Caudle said that on his initial visit to the property, there were four people living in the basement. After his first visit Mr. Sherbiny asked a couple to leave which left two remaining.

Mr. Hammack said he wanted to see the actual interpretation. Ms. Cooper said she did not think such an interpretation existed. She said that it had been interpreted through the notices of violation for years. Mr. Hammack then asked if whatever Code Compliance decided became the law. Ms. Stanfield said this was the consistent approach used to address zoning violations, which had been applied and upheld in the Circuit Court. Mr. Hammack noted that this was true, but those people were unrepresented in Circuit Court almost

exclusively and that changed the playing field a lot. Mr. Hammack then asked if there was anything in the Ordinance, State Code or written interpretation to enforce this. Ms. Stanfield said that there were many Notices of Violation that contained that language, and as such it was in writing many times. She also gave the definition of a dwelling unit, which was what staff had determined it to be.

Mr. Ribble asked the appellant whether the item seen in one of the pictures was a dishwasher. Mr. Sherbiny said it was a cooler, which was used to cool wines. Mr. Smith asked why the wet bar was not constructed according to what was approved in the plan. Mr. Sherbiny said he wanted to have some cabinets below that and he was advised it was easier to do it in an L-shape. That was the only difference from the original design which was approved. He said that when the inspector came, he did not object to the variation. Mr. Smith asked whether there was a stove and or microwave at the time of the inspection. Mr. Sherbiny said there was no stove at the time of the inspection, but there was a microwave. He also said the intent was never to create two separate entities, but to sell the premises to a large family, which remained his intention. Mr. Smith asked about the presence of a locked door and written lease to tenants. Mr. Sherbiny said there was no locked door separating the upstairs from the downstairs. There was also no lease for downstairs, but just a gentleman's agreement. He also said he was paid every month, but the tenants would be leaving at the end of the month.

Answering Mr. Beard's question, Mr. Adams said he did not know whether the microwave was hard wired in, and that he would defer to what Mr. Sherbiny stated. Mr. Beard suggested that the inspectors needed to be more thorough in their inspections, especially when complaints were going to be brought against an applicant. Ms. Stanfield said that when she visited, she had seen a lock on the door. Mr. Hart asked staff whether the presence of two sets of tenants in the house without cooking facilities or permanent kitchen facilities would be a violation of occupancy. Ms. Cooper replied that it would not be a violation of occupancy. Mr. Hart asked staff if the principle thing in disagreement was the removal of sinks, cabinets and counters. Ms. Cooper said yes, as there was no contention that there was a multiple dwelling at the house. Ms. Cooper said that the locked door between the units was possibly an issue. Ms. Stanfield also stated that there was a prohibition on the locked door between the upstairs and downstairs as it was a fire code violation.

Mr. Adams confirmed that locked doors were covered under Virginia Maintenance Code, and the upstairs of the house was locked off from the downstairs tenants. Mr. Caudle said that tenants in the basement used a separate entrance and exit to come and go.

Mr. Hart asked Mr. Sherbiny if he was disputing anything else in the case other than removing counters, cabinets, and sinks. Mr. Sherbiny said no, and stated that his main intent was to place the house on the market for sale with a good equipped wet bar. He said that the requirement by Mr. Caudle that everything be taken out is punitive, and that is why he was appealing the decision.

Mr. Hart asked for the stamped copy of the plan that accompanied the building permit application. Mr. Sherbiny said he did not have it with him, but he had made copies and circulated them. Mr. Hart reviewed the permit, and asked Mr. Sherbiny what had happened to the closet. Mr. Sherbiny stated that there was a closet across from the wet bar at the other end of the room.

Mr. Beard asked staff if it was permissible for four unrelated persons to live in a house in the County. Mr. Adams said that it was permissible, but the central issue that staff was contending with was that there were two separate dwelling units.

As there were no speakers, Chairman Ribble asked staff for a summation. Ms. Cooper stated that it was clear that the appellant was maintaining two dwelling units, both of which contained provisions for eating, sleeping, cooking, and living, and functioning completely separate. She also stated that the house did not function as a single dwelling unit, as the folks in the basement enter and exit separately, and there was a locked door in between the basement dwelling and the upper-level dwelling. Ms. Cooper stated that the remedy set forth in the notices of violation was consistent with what was always set forth in the notices of violation for multiple dwellings, and had been consistently upheld.

Mr. Sherbiny stated that since the last round of inspections, he had spoken to the tenants downstairs and had asked them to leave. He said that in preparation for placing the house on the market, he had also asked both sets of tenants to leave by the end of August, and then the house would be empty. Subsequent to that, he was advised by his real estate agent that the market was not suitable for selling the house, so he planned on leasing it to one family. He also said that under the circumstances, the one thing that would make sense was for the Board to defer until he had the situation completely clear to the Board's satisfaction.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to overrule the determination of the Zoning Administrator. The motion died for lack of a second.

Mr. Hart moved to uphold-in-part. Mr. Hart proposed that the second and third bullets of the October 2, 2012, letter went too far, and the directions for demolition permit was inconsistent with building permit approval and final inspections permit that had the wet bar in it. The motion was seconded by Mr. Smith.

Ms. Gibb asked for clarification on the motion regarding what was being upheld and over-turned. Mr. Hart stated that he proposed that the appellant keep everything for which he had received approval, but not for the stove and the microwave.

Mr. Smith said that the permit and plan approved had a different configuration from what was built. He asked staff whether the appellant could apply for a special permit for the wet bar in its existing configuration, and whether he could do that if the Board upheld the Zoning Administrators' decision. Ms. Stanfield said that typically applications for special permits are usually not approved, since they are considered a resumption of the violation. Ms. Gibb asked whether structures were usually built according to the plans submitted or whether variations were allowed. Mr. Adams said structures were usually built according to plan, though certain minor modifications could be allowed. Major changes to the plan required revision. Ms. Gibb asked whether the changes to this wet bar could be considered minor. Mr. Adams said he was unable to determine that, as this is usually done by the Building Department from residential inspections. Mr. Caudle said if the cabinetry constructed was reviewed against the picture in the plan, it would clearly show the extent of the variation. Mr. Adams also added that the inspectors were usually concerned with whether the electrical, plumbing, drains, and vents were properly installed according to Code. Mr. Adams said that he believed that at the time of the inspection, everything was built according to the building code with the placement of the electrical and plumbing, and that is why it was approved.

Mr. Beard said that he disagreed with Mr. Hammack. He thought the case was tough, and that he understood why the Zoning Administrator insisted on everything be removed. He stated that it would be too easy to reinsert the stove once the authorities leave. There was no question that the structure was a kitchen, and the appellant gave justification due to economic circumstances. He said that the appellant had created two separate dwelling units with a built in microwave and dishwasher. He also said that he deferred to Mr. Hammack with respect to what State Code allowed the County to do, but he was unable to speak to what an absolute definition of a kitchen is. He stated that the Board should uphold the determination of the Zoning Administrator across the board, as what was shown on the initial plan was a wet bar.

The second motion failed by a vote of 2-4. Mr. Beard, Mr. Ribble, Mr. Smith and Ms. Gibb opposed the motion. Mr. Byers was not present for the meeting.

Mr. Beard moved a third motion to uphold the Zoning Administrator's determination. The motion was seconded by Mr. Smith.

Mr. Smith said he found Mr. Beard's comments very relevant, and recognized the predicament that the County was in. He said that the definition of a dwelling unit references living, sleeping, cooking, eating, and sanitation. He noted that the problem in trying to enforce it was that it would be too easy to just remove one thing to be compliant. He said that it was necessary to have a reasonable rule and enforce it on a consistent basis. He also said that he understood the concerns with the rule, but that it had been consistently enforced in this way. It had been brought before the Board many times and litigated in the Circuit courts many times with and without counsel. He said that Mr. Hart's motion was a good one, but it would be difficult to figure out how to uphold it. He said he hoped Mr. Sherbiny could still apply for a wet bar and make the necessary modifications or assurances to get it approved as a wet bar subsequent to the Board's action. Mr. Smith said the structure was a kitchen, and he would vote in favor of the motion.

Mr. Hammack stated that once a building permit is issued, there are some rights that are vested and needed to be reconciled with the authority of the Department to come in and make a draconian solution to a problem. He said he recognized the problem of second dwelling units, and thought the Zoning Administrator should be enforcing them, but each of the cases were different. He stated that some cases did not have permits, but this particular case had a permit, and that made a difference. He also stated that there was no Code or Ordinance authority or even a written interpretation other than the Notice of Violation itself, which was what

the Zoning Administrator or Code Compliance decided was a violation. He said there was no definition of a kitchen, and that should be corrected if the County wanted to enforce it. He also said that in a previous case that was deferred, it was approved and taxed for 15 years, though in this case it was for a lesser period. The role of the Board was to uphold the determination of the Zoning Administrator without being able to modify what the punishment would have been. He said the motion moved by Mr. Hart was a good one for it tried to recognize and compromise a violation but to mitigate against punitive actions in favor of what the appellant had been given in a building permit. He said he didn't support the motion, and wanted to register his dissent, although the issue did need to be resolved.

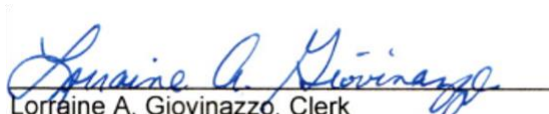
Mr. Hart stated that he recognized that there was a stack of orders in the staff reports that were a mix of default judgments, and there was no appellate authority to guide the Board for what the Zoning Administrator's powers were in these types of situations. His procedural concern was that he did not believe that the Zoning Administrator enforcing the Ordinance about a second dwelling unit can punish the homeowner by ordering them to take out something that was already approved. In response to the point made by Mr. Smith about the scope of the modifications, he said that no explanation had been received from the building permit section side. He said that he was struck by the modifications to the location of the sink, closet, and cabinets in the kitchen. He said that he thought the discrepancies were the microwave and a stove, and the rest of it did not seem particularly structural or change much of anything. He said that Mr. Adams did explain that it could be something that the inspector saw in the field but did not find troubling. He said he was afraid that by blessing it, somebody who got approval for a wet bar could lose the wet bar without statutory authority from the Zoning Administrator to determine the punishment for having renters in the basement with a kitchen. There was no guidance in the Ordinance about the amount of cabinets or electrical circuits you could have in your basement, and it had not been shown to the Board that the Zoning Administrator had that authority. If the Board upheld the decision totally, the Board would have gone further than what authority she has. So while he agreed that there was a second dwelling unit and that was the main point, he did not think the draconian measures set forth in the letter were appropriate.

The Zoning Administrator's determination was upheld by a vote of 3-3. Mr. Hart, Mr. Hammack and Ms. Gibb opposed the motion.

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

Minutes by: Tameca N. Brown

Approved on: September 19, 2019


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 10, 2013. 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. Absent from the meeting was Nancy E. Gibb.

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, Chairman Ribble called for the first scheduled case.

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. HAMPTON CHASE RECREATION ASSOCIATION, SPA 89-S-006-02 Appl. under Sect(s). 8-401 of the Zoning Ordinance to amend SP 89-S-006 previously approved for a community swimming pool to permit modification of development conditions. Located at 5492 Ashleigh Rd., Fairfax, 22030, on approx. 2.65 ac. of land zoned R-2 (Cluster) and WS. Springfield District. Tax Map 66-2 ((5)) U1.

Chairman Ribble called the applicant to the podium.

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

Mark Jenkins, the applicant's agent, 2071 Chain Bridge Road, Suite 400 Vienna, Virginia 22182, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 89-S-006-02, subject to the proposed development conditions.

Mr. Byers asked staff why they had deleted the 55 decibels under Development Condition 18. Ms. Gumkowski explained that its inclusion was an error that did not relate to the property. Mr. Byers asked staff about the limits under Chapter 108 from the standpoint of noise. Ms. Gumkowski said that the applicant could respond to the questions when he was called to speak. Mr. Hart said he agreed with taking out the last sentence of Development Condition 18. He made suggestion on alternative language. Mr. Hammack noted that there was a limit of six swim meets per season, and asked if the number was not low based on the activity of other swim clubs. Ms. Gumkowski indicated that the applicant would be able to clarify.

Mr. Jenkins said the hours during which swim meets could be held had been extended to 9:30 pm. He mentioned that the Board of Directors of the Association were okay with that. He said that six swim meets were a satisfactory number for the season. The Association belonged to a league, and based on history, there were usually three to four pool meets held per year, as they also have meets at other pools.

Mr. Jenkins continued that the initial reaction to the 55 decibels is one form of measurement at the boundary line that is in the noise ordinance, and he thought it needed to be deleted as it was not necessary. He stated that their intention was to comply with the Noise Ordinance just as any other property owner. He also suggested alternative language for the development conditions. He stated that after the pre-staffing meeting with staff, the Board of Directors of the Association had sent out a special notice to all the members in the surrounding area to ensure they knew what was being proposed. He noted that the communication had continued throughout this process. He said they believed they had produced a successful project for that community at large.

Chairman Ribble called for speakers. Mr. Beard asked staff if there had been any complaints regarding the organization. Ms. Gumkowski indicated that there had been no complaints. Mr. Beard commended the applicant for honoring the development conditions related to the application.

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

Mr. Hammack moved to approve SPA 89-S-006-02 for the reasons stated in the Resolution

//

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAMPTON CHASE RECREATION ASSOCIATION, SPA 89-S-006-02 Appl. under Sect(s). 8-401 of the Zoning Ordinance to amend SP 89-S-006 previously approved for a community swimming pool to permit modification of development conditions. Located at 5492 Ashleigh Rd., Fairfax, 22030, on approx. 2.65 ac. of land zoned R-2 (Cluster) and WS. Springfield District. Tax Map 66-2 ((5))U1. 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 10, 2013; and

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

1. The applicant is the owner of the land.
2. The proposed development conditions are all appropriate and certainly not contested.
3. The Board has a favorable staff recommendation and adopts its rationale.

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

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

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

1. This approval is granted to the applicant, Hampton Chase Recreation Association, only. However, upon conveyance of the property to the Hampton Chase Homeowners' Association, or similar non-profit corporation or association, this approval will transfer to such association. This approval is for the location indicated on the application and is not transferable to other land.
2. This special permit is granted for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat drawn by Greenhorne and O'Mara, Inc., April 24, 1990, as certified by an engineer's seal on March 8, 2013, as qualified by these development conditions. The SP Plat remains the same as approved in SP 89-006-001, except for the certification on Sheet 1 of the SP Plat correcting a plat note.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This use shall be subject to the provisions set forth in Article 17, Site Plans.
5. The hours of operation shall be limited to the following:

Community Room – 9:00 a.m. to 12:00 a.m.

Swimming Pool – 7:00 a.m. to 11:00 a.m. for swim team practices, swim team meets and swimming lessons;

Swimming Pool/General Swimming Pool Hours 11:00 a.m. to 9:30 p.m.; but, for up to six times during each swim season, swim team meets may also be held during these hours;

Other outside social functions:

- a. generally, between 11:00 a.m. to 9:30 p.m. (concurrent with the use of the swimming pool and the community room during these hours).

b. in addition, not more than twelve (12) times per year, outside social functions or activities, including pool use, are permitted between 9:30 pm and 12:00 a.m. on Fridays, Saturdays, Sundays (if the following Monday is a Federal or State Holiday), or pre-holiday evenings, concurrent with the use of the community room. All other functions will be held indoors within the 9:30pm -12:00am time period. Clean-up may be extend beyond this time.

6. The maximum employees at any one time at the site will be eight (8).
7. The maximum family memberships shall be limited to five hundred and fifty-four (554) families. All eleven sections in the Hampton Forest Subdivision shall be offered annual right of first refusal prior to offering annual membership to anyone other than Hampton Forest residents.
8. A minimum of fifty-five (55) and a maximum of fifty-eight (58) parking spaces shall be provided. All parking for this use shall be on-site.
9. Transitional Screening 1 and Barrier D, E, or F shall be provided along the northern, western, and eastern lot lines. Existing vegetation shall be used to fulfill the screening requirement, and supplemental coniferous plantings shall be provided where necessary to fulfill the requirements of Transitional Screening 1 as determined by the County Arborist. A modification of the screening and barrier requirements shall be granted along the southern lot line to allow landscape plantings.
10. The type, quantity, size and location of all plantings shall be reviewed and approved by the County Arborist. An evergreen hedge, approximately four feet in planted height, shall be located within this landscaped area on the southern lot line. The purpose of this hedge is to screen the parking and to mitigate any adverse visual impact of the recreation center.
11. The barrier requirement shall be waived on the northern, southern, and western lot lines. A solid, six foot wooden fence shall be provided on the eastern lot line to fulfill the barrier requirement.
12. Foundation plantings shall be provided around the existing community clubhouse to soften the visual impact of the structure and to ensure compatibility with the residential area. The type, quantity, size and location of these plantings shall be approved by the County Arborist.
13. The limits of clearing and grading where existing vegetation is to be preserved shall not encroach on the Transitional Screening area and shall be limited to that which is indicated on the Special Permit Plat. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site. Where the Transitional Screening area contains existing vegetation, the limits of clearing and grading shall preserve these areas.
14. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
15. Pool water shall be treated to achieve a pH of 7 or as close as possible to the receiving stream and a minimum dissolved oxygen content of 4.0 milligrams per liter prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.
16. Best Management Practices (BMP's) shall be provided to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay district (WSPOD) of the Zoning Ordinance.
17. Swim meets shall not be conducted during times when the community room is being used for other activities so as to eliminate the need for off-street parking. All parking shall be on-site.
18. There shall be no loudspeakers, bullhorns, or whistles used except during swim meets.
19. Interior parking lot landscaping shall be provided in accordance with Article 13.
20. Construction of the entrance ingress/egress shall be provided in accordance with VDOT standards.

21. In order to meet the intent of Proffer #6 in RZ 79-S-119, a tree preservation plan shall be submitted for approval by the County Arborist that preserves specimen trees on the site to the greatest extent possible. If the preservation plan and the plat conflict, the applicant shall amend the special permit.
22. A soil survey shall be completed prior to pool construction if determined necessary by the Director, Department of Environmental Management. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances result in instability are found in the immediate vicinity of the pool, then the pool shall be engineered and constructed to ensure pool stability, including the installation of hydrostatic relief valves and other appropriate measures.
23. There shall be a maximum of two (2) handicapped parking spaces included in the fifty-eight (58) parking spaces shown on the submitted plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards. The applicant shall be responsible for establishing the use as outline above, and this Special permit shall not be valid until this has been accomplished.

Pursuant to Section 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently pursued. It is noted, however, that construction of the improvements shown on the SPA Plat have been completed. 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.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 8-501 of the Zoning Ordinance to permit commercial recreation use in conjunction with a by-right place of worship. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. *(Admin. moved from 5/25/11, 6/29/11, 2/13/13, and to 7/24/13 4/3/13 at appl. req.) (Indefinitely deferred from 8/10/11 at appl. req.) (Reactivated on 11/20/12 at appl. req.)*

Chairman Ribble noted that there was a request to open this case, and then continue it. Since the applicant was not there to reaffirm the affidavit, Mr. Beard moved to defer SP 2011-SU-011 to July 24, 2013, at 9:00 a.m. Mr. Smith seconded the motion, which carried on a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF SHILOH BAPTIST CHURCH, SPA 83-V-090-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 83-V-090 previously approved for a place of worship to permit site modifications and building addition. Located at 10704 Gunston Rd., Lorton, 22079, on approx. 6.72 ac. of land zoned R-E. Mt. Vernon District. Tax Map 114-4 ((1)) 21, 22 and 22A. *(Admin. moved from 5/8/13 at appl. req.)*

Chairman Ribble noted that SPA 83-V-090-02 had been indefinitely deferred.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC. & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 Appl. under Sect(s). 3-303 and 3-304 of the Zoning Ordinance to amend SP 76-M-088 previously approved for a community swim club to permit construction of a wireless telecommunications facility. Located at 6011 Crater Pl., Alexandria, 22312, on approx. 14.54 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((6)) (T) 056 and 72-2 ((3)) (T) C. *(Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12, 12/12/12, 1/16/13, 3/6/13, and 5/8/13 at appl. req.)*

Chairman Ribble noted that SPA 76-M-088 had been administratively moved to July 17, 2013 at 9:00 a.m. at the applicant's request.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-06 Appl. under Sect(s). 3-103 and 8-301 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a place of worship with private school of general education, telecommunications facility and columbarium to permit increase in school enrollment and modification of development conditions. Located at 1089 Liberty Meeting Ct., Herndon, 20170, on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B and 70A; 6-4 ((14)) A.

Chairman Ribble called the applicant to the podium.

Ms. Sara Mariska, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.2200 Clarendon Boulevard, Suite 1300 Arlington, Virginia 22201, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SPA 83-D-022-06, subject to the proposed development conditions.

Ms. Mariska stated that it was an application to increase the number of students and modify the hours to better accommodate the existing school needs. There were no site or building modifications or extension of any kind proposed. The request was simply to accommodate students and staff members.

Mr. Hart asked staff to clarify pictures of a trampoline park which were included in the exhibit. Staff stated that the pictures were not relevant to the application.

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

Mr. Byers moved to approve SPA 83-D-022-06 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-06 Appl. under Sect(s). 3-103 and 8-301 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a place of worship with private school of general education, telecommunications facility and columbarium to permit increase in school enrollment and modification of development conditions. Located at 1089 Liberty Meeting Ct., Herndon, 20170, on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B and 70A; 6-4 ((14)) 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 10, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The lot area is 8.11 acres.
4. Staff recommends approval, and its rationale is adopted.

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

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

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

1. This approval is granted to the applicant only, Trustees of Dranesville United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 1089 Liberty Meeting Court (8.11 acres) and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by Dewberry Consultants LLC, signed by Timothy Charles Colleton, dated March 19, 2013, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum daily enrollment for the private school of general education shall not exceed 150 children.
6. The number of employees associated with the private school of general education shall be limited to a maximum of twenty (20) at any one time.
7. Seating in the church sanctuary shall be limited to a maximum of 400 seats.
8. All parking shall be on site, as shown on the special permit plat.
9. The maximum hours of operation of the private school of general education shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.
10. Barrier requirements shall be waived along all lot lines. The transitional screening requirements shall be modified along the northern lot line as depicted on the special permit plat.

To the extent feasible, given the location of existing graves, Transitional Screening 1 shall be provided and maintained along the eastern portion of the cemetery to screen the dwelling on Tax Maps 6-4 ((1)) 69A and 69B from the proposed Phase III addition to the church and from the columbarium prior to approval of final building inspections for the addition or columbarium, whichever occurs first. Supplemental plantings shall be provided as depicted on Sheet Z-7 of the SEA/SPA plat (approved with SPA 83-D-022-05) to screen the dwellings on Tax Maps 6-4 ((14)) 2 and 3 from the telecommunications equipment. Screening shall be provided along the southern lot lines of Lots 6B and 70A if determined necessary by the Forest Conservation Branch. The transitional screening plantings for these areas shall be comprised of large evergreen trees with an ultimate height of 40 feet and a minimum height of 10-12 feet tall at the time of planting and medium evergreen trees with an ultimate height of 20-40 feet and a minimum height of 6-8 feet tall at the time of planting. The

minimum height of the trees at the time of planting shall apply only to the landscaping to be installed. The exact number, size and species of landscaping materials shall be determined by the Forest Conservation Branch, Department of Public Works and Environmental Services (DPWES). All dead, dying or diseased plantings in the transitional screening yards shall be replaced in consultation with the Forest Conservation Branch.

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

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

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

Root pruning shall take place as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

12. Any proposed lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
13. The existing structure utilized as an equipment building for the telecommunication facility shall be limited to the storage of telecommunication and carillon equipment only.
14. If a speaker system is utilized to broadcast the sound of bells, the system must comply with the noise regulations of Chapter 108 of the Code of Virginia. The playing of music shall be prohibited between the hours of 6:00 p.m. and 7:00 a.m.
15. The existing residential dwelling unit shall be used only for the storage of the telecommunication and carillon equipment, and shall meet all applicable County, State and Federal building, structural and fire codes regulations as determined by DPWES. Access to the building shall be permitted only from within the fenced area located to the east of the building. The interior of the building shall be designed to include a wall that will prohibit access from the doors and windows located on the western façade of the building. The equipment building doors located of the eastern façade, within the fenced area, shall be locked at all times. The gate for the fence shall be locked at all times. The telecommunication equipment shall be located within secured metal cabinets or enclosures inside

the equipment building and shall be locked at all times.

The equipment cabinets may be unlocked only to perform maintenance and only in the presence of a maintenance worker. Signs shall be posted on the individual equipment cabinets, the doors to the equipment building and the fence that clearly state that they shall be locked at all times.

These development conditions incorporate and supersede all previous development conditions.

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

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

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

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. G & K, INC. T/A RESTON UHAUL, A 2013-HM-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a truck rental establishment on property in the PRC District without Special Exception approval in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr., Reston, 20190, on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7.

Chairman Ribble noted that A 2013-HM-010 had been administratively moved to September 11, 2013 at 9:00 a.m., at the appellant's request.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. PINWOOD LAKE HOMEOWNERS ASSOCIATION, A 2012-LE-034 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a contractor's office and shop, which is a use not permitted, to operate on property in the R-8 District in violation of Zoning Ordinance provisions. Located on approx. 7143 ac. of land zoned R-8. Lee District. Tax Map 101-1 ((6)) K1. (*Admin. moved from 5/8/13 at appl. req.*)

Chairman Ribble noted that A 2012-LE-034 had been withdrawn.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. THOMAS D. AND CHRISTINA DAVIS, A 2012-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have allowed the construction of a roof over a deck that extends into the minimum required side yard and have failed to submit required as-built house location surveys for construction on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1859 Patton Ter., McLean, 22101 on approx. 11,113 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 24. (*Admin. moved from 1/9/13 and 6/5/13 at appl. req.*)

Chairman Ribble noted that, A 2012-DR-026 had been administratively moved to October 2, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ July 10, 2013, Scheduled case of:

9:00 A.M. ADIL AL-BOTABEEKH AND BABYLON TAVERNA, INC., A 2013-MA-011


Chairman Ribble noted that A 2013-MA-011 had been administratively moved to July 17, 2013, at 9:00 a.m., at the appellants' request

//

As there was no other business to come before the Board, the meeting was adjourned at 9:29 a.m.

Minutes by: Tameca N. Brown/Lorraine A. Giovinazzo

Approved on: September 18, 2019


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 17, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Absent from the meeting was Paul W. Hammack, Jr. and Thomas W. Smith III.

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, Chairman Ribble called for the first scheduled case.

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. JIL AND ABHIJIT DUTTA, SP 2013-DR-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling and to permit an accessory storage structure in the minimum required front yard. Located at 11318 Beach Mill Rd., Great Falls, 22066, on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((2)) A (Concurrent with VC 2013-DR-004).

9:00 A.M. JIL DUTTA, VC 2013-DR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height in front yard. Located at 11318 Beach Mill Rd., Great Falls, 22066, on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((2)) A (Concurrent with SP 2013-DR-032).

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.

Jill Dutta, 11318 Beach Mill Road, Great Falls, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-DR-032, subject to the proposed development conditions.

Discussion ensued regarding the easement, the shed, and vehicles intended to be kept on the subject property, along with potential paving options for the applicant.

Ms. Dutta presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. She explained her father's need for care and her desire for privacy and storage.

The applicant responded to questions concerning the shed, occupancy of the home, and parking procedures.

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

Mr. Byers moved to approve-in-part SP 2013-DR-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JIL AND ABHIJIT DUTTA, SP 2013-DR-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling and to permit an accessory storage structure in the minimum required front yard. **(THE BZA DID NOT APPROVE THE STORAGE STRUCTURE.)** Located at 11318 Beach Mill Rd., Great Falls, 22066, on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((2)) A (Concurrent with VC 2013-DR-004). 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 17, 2013; and

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

1. The applicants are the owners of the land.
2. The granting of this special permit will partially 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.
3. The granting of this special permit will not create a partial unsafe condition with respect to both other properties and public streets, and to force compliance with setback requirements, at least on the part of the shed, would not cause unreasonable hardship upon the owner.
4. The Board concurs with Staff in its rationale from the standpoint of the accessory dwelling unit.
5. The criteria are met with that from the standpoint of the 83-year-old father being there.
6. The Board does not recommend that the shed be kept where it is because it does immediately adjoin an easement.
7. Typically, from the Board's perspective when they look at sheds and mistake in building location, they look at lot size.
8. With lots that are 7,000 square feet to 10,000 square feet, it is very difficult to place a shed on that.
9. In this particular case, it is two acres. It looks like there are alternative places where the shed could, in fact, come into compliance relatively easily.
10. This is not built on a solid foundation, but essentially was on cement posts or cinder blocks, so it would not cause unreasonable harm to have the shed moved to come into compliance with the Zoning Ordinance.

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

THAT the applicant has presented partial testimony indicating compliance with 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-IN-PART** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Jil Dutta and/or Abhijit Dutta, and is not transferable without further action of this Board, and is for the location indicated on the application, 11318 Beach Mill Road (2.0 acres), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys, titled "Special Permit Plat on the Property of Outlot A, Beach Mill Hill," dated April 16, 2013 as 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 occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled. The occupants of the accessory dwelling unit shall be limited to family members, and no additional vehicles shall be allowed.
6. The accessory dwelling unit shall contain a maximum of 832 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for kitchen components in the

accessory dwelling unit.

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 Sect. 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 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.
11. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

Mr. Byers moved to deny VC 2013-DR-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JIL DUTTA, VC 2013-DR-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height in front yard. Located at 11318 Beach Mill Rd., Great Falls, 22066, on approx. 2.0 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((2)) A (Concurrent with SP 2013-DR-032). 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 17, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 2.0 acres.
4. The Board found that Standard 1 was met.
5. The Board looked through all the standards under 2 and could not find any of the criteria that met any of those standards.
6. The Board found that the strict application of the Ordinance would not produce undue hardship, under 6, which is the toughest stipulation, the strict application of the Zoning Ordinance would

effectively prohibit or unreasonably restrict the use of the subject property, and under B, the granting of the variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant, and what the Board looked at from the standpoint that there are special permits that allow fences six feet in a front yard.

7. Reading the staff report and the justification by the applicant, there was very little justification for the height of the fence frankly with the exception it was aesthetically pleasing.
8. When talking about security, there have been other instances where the Board has approved six feet in a front yard, and specifically for security reasons, moving it from four feet to six feet. In this case, that was not the justification.

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

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

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

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

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

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

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. ADAM J. KIMMICH, SP 2013-MV-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 6.8 ft. from side lot line, dwelling to remain 4.8 ft. from side lot line and accessory storage structure to remain 0.8 ft. from side lot line and 3.1 ft. from rear lot line.

Located at 6402 Thirteenth St., Alexandria, 22307, on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (25) 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.

Adam Kimmich, 6402 Thirteenth Street, Alexandria, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Kimmich presented the special permit request as outlined in the statement of justification submitted with the application. He explained his reasoning for the addition of the shed and noted his belief he had been in compliance with by-right permissions.

Discussion ensued regarding an anonymous complaint, similar applications, and finished work on the property.

Chairman Ribble called for speakers.

Edwin Stanley, 6405 Fourteenth Street, Alexandria, Virginia came forward in support. He noted he had a similar shed in his own yard and sheds were common in the neighborhood.

Additional letters of support were submitted to the clerk.

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

Mr. Hart moved to approve SP 2013-MV-033 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ADAM J. KIMMICH, SP 2013-MV-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit roofed deck to remain 6.8 ft. from side lot line, dwelling to remain 4.8 ft. from side lot line and accessory storage structure to remain 0.8 ft. from side lot line and 3.1 ft. from rear lot line. Located at 6402 Thirteenth St., Alexandria, 22307, on approx. 7,000 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (25) 19. 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 17, 2013; 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 house itself, the paper trail is a mess, but it appears that although a building permit was approved that required demolition of either side of the house in conjunction with the construction of the addition over the top of the middle of the house, it looks like the sides stayed, and then the addition was built anyway. Somehow, that is all approved or the building permit is closed out.
3. However we got to that point, the applicant purchased the property this way. It is not his fault. He bought it like this, and the Board does not see that it is appropriate to make him tear down the sides of the house after he bought it.
4. It does not seem that inconsistent with the New Alexandria neighborhood anyway.

5. Frankly, the Board had a whole slew of cases after Hurricane Isabelle.
6. In that whole neighborhood, there were a lot of things that had to be redone, and there are many houses in there that are too close to the line or there is something that has happened over the years that is perhaps not strictly by the book, but that is the pattern in that neighborhood, and this does not seem inconsistent with that.
7. The Board does not think there would be any significant negative impact by leaving the house just how it is.
8. It is a very attractive house.
9. The Board does not think it would bother anyone.
10. With respect to the shed, the pattern of development in New Alexandria, the Board would be surprised if there was not a shed back by the alley.
11. Many similar sheds could be seen from the photograph.
12. This is a well-constructed, attractive storage facility.
13. It does not seem like it is going to be bothering anyone.
14. It is certainly in keeping with what is in the neighborhood.
15. The Board has approved other sheds in New Alexandria under very similar situations.
16. The Board has a letter from the president of the citizens association in support.
17. The Board has a letter from Supervisor Hyland urging approval.
18. There does not seem to be any opposition except an anonymous complaint.

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

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

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

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

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

1. This special permit is approved for the locations of the roofed deck, dwelling, and accessory storage structure as shown on the plat prepared by Dominion Surveyors, Inc., dated February 27, 2012, 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. Mr. Hammack and Mr. Smith were absent from the meeting.

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. GIOVANNI CALABRO, SP 2013-SU-034 (R-C lot)

Chairman Ribble noted that SP 2013-SU-034 had been administratively moved to July 31, 2013, at 9:00a.m., at the applicant's request.

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. SUN SOOK LEE, SP 2012-SP-075 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit home child care facility and to permit reduction in minimum yard requirements based on error in building location to permit open deck to remain 0.4 ft. from side lot line. Located at 4103 Mount Echo Ln., Fairfax, 22033, on approx. 8,639 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (29) 11. *(Indefinitely deferred from 1/16/13 at appl. req.) (Reactivated on 4/26/13.)*

Chairman Ribble called the applicant to the podium.

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

Sun Sook Lee, 4103 Mount Echo Lane, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff did not make recommendations on errors in building locations.

Discussion ensued concerning the recent Zoning Ordinance amendments, guidelines on number of employees, and parking considerations.

Ms. Lee presented the special permit request as outlined in the statement of justification submitted with the application. She noted she had addressed her neighbors' concerns, and explained her neighbors' support of her home child care.

The Board discussed the proposed development conditions related to onsite employees and the age of the children attending the home child care.

Chairman Ribble called for speakers.

Paul Carlin, 4107 Mount Echo Lane, Fairfax, Virginia, came forward to speak in opposition. He did agree that there was a need for a business in the neighborhood which would generate traffic.

Phillis Brown, 4106 Mount Echo Lane, Fairfax, Virginia, came forward to speak in opposition. She spoke to the concern with traffic generation, which she had observed, though she did believe the applicant was a good caregiver.

Discussion ensued concerning the location and time of child drop-off and pick-up.

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

Ms. Gibb moved to approve SP 2012-SP-075 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUN SOOK LEE, SP 2012-SP-075 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit home child care facility and to permit reduction in minimum yard requirements based on error in building location to permit open deck to remain 0.4 ft. from side lot line. Located at 4103 Mount Echo Ln., Fairfax, 22033, on approx. 8,639 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-4 ((3)) (29) 11. (Indefinitely deferred from 1/16/13 at appl. req.) (Reactivated on 4/26/13.) 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 17, 2013; and

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

1. The applicant is the owner of the land.
2. The Board adopts staff's recommendations of approval.
3. There has been testimony about the operation, and from the photographs and testimony, it sounds like it is a well-run small child care facility.
4. It sounds as if the applicant is aware of the neighbors and trying to respond to their needs.
5. There is a real need for child care in Fairfax County.
6. The Board of Supervisors, in adopting a new Zoning Ordinance, is trying to make it easier to have twelve children and make it consistent with the state requirements and licensing.
7. These facilities are licensed and inspected by the State.
8. The Board is going to amend the development condition regarding parking for the employee.
9. The Board hears the neighbors about their concern about parking.
10. The Board is hoping that the fact that the applicant has been attentive to her neighbors in the past will make her attentive to their needs as far as parking by her parents in the future, so if there is an issue, the neighbors can talk to her about it, and she will talk to her parents.
11. If there is an issue about too fast driving or parking in other people's spots, that can be taken care of in a neighborly way.
12. The open deck will not have an impact on the neighbors.
13. It is safe enough for the children, and it is making a larger play area for the children.

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

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

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

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

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

1. This approval is granted to the applicant, Sun Sook Lee, only and is not transferable without further action of the Board, and is for the location indicated on the application, 4103 Mount Echo Lane, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dominion Surveyors, Inc., dated October 2, 2012, as revised through October 17, 2012, 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 hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:30 a.m. to 12:30 p.m., Saturday.
5. The maximum number of children on site at any one time shall be twelve (12), excluding the applicant's own children.
6. The applicant and assistants shall use on-street parking during the hours of operation of the child care facility. Pick up and drop off of children shall take place in the driveway.
7. The maximum number of employee cars shall be limited to one on the street at any one time in addition to the applicant.
8. The dwelling that contains the child care facility shall be the primary residence of the applicant.
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.

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

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. BOYD T. CLOERN REVOCABLE TRUST, DARA R. ALDERMAN REVOCABLE TRUST,
BOYD CLOERN, CO - TRUSTEE, DARA ALDERMAN, CO-TRUSTEE, SP 2013-DR-031

Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.4 ft. from side lot line and 8.4 ft. from rear lot line. Located at 1850 MacArthur Dr., McLean, 22101, on approx. 10,043 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 31.

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.

Boyd Cloern, 1850 MacArthur Drive, McLean, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

There was discussion regarding how the error in building was discovered by staff.

Mr. Cloern presented the special permit request as outlined in the statement of justification submitted with the application. He explained the history of the playset installation.

Discussion ensued concerning the swale, costs of the application process, and the process of handling complaints and violations.

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

Mr. Beard moved to approve SP 2013-DR-031 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BOYD T. CLOERN REVOCABLE TRUST, DARA R. ALDERMAN REVOCABLE TRUST, BOYD CLOERN, CO-TRUSTEE, DARA ALDERMAN, CO-TRUSTEE, SP 2013-DR-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.4 ft. from side lot line and 8.4 ft. from rear lot line. Located at 1850 MacArthur Dr., McLean, 22101, on approx. 10,043 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 31. 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 17, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has determined that this was done in good faith.
3. There were some extenuating circumstances why this application was here today, and it rose out of another runoff type situation.
4. The Board has determined that all of the conditions prevalent are 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 the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

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

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

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

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

- 1. This special permit is approved for the location of the playset as shown on the special permit plat prepared by Dominion Surveyors Inc., dated January 9, 2013, 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.

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

//

The meeting recessed at 10:49 a.m. and reconvened at 11:03 a.m.

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC. & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 Appl. under Sect(s). 3-303 and 3-304 of the Zoning Ordinance to amend SP 76-M-088 previously approved for a community swim club to permit construction of a wireless telecommunications facility. Located at 6011 Crater Pl., Alexandria, 22312, on approx. 14.54 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((6)) (T) 056 and 72-2 ((3)) (T) C. (Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12, 12/12/12, 1/16/13, 3/6/13, 5/8/13 and 7/10/13 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.

Ed Donohue, the applicants' agent, no address given, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 76-M-088, subject to the proposed development conditions.

There was discussion regarding when the applicants were to go before the Board of Supervisors, documents referenced in the development conditions, staff's recommendation of the monopole but not the tree pole, potential conditions related to maintenance and hours for evening parties, and whether there were a history of any complaints.

Mr. Donohue presented the special permit amendment request as outlined in the statement of justification submitted with the application. He noted the attendance of other individuals who may be able to address specific Board questions, alterations to previously submitted designs, the existing and desired network availability, findings related to the strength of network coverage and increased usage, insufficient alternative locations, and proposed and proffered design options.

Chairman Ribble called for speakers.

The following speakers came forward in support: Heath Brown, president of Parklawn Recreation Association, 6209 Parkhill Drive, Alexandria, Virginia; Austin Bozarth, 6203 Larstan Drive, Alexandria, Virginia; Ivy Sinaiko, 6101 Larstan Drive, Alexandria, Virginia; Amber Kim Dewey, 4505 Kling Drive, Alexandria, Virginia; Susan Fernandez, 6326 Applegarth Court, Alexandria, Virginia; Stephanie Liller, 6304 Hillcrest Place, Alexandria, Virginia; Mary Armstead Mack, 5802 Sable Drive, Alexandria, Virginia; Sybil Laird, 4121 Teton Place, Alexandria, Virginia; Bill Larme, president of Lincolnia Hilla Heywood Glen Civic Association, 6214 Berlee Drive, Alexandria, Virginia; and Eileen Kirwan, 941 North Ashton Street, Alexandria, Virginia;

Their main points included majority support by existing members of the Parklawn Recreation Association, desire for improved cellular service, improved business operations and safety, crime incidences in the neighborhood, and the lessening use of landlines.

Mr. Brown responded to Board questions related to proposed late-night party hours.

The following speakers came forward in opposition: Kevin Prestwich, 4204 Stanby Court, Alexandria, Virginia; Robert Stapleton, 4119 Teton Place, Alexandria, Virginia; Rebecca Choi, 4132 Teton Place, Alexandria, Virginia; Donald Bisenius, 4112 Faith Court, Alexandria, Virginia; Brian Dwyer, 4125 Teton Place, Alexandria, Virginia; Charles Bell, 4127, Teton Place, Alexandria, Virginia; Stephen Barrett, 6009 Crater Place, Alexandria, Virginia; John Edwards, 4132 Teton Place, Alexandria, Virginia; Allan Brown, 4123 Teton Place, Alexandria, Virginia; Thomas Kelly, 6013 Crater Place, Alexandria, Virginia; Bruce Cornett, 6104 Everglades Drive, Alexandria, Virginia; Linda Barrett, 6009 Crater Place, Alexandria, Virginia; Max Barrett, 6009 Crater Place, Alexandria, Virginia; Julia Munoz, 6010 Crater Place, Alexandria, Virginia; Zoya Melnitchenko, 6010 Crater Place, Alexandria, Virginia; and Jegnaw Alemu, 6012 Crater Place, Alexandria, Virginia.

At the direction of the Chairman, Mr. Bell swore or affirmed that his testimony would be the truth.

The main points of the speakers in opposition included the proposal being inconsistent with the Comprehensive Plan, adverse effect on the value of neighboring properties, the visual impact caused by the height of the proposed tower, testimony of good existing cellular coverage, alternative options for individuals to increase coverage in their home, the steep topography of the area, sufficient alternative locations, the impact of shadows, unfeasible screening, documented success of emergency calls made from the neighborhood, the irrelevance of party hours with regard to the application, covenant regulations which do not permit the subject property to be used for private or profit-based purposes, and the safety hazards which could be caused by the tower.

There was discussion regarding whether the tower would include a red light, the Board's considerations being unrelated to coverage, the provided coverage data being relevant solely to AT&T, and the irrelevancy of an existing covenant to the Board's decision.

Mr. Donohue came forward in rebuttal. He noted there was no intention to include a light on the proposed structure, as long as there was no imposed requirement. He also discussed the attempts at co-location, the coverage gap for other cellular companies, how the proposed location exceeded the required set-back,

efforts to demonstrate the intended aesthetic to community members, screening efforts, and the proposed location being ideal compared to other options.

Discussion ensued concerning other cell phone towers in Fairfax County, the poor representation provided by citizens' photoshopped images of the proposed structure, how staff determined the proposed mitigation was sufficient such that neighboring properties would not be adversely affected, the applicant's demonstration of need, what criteria the Board was meant to consider, and associated applications.

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

Mr. Hart moved to defer decision on SPA 76-M-088 to July 31, 2013, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 3-2. Mr. Byers and Mr. Beard voted against the motion. Mr. Hammack and Mr. Smith were absent from the meeting.

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. ADIL AL-BOTABEEKH AND BABYLON TAVERNA, INC., A 2013-MA-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a commercial recreation use located in the C-6 and CRD Districts without an approved Group 5 Special Permit in violation of Zoning Ordinance provisions. Located at 3811E and F South George Mason Dr., Falls Church, 22041 on approx. 2,400 sq. ft. of land zoned C-6 and CRD. Mason District. Tax Map 62-3 ((13)) 5 and 26. (*Admin. moved from 7/10/13.*)

Chairman Ribble called the appellants to the podium.

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

John Carrol, the appellant's agent, no address given, came forward.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. She explained the history of applications and violations associated with the subject property and shopping center. Ms. Stanfield played a video which demonstrated the historical operations on the subject property, discussed the reasoning for lack of building permit approval, and noted the process which took place related to the recommendation and acquisition of parking tabulations.

Discussion ensued concerning staff's attempt at obtaining updated parking tabulations, the creation of issues through modifications made by the applicant which were misrepresented to staff, the compliance actions taken by similar applicants, the inspections performed on the subject property and the resulting observations, alternative legal actions the applicant could have taken, the modifications made to the property and business operation, and the principal use of the property.

Staff recommended the Board uphold the determination made by the Zoning Administrator.

Mr. Carrol presented the arguments forming the basis for the appeal. He handed a copy of the restaurant menu to the Board for their review. Mr. Carrol discussed the history of the property's use, other businesses operating in the same shopping complex, parking requirements and issues, inspections of the establishment, similar operations and expectations at other like businesses, the improper issuance of a notice of violation, requirements for complying with laws related to smoking, and the absence of sufficient proof there was a change in use.

There was discussion regarding parking, the intensity of use caused by the conglomerate of operations, requirements for by-right operations, the conversion of use on the property, unpermitted inspections, the legal restaurant use, the change of business name and furniture used on the property, the impact of religious holidays observed on the neighborhood, and the applicant's attempts to obtain building permits.

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

Mr. Byers moved to reverse the determination of the Zoning Administrator. There was not sufficient convincing evidence the use of the property had changed; the timing of the inspections may have misrepresented the operations; the impact of Ramadan on the sales of food to the main customer base of the subject business; and insufficient evidence the primary use of the property is a hookah bar based on the presence of non-disposable utensils, food stored on-site, and a four-burner stove. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Smith were absent from the meeting.

//

~ ~ ~ July 17, 2013, Scheduled case of:

9:00 A.M. GEORGE D'ANGELO, A 2012-DR-033 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 District in violation of Zoning Ordinance provisions. Located at 7422 Howard Ct., Falls Church, VA 22043 on approx. 10,710 sq. ft. of land zoned R-4 and H-C. Dranesville District. Tax Map 40-1 ((6)) (D) 7. (*Admin. moved from 3/6/13 at appl. req.*) (*Continued from 6/19/13.*)


Chairman Ribble noted A 2012-DR-033 had been withdrawn.

//

As there was no other business to come before the Board, the meeting was adjourned at 2:15 p.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: September 18, 2019


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 24, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; James R. Hart; and Norman P. Byers. Absent from the meeting were Paul W. Hammack, Jr. and Nancy E. Gibb.

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.

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. FAKHRI ELMOHTASEB, SP 2013-SP-036 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard. Located at 5969 Colchester Rd., Fairfax, 22030, on approx. 1.25 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 2B.

Chairman Ribble noted SP 2013-SP-036 had been administratively moved to a date to be determined awaiting the filing of a variance by the applicant.

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. GARY J. SCHWARTZ, SP 2013-MA-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 12.0 ft. from side lot line. Located at 6459 Oakwood Dr., Falls Church, 22041, on approx. 14,964 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 167.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm was currently engaged in a case where the attorney for the adverse party was from the applicant's agent's law firm, 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Shawn Nazemian, the applicant's agent, 8630-A Lee Highway, Fairfax, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Nazemian presented the special permit request as outlined in the statement of justification submitted with the application. He explained the applicant's health concerns, some issues which arose during construction on the property, and support from neighbors.

Discussion ensued concerning the reason for continued construction without building permit modifications following the discovery of grading issues and prohibited stair installation, and relevant Fairfax County procedures.

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

Mr. Byers moved to deny SP 2013-MA-037. Chairman Ribble seconded the motion for purposes of discussion. As it was indicated there would be insufficient support for the motion, Mr. Byers withdrew his motion.

Mr. Beard moved to defer decision on SP 2013-MA-037 to September 25, 2013, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 4-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. ENES ALIC, SPA 2011-LE-074 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 1.8 ft. from side lot line. Located at 7130 Cold Spring Ct., Alexandria, 22306, on approx. 2,280 sq. ft. of land zoned R-5 (Cluster) and HD. Lee District. Tax Map 92-4 ((6)) 152.

Chairman Ribble noted SPA 2011-LE-074 had been withdrawn.

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 8-501 of the Zoning Ordinance to permit commercial recreation use in conjunction with a by-right place of worship. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. *(Admin. moved from 5/25/11, 6/29/11, 2/13/13, and 4/3/13 at appl. req.) (Indefinitely deferred from 8/10/11 at appl. req.) (Reactivated on 11/20/12 at appl. req.) (Deferred from 7/10/13 at appl. req.)*

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm was currently engaged in a case where the attorneys for the adverse party were from applicant's agent's law firm, 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.

Amber Burke, the applicant's agent, 1775 Wiehle Avenue, Suite #400, Reston, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SU-011 subject to the proposed development conditions. Ms. Gumkowski noted the applicant had provided alternate development conditions which were not endorsed by staff.

Discussion ensued concerning signage, the applicant's development conditions, by-right permissions, proposed limitations on parking and seats in the church, and dumpsters on the property.

Ms. Burke presented the special permit request as outlined in the statement of justification submitted with the application. She explained the applicant's willingness to comply with the changes to signage and dumpster location, the relevant legal process and application of the Zoning Ordinance, and concerns with the proposed development conditions.

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

Mr. Hart moved to approve SP 2011-SU-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NEW LIFE CHRISTIAN CHURCH, SP 2011-SU-011 Appl. under Sect(s). 8-501 of the Zoning Ordinance to permit commercial recreation use in conjunction with a by-right place of worship. Located at 14550 Lee Rd. on approx. 5.57 ac. of land zoned I-5 and WS. Sully District. Tax Map 34-3 ((1)) 23A. *(Admin. moved from 5/25/11, 6/29/11, 2/13/13, and 4/3/13 at appl. req.) (Indefinitely deferred from 8/10/11 at appl. req.)*

(Reactivated on 11/20/12 at appl. req.) (Deferred from 7/10/13 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 24, 2013; 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 staff report with a favorable recommendation, and the Board adopts the rationale in the staff report.
3. This is a somewhat unusual situation in that it is an old Budweiser warehouse that has been converted to a place of worship with indoor athletic facilities.
4. Under the development conditions, the two uses would not be operating simultaneously.
5. It is in an industrial area where there probably would not be any significant impact on anyone.
6. With the proposed development conditions, any conceivable impact would be mitigated.
7. The applicant has met with the West Fairfax County Citizens Association, and they were supportive of the applicant.
8. It will provide additional recreation opportunities in the area.

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

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

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

1. This approval is granted to the applicant only, New Life Christian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 14550 Lee 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 Land Development Consultants, titled "New Life Christian Church" dated January 21, 2011, as revised through July 8, 2013, 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. Worship services shall not be held during the operational hours of the commercial recreation use. A minimum of one-half hour shall occur between the end of the worship services and the start of the commercial recreation use.
6. All parking for the commercial recreation use and place of worship use shall be provided on site as depicted on the SP Plat, subject to the parking reduction agreement and restrictions granted by the Board of Supervisors on July 27, 2010, as may be subsequently amended by the Board of Supervisors in accordance with the Zoning Ordinance, and kept clear of debris or obstructions.
7. Prior to issuance of a new Non-Residential Use Permit for the uses on site, all signage, existing and proposed, shall be in conformance with Article 12 of the Zoning Ordinance. All required permits shall

be obtained. Any signage that is determined to be in violation of the Zoning Ordinance shall be removed.

8. All outdoor lighting on-site shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article IX of the Zoning Ordinance.
9. All parking lot landscaping, both peripheral and interior, shall be maintained in a healthy condition, and dead, dying or damaged vegetation shall be replaced with material that meets the requirements outlined in the Public Facilities Manual.

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, **twelve (12) months after the date of approval, unless a new Non-Residential Use Permit has been obtained.** The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2004-LE-053 previously approved for church to permit the addition of a private school of general education, site modifications and building addition. Located at 5901 Wilton Rd., Alexandria, 22310, on approx. 2.0 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. (*Admin. moved from 11/7/12 and 12/5/12 at appl. req.*) (*Deferred from 1/16/13 at appl. req.*) (*Admin. moved from 3/6/13 due to inclement weather.*) (*Decision deferred from 4/24/13*)

Chairman Ribble noted SPA 2004-LE-053 had been deferred for decision only.

Mr. Smith moved to approve SPA 2004-LE-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2004-LE-053 previously approved for church to permit the addition of a private school of general education (**THE REQUEST FOR A PRIVATE SCHOOL OF GENERAL EDUCATION WAS WITHDRAWN BY THE APPLICANT**), site modifications and building addition. Located at 5901 Wilton Rd., Alexandria, 22310, on approx. 2.0 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. (*Admin. moved from 11/7/12 and 12/5/12 at appl. req.*) (*Deferred from 1/16/13 at appl. req.*) (*Admin. moved from 3/6/13 due to inclement weather.*) (*Decision deferred from 4/24/13*) 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 24, 2013; 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 two acres.
4. A lot of time was spent reviewing this at the public hearing.
5. Country staff has made a detailed staff report analyzing the different elements of this application and recommended approval even with the initially proposed private school of general education.
6. There have been concerns about transportation issues.
7. There was an analysis from the Department of Transportation on that, and they effectively did not have an objection as originally proposed.
8. The applicant has certainly listened to a lot of the community concerns and mitigated the impact by removing the private school of general education.
9. The parking is adequate on the site.
10. There will be no change in the number of seats, 150 seats.
11. The applicant has also presented a shared parking agreement with the Fairfax County School Board dated June 24, 2013, which is addressed in the development conditions not as a requirement.
12. The requirement is that all parking be provided on site, but that off-site parking may take place at the Wilton Woods Administrative Center if permitted by the County Public School System, which as of right now it is.
13. There is a termination provision on 30 days' notice.
14. There have been questions about stormwater, and there will be the addition of the infiltration trench and the additional required approvals associated with the site plan.
15. Many of the issues have been addressed and have been mitigated by the modification to the proposal.

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, Trustees of the Lighthouse Baptist Church, only and is not transferable without further action of this Board, and is for the location indicated on the application, 5901 Wilton Road (2.0 acres), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by CV, Inc. dated December 2011, revised and signed through February 14, 2013, and date stamped received, Department of Planning and Zoning, July 8, 2013, approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 150 seats in the sanctuary of the church.
6. Parking shall be provided on site as shown on the special permit amendment plat. All parking shall be on-site except that parking for the church may take place at the Wilton Woods Administrative Center if permitted by the Fairfax County public school system.
7. The limits of clearing and grading shall be no greater than as shown on the special permit amendment plat.

8. A Tree Preservation Plan and Narrative shall be submitted as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist and shall be subject to the review and approval of the Forest Conservation Branch, DPWES.
9. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as shown on the special permit amendment plat as approved by DPWES.
10. The transitional screening requirement shall be modified as shown on the special permit amendment plat and as outlined in Condition 11.
11. At the time of site plan review, a landscape plan shall be submitted to DPWES. The landscape plan shall be in conformance with the special permit amendment plat and shall be subject to review and approval by the Forest Conservation Branch. Regardless of that shown on the plat, supplemental landscaping shall be installed to meet transitional screening and tree cover requirements as determined necessary by the Forest Conservation Branch.
12. Foundation plantings shall be installed and maintained around the existing church and proposed classroom building to soften and screen the visual impact of the buildings.
13. The barrier requirement shall be waived and modified as shown on the special permit amendment plat.
14. Any new lighting, or replacement lighting installed on the subject property shall be provided in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
15. All signs on the subject property shall be provided in accordance with Article 12 of the Zoning Ordinance.
16. The exterior appearance of the classroom building shall include a brick façade and be in substantial conformance with the illustration as depicted in an Attachment 1 to these 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.

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

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

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. MARY JANE LEE, SP 2013-PR-023 Appl. under Sect(s). 8-914 and 8-919 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line and deck 2.7 ft. from rear and 2.4 ft. from side lot lines and to permit a noise barrier. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with VC 2013-PR-003). (*Decision deferred from 6/5/13*)

9:00 A.M. MARY JANE LEE, VC 2013-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with SP 2013-PR-023). (*Decision deferred from 6/5/13*)

Chairman Ribble called the applicant to the podium.

Chairman Ribble noted SP 2013-PR-023 and VC 2013-PR-003 had been deferred for decision only.

Rebecca Horner, Senior Staff Coordinator, noted the additional information provided to the Board.

There was discussion concerning the proposed development conditions, information submitted by the applicant, necessary plats, and the inclusion of decking in the application proposal.

Mr. Beard moved to defer decision on SP 2013-PR-023 and VC 2013-PR-003 to September 25, 2013, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Hammack were absent from the meeting.

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC. C/O GARCIA ARIAS, ZULMA, A 2012- LE-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a commercial recreation use, which is not a permitted use, on property in the C-6 and H-C Districts in violation of Zoning Ordinance provisions. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 19,135 sq. ft. of land zoned C-6 and H-C. Lee District. Tax Map 81-3 ((5)) 4. (*Admin. moved from 9/26/12, 11/28/12, 2/6/13, and 4/24/13 at appl. req.*)

Chairman Ribble noted A 2012- LE-013 had been administratively moved to November 20, 2013, at the applicant's request.

//

~ ~ ~ July 24, 2013, Scheduled case of:

9:00 A.M. SOUTH SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 2013-MV-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 8701 and 8713 Pohick Rd., Springfield, 22153, on approx. 3.56 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 58 and 60. (*Admin. moved from 5/1/13 and 6/5/13 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.

Lloyd Ntuk, the applicant's agent, 2655 Prosperity Avenue, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MV-012 subject to the proposed development conditions.

Discussion ensued regarding traffic at the intersection, visibility of the retaining wall, relevant storm water management details and concerns, and the applicant's intended modifications to mitigate drainage issues.

Mr. Ntuk presented the special permit request as outlined in the statement of justification submitted with the application. He noted the efforts to accommodate neighbor requests and exceed the required county standards in the applicant's proposal. Mr. Ntuk also commented on the retaining wall and the traffic.

There was discussion concerning visibility of the building, staggered start times for services, traffic impact caused by neighboring churches, coordination of surrounding churches in order to mitigate traffic impact, the effect of posting a police officer to direct traffic, and whether there was necessity for installing a traffic light.

Chairman Ribble called for speakers.

The following speakers came forward in support: David Gobel, 8021 Flint Street, Springfield, Virginia; Carlos Buendia, 8717 Redman Street, Springfield, Virginia; Maria Chavez, Burke, Virginia; Deborah Gobel, 8021 Flint Street, Springfield, Virginia; Diana Stackhouse, 8034 Steeplechase Court, Springfield, Virginia; Sue Daniel, 8119 Parkdale Court, Springfield, Virginia; Larry Tillman, no address given; Darren Korkolis, 12751 Hunterbrook Drive, Woodbridge, Virginia; Joel Powell, 7308 Byeforde Court, Springfield, Virginia; Donald Gramp, 8928 Sylvania Street, Lorton, Virginia; Sharon Garcia, no address given; Darrel Reed, no address given; Bereket Merzi, 8665 Rising Creek Court, Springfield, Virginia; Kurt Boydkin, no address given; Elaine Gramp, 8928 Sylvania Street, Lorton, Virginia; Keith Odin, no address given; Ingozi Rama, no address given; Tamara Campbell, no address given; Sherri King, 9127 Stonegarden Drive, Lorton, Virginia; Derrick King, 9127 Stonegarden Drive, Lorton, Virginia; Ron Abraham, no address given; Catherine Lockhart, Alexandria, Virginia; Veronica Varietos, no address given; Marsela Buendia, 6116 Lee Brooke Place, Springfield, Virginia; and Natasha Duarte, 5984 Annaberg Place, Burke, Virginia.

The Chairman directed the clerk to administer the oath to Mr. Gramp, Mr. Reed, Ms. Campbell, and Ms. Duarte, who swore or affirmed that their testimonies would be the truth.

The main points from the speakers in support included the convenience of having a church in close proximity to several attendees, the benefit of added right turn lanes; concern that other forms of development may happen on the land; the staggered arrival and departure of members; the need for a place of worship; the intended well-maintenance of the property; the continual efforts to accommodate community concerns; and the minimal impact of the proposed building.

The meeting recessed at 11:27 a.m., and reconvened at 11:48 a.m.

The following speakers came forward in opposition: Keith Randall, 7814 Giles Street, Springfield, Virginia; Joe Peralta, 8721 Redman Street, Springfield, Virginia; Gina Hurtado, 8738 Scott Street, Springfield, Virginia; Jane Davies, President of Homeowner's Association, no address given; Mary Simpkins, 8802 Scott Street, Springfield, Virginia; Kermit Stiltner, 8650 Pohick Forest Court, Springfield, Virginia; Barbara Burdsall, 8736 Redman Street, Springfield, Virginia; Anthony Baker, 8651 Pohick Forest Court, Springfield, Virginia; Karen Sugrue, 8736 Redman Street, Springfield, Virginia; Linda Pettit, 8724 Redman Street, Springfield, Virginia; Richard Huzil, 8716 Redman Street, Springfield, Virginia; Patty Boore, 8713 Redman Street, Springfield, Virginia; Doug Applegate, 8489 Summer Breeze Lane, Springfield, Virginia; Kristine Wong, 8661 Pohick Forest Court, Springfield, Virginia; Tom Niner, 8746 Scott Street, Springfield, Virginia; Terrence Wong, 8661 Pohick Forest Court, Springfield, Virginia; and two additional young ladies who's information was not provided.

The Chairman directed the clerk to administer the oath to Ms. Burdsall and Ms. Sugrue, who swore or affirmed that their testimonies would be the truth.

The main points from the speakers in opposition included noting there was a petition in opposition; the negative impact of increased traffic; storm water drainage concerns; safety concerns; the frequency of flooding; the intended expansion of other nearby churches; overflow parking; the limitations imposed by evening hours of operation; the lack of sidewalks in the community; and the weighted impact of adding an additional church in such close proximity to other existing churches.

There was discussion regarding other development options for the subject site, storm water concerns in the community, the existing structures for storm water management and the intended modifications, and the direction of traffic.

Mr. Ntuk came forward to provide a rebuttal. He noted the intent to add sidewalks around the subject property, the source of the noted drainage issues, and the church's inability to legally regulate use of community roads as cut throughs.

There was discussion concerning the intended traffic pattern, the impact of larger storms based on the proposed storm water management plans, whether there would be a negative impact on the storm water issues in the surrounding community with the addition of a building on the subject property, plans for overflow parking, by-right uses for the land, and impervious area regulations.

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

Mr. Byers moved to defer decision on SP 2013-MV-012 to September 18, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

The Board requested additional information from the applicant and staff.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:25 p.m.

Minutes by: Kathleen A. Knoth/Emily J. Armstrong

Approved on: November 20, 2019


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 31, 2013. 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 asked if there were any Board Matters to bring before the Board. Mr. Byers expressed sympathies to a Clerk of the Board for her husband's recent passing. Chairman Ribble then discussed the policies and procedures of the Board of Zoning Appeals. Chairman Ribble called for the first scheduled case.

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC. & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 Appl. under Sect(s). 3-303 and 3-304 of the Zoning Ordinance to amend SP 76-M-088 previously approved for a community swim club to permit construction of a wireless telecommunications facility. Located at 6011 Crater Pl., Alexandria, 22312, on approx. 14.54 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((6)) (T) 056 and 72-2 ((3)) (T) C. *(Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12, 12/12/12, 1/16/13, 3/6/13, 5/8/13 and 7/10/13 at appl. req.) (Decision deferred from 7/17/13.)*

Chairman Ribble noted SPA 76-M-088 had been deferred for decision only.

Mr. Byers moved to deny SPA 76-M-088 for the reasons stated in the Resolution.

The Board discussed the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE PARKLAWN RECREATION ASSOCIATION, INC. & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 Appl. under Sect(s). 3-303 and 3-304 of the Zoning Ordinance to amend SP 76-M-088 previously approved for a community swim club to permit construction of a wireless telecommunications facility. Located at 6011 Crater Pl., Alexandria, 22312, on approx. 14.54 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((6)) (T) 056 and 72-2 ((3)) (T) C. *(Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12, 12/12/12, 1/16/13, 3/6/13, 5/8/13 and 7/10/13 at appl. req.) (Decision deferred from 7/17/13.)* 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 31, 2013; 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 14.53 (sic) acres.
4. Staff has recommended approval, but in this instance, the Board does not agree with that recommendation.
5. The Board does not agree that it is in conformance with the Comprehensive Plan.
6. As noted in the public hearing, the Board has one responsibility, and that is to determine if this application meets Zoning Ordinance criteria under Sect. 8-006 of the Zoning Ordinance.
7. In the Board's view, this application does not meet Standards 1, 2 or 3.
8. Standard 1, the proposed use of the specified location shall be in harmony with the adopted comprehensive plan.
 - A. A key concept in assessing telecommunications facilities is mitigation, which is defined as

- actions taken to reduce or eliminate negative visual impacts.
- B. On page 6 of the staff report, the 2232 analysis, plan guidelines support the location of telecommunication uses on existing private recreation in a predominately residential area when other more suitable land uses, such as public property or commercial or industrial properties, are not available and the telecommunications facility is located to blend into its surroundings.
 - C. In the staff report itself, quote, the proposed installation will result in visual impacts that may not be fully mitigated for some of the surrounding properties.
 - D. On page 8 of the staff report, quote, while the monopole has a clear impact to some adjacent properties, the visual impact to the overwhelming majority of the surrounding properties is reasonably mitigated, unquote. Quote, staff concludes the monopole, with a graduated paint, blends better in the areas where the pole extends above the tree line, although it is not necessarily a quote, stealth design, unquote.
9. The mere fact that there has been several unsuccessful attempts over the past several years beginning in 2007 by another telecommunications carrier to locate a telecommunications facility on this particular property should give us all pause.
 10. Whether it is a monopole that purports to blend into the sky or not, it is going to extend 50 to 75 feet above the tree line.
 11. The trees in this area are deciduous. They are not pine and are going to be barren of leaves for a significant portion of the year, meaning residents immediately adjacent to the monopole will have a direct view of that monopole.
 12. Standard 2, the proposed use will be in harmony with the general purpose and intent of applicable zoning district regulations.
 - a. The site as contemplated is not compatible with the residentially zoned land based on the information provided in the staff report, at least as the Board interpreted it, and the testimony given during the public hearing.
 - b. Although the site itself is 14.53 (sic) acres, much of the parcel is not useable as it is in a resource protection area and flood plain.
 - c. This has resulted in the tower being placed only 226 feet from the nearest residence.
 - d. It is not the number of acres that counts. It is where the monopole is placed on that acreage and the mitigation techniques used that are paramount.
 - e. In other applications approved by the Board, the placement of the pole has been mitigated by it being a flagpole, a cross or being placed in the steeple of a church.
 - f. The Board has also approved monopoles on recreation sites that are surrounded by pine trees and have been able to mitigate the effects by using a monopine.
 - g. None of those mitigation techniques can or have been used in this case.
 13. Standard 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 in accordance with the applicable zoning district regulations and the adopted Comprehensive Plan. The location, size, and height of building structures, walls, fences, and the nature and extent of screening, buffering, and landscape shall be such that the use will not hinder or discourage the appropriate development use of adjacent or nearby land or buildings or impair the value thereof.
 - a. Reading the analysis in the Thorne Evaluation study, of the six sites that were analyzed, five were in the state of Maryland. There would have been much more relevance if the studies had concentrated on value patterns in Fairfax County.
 - b. The Board agrees with Thorne that some of the primary reasons an individual purchases a home are good schools, the neighborhood, and transportation. Although these may be the primary reason, a simpler test would be viewing two homes of exactly the same value, with exactly the same access to good schools, and exactly the same access to the same transportation and having the opportunity to buy one without a monopole that is 128 feet tall that is in the backyard or one that does not have a monopole and has open vistas, which home would be purchased? The home without the monopole.
 - c. This leads to two alternatives that any homeowner has in that situation. You either decrease the value of your property to bring it in line so people will purchase your home or your home stays on the market for a longer period of time. That decreases the value of your home.
 14. It is also noted that of the 158 members of the Parklawn Recreation Association, 70 percent do not reside in the neighborhood and, therefore, would have no issue with a monopole.
 15. Also noted, based on the petition that was circulated, just about everyone in the community is dead set against this monopole.
 16. There are other technologies available, and they were never presented to the Board.
 17. With any applicant, cost could be a factor, but the Board was never apprised of the reasons other techniques were not employed or other locations whereby the applicants' coverage concerns could

be met fully and would truly mitigate the effects of the equipment used.

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

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

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

Ms. Gibb seconded the motion, which carried by a vote of 6-0-1. Mr. Hart moved to waive the 12-month waiting period for refileing an application. Mr. Beard seconded the motion, which carried by a vote of 4-2-1. Mr. Hammack abstained from the votes.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. CRILLEY WAREHOUSE, LLC & THE NOVA FIELD HOUSE LLC, SPA 2003-SU-012 Appl. under Sect(s). 5-303 of the Zoning Ordinance to amend SP 2003-SU-012 previously approved for commercial recreation use to permit change in permittee and modification of development conditions. Located at 14810 Murdock St., Chantilly, 20151, on approx. 4.10 ac. of land zoned I-3, AN and WS. Sully District. Tax Map 33-2 ((2)) 13C and 14.

Chairman Ribble called the applicants to the podium.

Chairman Ribble made a disclosure that he had dealings with parties involved in the case and indicated that he would recuse himself from the public hearing.

Vice Chairman Hammack assumed the Chair.

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 Turner, the applicants' agent, 124 South Royal Street, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 2003-SU-012, subject to the proposed development conditions.

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

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

Mr. Hart moved to approve SPA 2003-SU-012 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRILLEY WAREHOUSE, LLC & THE NOVA FIELD HOUSE LLC, SPA 2003-SU-012 Appl. under Sect(s). 5-303 of the Zoning Ordinance to amend SP 2003-SU-012 previously approved for commercial recreation use to permit change in permittee and modification of development conditions. Located at 14810 Murdock St., Chantilly, 20151, on approx. 4.10 ac. of land zoned I-3, AN and WS. Sully District. Tax Map 33-2 ((2)) 13C and 14. 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 31, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. This is a very straightforward application with minor changes to the development conditions.
5. The applicant had also met with the Sully District Council Land Use Committee, and they had no objection to the request, including the request for a 24-hour operation.
6. If there is going to be something like this on a facility up behind the airport, it certainly is not going to bother anyone.
7. The applicant is in agreement with staffs proposed changes to the development conditions.
8. There will not be any significant impact on anyone.

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

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

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

1. This approval is granted to the co-applicants, Crilley Warehouse, LLC, and Nova Field House, LLC, and is transferable without further action of this Board, and is for the location indicated on the application, 14810 Murdock Street, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton, Harris, Rust and Associates, P.C., dated April 6, 2003, as revised through May 20, 2003 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. All parking shall be on-site as shown on the special permit plat. If the proposed future entrance is constructed on Stonecroft Boulevard, a special permit amendment will not be required, provided the minimum number of parking spaces required by the Zoning Ordinance is provided.
6. A maximum of 400 patrons may be in the facility at any one time.
7. The athletic courts will be scheduled to allow all participants and spectators in a scheduled session to vacate the facility prior to the commencement of the following session.
8. All lighting shall be provided in accordance with the following:
 - The combined height of the light standards and fixtures shall not exceed eighteen (18) feet.
 - The lights shall be low intensity design, full-cut-off fixtures, which focus the light directly onto the subject property. Shields shall be installed, if necessary.
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the

site is not in use, except for security lighting directly adjacent to the building(s).

- There shall be no plighting of the existing or proposed buildings.
9. Any proposed signs shall comply with Article 12 of the Zoning Ordinance, notwithstanding however, there shall be no plighting of any signs.
 10. Understory and foundation plantings, in addition to the plantings shown on the special permit plat to soften the appearance of the parking area and structure, shall be maintained adjacent to Stonecroft Boulevard and surrounding the building. The species, size, number and location shall be determined in consultation with the Urban Forestry Division of DPWES.
 11. All landscaping shall be maintained in good condition. Any dead, dying and hazardous materials shall be replaced.
 12. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be maintained as determined by the Department of Public Works and Environmental Management (DPWES). If DPWES determined that the SWM/BMP requirements cannot be provided downstream as proposed, they shall be provided on-site as determined by DPWES, however no additional parking spaces shall be deleted except as noted in Condition 6.

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, six (6) months after the date of approval **unless a new non-RUP has been obtained**. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Chairman Ribble recused himself from the hearing.

//

Chairman Ribble resumed the Chair.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. JAIME W. ZAMBRANA, SP 2013-MA-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 2.3 ft. from side lot line and decks 3.0 ft. and 3.8 ft. from side lot line. Located at 7201 Pine Dr., Annandale, 22003, on approx. 11,972 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((7)) (C) 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.

Jaime Wilbert Zambrana, 7201 Pine Drive, Annandale, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report.

Discussion ensued regarding necessary permits, building code requirements, whether the existing structure needed screening, and complaints against the property related to storm water drainage.

Mr. Zambrana presented the special permit request as outlined in the statement of justification submitted with the application. He noted his reasons for wanting to keep the shed and assured he would maintain the yard in good upkeep.

There was discussion concerning an illegal shed taken down by the applicant, necessary permits, the applicants plan should the special permit be approved, the current state of the existing sheds, permitted heights and lot line distances of the subject structures, and the absence of a laundry room in the primary dwelling.

Chairman Ribble called for speakers.

John Clarke, 7227 Auburn Street, Annandale, Virginia, came forward in opposition. He noted the opposition by the neighborhood, and explained how the Zoning Ordinance was not applicable to this case.

There was discussion regarding how long the sheds had been on the property, whether there was a history of complaints from the neighborhood, and plumbing and electric in the laundry shed.

Mr. Zambrana came forward in rebuttal. He explained there had been no history of issues or complaints related to the sheds on his property, there were other non-compliant sheds in the neighborhood, and his reason for the special permit request was for personal needs. He also noted his intent was not to lower property values in the neighborhood.

Discussion ensued concerning the location of the shed and whether it could be moved, neighbor complaints, potential additional development conditions, the location of the trailer, and removal of an old hot water tank.

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

Ms. Gibb moved to approve SP 2013-MA-039 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAIME W. ZAMBRANA, SP 2013-MA-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 2.3 ft. from side lot line and decks 3.0 ft. and 3.8 ft. from side lot line. Located at 7201 Pine Dr., Annandale, 22003, on approx. 11,972 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((7)) (C) 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 July 31, 2013; and

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

1. The applicant is the owner of the land.
2. In this case, the applicant has presented testimony that when he purchased the property, the main issue here is the large shed that has the laundry room in it, and the large shed was already on the property.
3. The applicant purchased it in 1997. That is a long time to have this existing without complaint.
4. It is a close case, but the applicant has met the standards required to obtain a special permit under the mistake section, section's A thru G.
5. The noncompliance was done in good faith.
6. The shed was there when he bought the property.

7. The fact that it is located right next door to his neighbor's shed means that the impact is minimized.
8. The Board has a complaint from neighbors driving by.
9. It is a corner lot, so you can see into the lot.
10. One shed has been removed, and it seems like there is other activity on the lot that has been cleaned up.
11. There is one shed that is there by right that may seem unkempt to passersby, but it is there by right so it is not currently before the Board.
12. It does not create an unsafe condition.
13. The Board has allowed sheds closer than 2.3 feet, and there is room for a human to get between the boundary line and the shed for maintenance purposes.
14. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
15. The owner obviously uses the shed and has testimony that he needs it because there are no laundry facilities in his home.
16. There is testimony that it does not seem possible to move it.
17. As far as the decking, there is testimony from the inspector that it does not cause a stormwater issue.
18. There does not seem to be any complaint from the neighbors about the concrete patio and the fact that it extends into the setback area.

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

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

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

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

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

1. This special permit is approved for the locations of the accessory structure and decks as shown on the plat prepared by Inova Engineering Consultants, Inc., titled "Special Permit Plat, Lot 1, Fairdale" dated May 28, 2013, as submitted with this application and is not transferable to other land.

2. All applicable permits and final inspections shall be obtained for the accessory structure within 6 months of approval of this application.
3. The two sheds on the property shall be painted and maintained consistent with the existing home. The empty steel tank noted on the plat shall be removed.

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

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

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF CALVARY CHRISTIAN CHURCH, SPA 76-S-200-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-S-200 previously approved for place of worship to permit site modifications and deletion of land area. Located at 6408 Spring Lake Dr. and 9800 Old Keene Mill Rd., Burke, 22015, on approx. 9.67 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((2)) 8 and 10. (Associated with RZ 2013-SP-005)

Chairman Ribble noted that SPA 76-S-200-02 had been administratively moved to September 25, 2013, at 9:00 a.m., at the applicant's request.

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. GIOVANNI CALABRO, SP 2013-SU-034 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 13.6 ft. from the side lot line. Located at 15420 Cedarhurst Ct., Centreville, 20120, on approx. 15,532 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (5) 120. (*Admin moved from 7/17/13 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.

Giovanni Calabro, 15420 Cedarhurst Court, Centreville, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Calabro 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 2013-SU-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GIOVANNI CALABRO, SP 2013-SU-034 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 13.6 ft. from the side lot line. Located at 15420 Cedarhurst Ct., Centreville, 20120, on approx. 15,532 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (5) 120. (*Admin moved from 7/17/13 at appl. req.*) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2013; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The present zoning is R-C in a watershed overlay district.
7. The area of the lot is 15,532 square feet.
8. This is going to have very little impact on adjoining property owners.
9. It will be consistent and harmonious with the existing dwelling unit.
10. There is currently a deck in the location, as testified by the applicant.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 addition as shown on the plat prepared by Schools & Townsend, P.C., dated April 25, 2013, signed by Ronald S. Schools, as submitted with this application and is not transferable to other land.
2. The play structure located in the northeast corner of the rear yard shall be removed or relocated to be in conformance with Zoning Ordinance requirements.
3. All applicable permits shall be obtained prior to any 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 7-0.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. LORI BARNES, SP 2013-SU-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 7.2 ft. and open deck to remain 7.5 ft. from rear lot line. Located at 13761 Royal Red Ter., Chantilly, 20151, on approx. 13,571 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 44-4 ((12)) 28.

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm was currently engaged in a case where the attorneys for the adverse party were from the appellants' agents' law firm, 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.

Lori Barnes, 13761 Royal Red Terrace, Chantilly, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

Discussion ensued concerning a related setback certification and differences between plats associated with the property.

Ms. Barnes presented the special permit request as outlined in the statement of justification submitted with the application. She explained the history which led to expansion of the existing deck.

At the direction of the Chairman, Shawn Nazemian, the applicant's contractor, 8630-A Lee Highway, Fairfax, Virginia, swore or affirmed that his testimony would be the truth.

There was discussion regarding discrepancies between approved documents and final construction, completed inspections, changes made to the original building plan, grading on the property, and whether the nature of the error in building was done in good-faith.

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

Mr. Beard moved to approve SP 2013-SU-035. Ms. Gibb seconded the motion, which failed by a vote of 3-2. Chairman Ribble and Mr. Hammack voted against the motion. Mr. Byers was not present for the vote, and Mr. Hart recused himself.

Mr. Hammack moved to defer decision on SP 2013-SU-035 to September 18, 2013, at 9:00 a.m. Chairman Ribble seconded the motion, which failed by a vote of 2-3. Mr. Beard, Ms. Gibb, and Mr. Smith voted against the motion. Mr. Byers was not present for the vote, and Mr. Hart recused himself.

Mr. Hammack moved to reconsider the motion to defer decision on SP 2013-SU-035 to September 18, 2013, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote, and Mr. Hart recused himself.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. BASIM M. MANSOUR, SP 2013-MV-043 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 11191 Gunston Rd., Lorton, 22079, on approx. 5.26 ac. of land zoned R-E. Mt. Vernon District. Tax Map 119-1 ((3)) 12.

Chairman Ribble noted that there was a deferral request by the applicant.

Mr. Hammack moved to defer SP 2013-MV-043 to September 25, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. ERIC LARSON, SP 2013-SP-045 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 structures to remain 10.3 ft from rear lot line and 8.4 ft.

and 1.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from the side lot line. Located at 8904 Stewart St., Burke, 22015, on approx. 38,734 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((2)) 12.

Chairman Ribble noted that SP 2013-SP-045 had been administratively moved to September 11, 2013, at 9:00 a.m. due to notices.

//

~ ~ ~ July 31, 2013, Scheduled case of:

9:00 A.M. GUIMAR E. CORDOVA, VC 2013-MA-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.34 ft. from front lot line and accessory storage structure greater than 200 sq. ft. in size. Located at 3711 Munson Rd., Falls Church, 22041, on approx. 10,768 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((22)) 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.

Guimar Cordova, 3711 Munson Road, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

There was discussion regarding options for the driveway.

Mr. Cordova presented the variance request as outlined in the statement of justification submitted with the application. He explained his personal reasons for making the variance request.

Discussion ensued concerning a neighborhood petition in opposition, additional objection to the application, the applicant's reasoning for needing the shed, whether there were existing plans from an architect, and the applicant's plan for the driveway.

Chairman Ribble called for speakers.

At the direction of the Chairman, Francis Dick, 3620 Lacy Boulevard, Falls Church, Virginia, swore or affirmed that her testimony would be the truth.

Ms. Dick came forward in opposition. She discussed her concern with the impact of the location of the driveway, visual obstruction caused by the shed, and her understanding that the applicant did not meet all the variance requirements.

There was discussion concerning alternative options available to the applicant and the history of the existing easement.

Mr. Cordova came forward in rebuttal. He explained he wanted to make home improvements in order to support his family.

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

Mr. Hammack moved to approve-in-part VC 2013-MA-005. Mr. Hart seconded the motion.

Mr. Hammack withdrew his motion.


Mr. Hammack moved to defer decision on VC 2013-MA-005 to September 18, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. The case remained open for additional comments. Mr. Byers was not present for the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: November 20, 2019


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 7, 2013. The following Board Members were present: Chairman John F. Ribble III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard. Absent from the meeting were Thomas W. Smith III and Nancy E. Gibb.

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

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. ENES ALIC, SPA 2011-LE-074 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 1.8 ft. from side lot line. Located at 7130 Cold Spring Ct., Alexandria, 22306, on approx. 2,280 sq. ft. of land zoned R-5 (Cluster) and HD. Lee District. Tax Map 92-4 ((6)) 152. (*Admin. moved from 7/24/13 at appl. req.*)

Chairman Ribble noted that SPA 2011-LE-074 had been administratively withdrawn.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M., VASILA LADYGINE, SP 2013-DR-038 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 2008 Leonard Rd., Falls Church, 22043, on approx. 12,771 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((18)) 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.

Vasila Ladygine, 2008 Leonard Road, Falls Church, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-DR-038, subject to the proposed development conditions.

There was discussion regarding safety concerns and the applicant's conditional license.

Ms. Ladygine had nothing to add to the special permit request as outlined in the statement of justification submitted with the application.

Discussion ensued concerning the applicant's conditional license and relevant Fairfax County procedures.

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

Mr. Hammack moved to approve SP 2013-DR-038 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VASILA LADYGINE, SP 2013-DR-038 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 2008 Leonard Rd., Falls Church, 22043, on approx. 12,771 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((18)) 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 August 7, 2013; 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 report.
3. It appears the applicant meets all the requirements to grant this.
4. The Board adopts staff's recommendations generally.

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, Vasila Ladygine, only and is not transferable without further action of the Board, and is for the location indicated on the application, 2008 Leonard 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 House Location Survey prepared by Brian W. Smith of B.W. Smith and Associates, Inc., dated May 21, 2007, 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 hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
7. Pick-up and drop-off of children shall take place in the driveway.
8. A minimum of six parking spaces shall be provided on the subject parcel within the garage and areas of existing paving.
9. The existing two-car garage shall not be converted to a use other than for off-street parking and shall be kept clear of debris at all times in order to accommodate parking for the dwelling and home child care uses.
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 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 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. DAVID LAUX AND TARA LONG, SP 2013-MA-041 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.1 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 4613 Randolph Dr., Annandale, 22003, on approx. 24,798 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((11)) 6 (Concurrent with VC 2013-MA-007).

9:00 A.M. DAVID LAUX AND TARA LONG, VC 2013-MA-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 7.0 ft. in height to remain in the rear yard. Located at 4613 Randolph Dr., Annandale, 22003, on approx. 24,798 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((11)) 6 (Concurrent with SP 2013-MA-041).

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.

David Laux, 4613 Randolph Drive, Annandale, Virginia, and Tara Long, 4613 Randolph Drive, Annandale, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MA-041, subject to the proposed development conditions.

Discussion ensued regarding the history of the shed, expected surrounding development, and electricity in the shed.

Mr. Laux presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He explained the shed's existence prior to his purchase of the home, the presence of electricity, that the fence had been built on a slope, and the location of the garage addition.

There was discussion concerning utilities in the shed and the present disrepair of the shed.

Chairman Ribble called for speakers.

Rayburn Allen, 4609 Randolph Drive, Annandale, Virginia, came forward in support. He noted the shed existed prior to the applicants' ownership of the home and the necessity of having the fence.

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

Mr. Byers moved to approve SP 2013-MA-041 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID LAUX AND TARA LONG, SP 2013-MA-041 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.1 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 4613 Randolph Dr., Annandale, 22003, on approx. 24,798 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((11)) 6. (Concurrent with VC 2013-MA-007). 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 7, 2013; and

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

1. The applicants are the owners of the land.
2. The Board had testimony from both the applicant and the next-door neighbor that the shed was in place three to four years prior to the property actually being purchased.
3. It appears to be well screened with mature trees in the backyard at least from the front, and the next-door neighbor indicated there is a fence in between the properties.
4. This was not the result of a complaint.
5. Staff recommends approval for the addition, and the Board concurs with staff's analysis.

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, approximately 1,430 square feet for the proposed addition, and the shed as shown on the plat prepared by Dominion Surveyors Inc., dated November 7, 2012, 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 (2,458 square feet existing + 3,888 square feet (150%) = 6,145 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 generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.
5. All applicable permits and final inspections shall be obtained for the accessory storage structure within six months of 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 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 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

//

Mr. Byers moved to approve VC 2013-MA-007 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID LAUX AND TARA LONG, VC 2013-MA-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing fence greater than 7.0 ft. in height to remain in the rear yard. Located at 4613 Randolph Dr., Annandale, 22003, on approx. 24,798 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((11)) 6. (Concurrent with SP 2013-MA-041). 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 7, 2013; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 24,798 square feet.
4. The subject property was acquired in good faith.
5. There is an extraordinary condition with regard to the property, and that is a steep slope.
6. The adjoining property is four to five feet higher than the property of the applicants, and in essence it is going to be a four-foot fence with that adjoining property.
7. The adjacent property owner indicated that it is not an issue.
8. There is going to be a redevelopment of the adjoining properties.
9. The buildings on the next property will be relatively tall, which will take away some of the privacy of

- the applicants.
10. During the construction period, there will be noise pollution, and there will be pollution from dust and that kind of thing, so there is an extraordinary condition.
 11. That applies to 2G, an extraordinary situation or condition of the use or development of the property right next door.
 12. The critical criteria is 6B. The granting of the variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicants.
 13. The authorization of this variance will not be of substantial detriment to the adjacent property.
 14. The character of the zoning district will not be changed.
 15. The variance will be in harmony with the intended spirit and purpose of this ordinance.
 16. It will not be contrary to the public interest.

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

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

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

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

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

1. This variance is approved for the 8 foot rear yard fence on the property as shown on the plat prepared by Dominion Surveyors, Inc., dated November 7, 2012, 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 including requirements for building permits.

Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. APPLETREE MONTESSORI, LLC, SP 2013-PR-044 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 8809 Arlington Blvd., Fairfax, 22031, on approx. 41,216 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 41.

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.

Annely Carver, 10522 Elmenden Court, Oakton, Virginia, and Thea Meinen, 8809 Arlington Boulevard, Fairfax, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SP 2013-PR-044. Should the Board choose to approve the application, staff recommended they do so subject to the proposed development conditions.

Discussion ensued regarding potential modifications to the request, generated traffic issues, parking, Health Department standards, Virginia Department of Transportation concerns, additional information that would be helpful to staff, and the expedited review of the subject application.

Ms. Carver provided handouts to the Board, and presented the special permit request as outlined in the statement of justification submitted with the application. She explained the relevant work history of Ms. Meinen, the need for quality childcare services, modifications made to the property, and neighbor support. She also addressed the traffic concerns and Health Department requirements.

There was discussion concerning the applicant, who would reside on the property, transportation and septic concerns, input from the Health Department, parking, and a letter submitted in opposition.

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

Mr. Hart moved to defer decision on SP 2013-PR-044 to November 6, 2013, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

The Board commented on concerns regarding the application request.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59.

Chairman Ribble noted that VC 2013-PR-009 had been administratively moved to September 11, 2013, at 9:00 a.m., at the applicant's request

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. KENNETH A. PRICE & IMELDA G. PRICE, SP 2013-MA-020 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 4500 Braddock Rd., Alexandria, 22312, on approx. 31,745 sq. ft. of land

zoned R-2. Mason District. Tax Map 72-1 ((6)) 132. (Admin. moved from 5/8/13 at appl. req.)
(Admin. moved from 6/12/13 for notices.)

Chairman Ribble noted that SP 2013-MA-020 had been withdrawn.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. LORENA S. DENNEHY, SP 2013-SU-040 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 13921 Waterflow Pl., Centreville, 20121, on approx. 1,650 sq. ft. of land zoned R-8 and WS. Sully District. Tax Map 65-2 ((3)) (16) 46.

Chairman Ribble noted that SP 2013-SU-040 had been administratively moved to October 9, 2013 at 9:00 a.m., for notices.

//

The meeting recessed at 10:35 a.m. and reconvened at 10:47 a.m.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (*Decision deferred from 11/28/12 and 1/16/13 (Admin. moved from 3/6/13 due to inclement weather.) (Admin. moved from 6/5/13 at appl. req.)*)

9:00 A.M. MONIKA JEDROL, VC 2013-SP-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit front yard coverage greater than 30%. Located at 6117 Lundy Pl., Burke, 22015, on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331.

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.

William Florence, 5605 Sutherland Court, Burke, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report.

Mr. Florence presented the special permit and variance request as outlined in the statement of justification submitted with the application. He explained the financial concerns and desired coverage approval.

Discussion ensued regarding parking and traffic patterns, different coverage options, the shed, availability of on-street parking, and the financial hardship of reducing existing coverage.

Chairman Ribble called for speakers.

Steve Cook, 6115 Lundy Place, Burke, Virginia, came forward in support. He explained the benefit of the existing coverage to the maintenance of his property and the safety concerns with child drop-off and pick-up occurring outside the driveway.

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

Mr. Hammack moved to deny VC 2013-SP-008. Chairman Ribble seconded the motion for purposes of discussion.

The Board discussed the motion, and opted for a substitute motion to defer decision.

Mr. Hart moved to defer decision on VC 2013-SP-008 to September 11, 2013. Mr. Byers seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

Mr. Hammack moved to defer decision on SP 2012-SP-059 to September 11, 2013, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

//

~ ~ ~ August 7, 2013, Scheduled case of:

9:00 A.M. HAJI-NOOR AND TAHERA AHMAD, A 2013-MV-012 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established two dwelling units, are allowing outdoor storage that does not meet location requirements, have paved more than 30% of the rear and front yards, and have erected an accessory storage structure that does not comply with size or location requirements, all on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3003 Preston Ave., Alexandria, 22306, on approx. 6,250 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18E)) 175 and 176.

Chairman Ribble called the appellants to the podium.

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

Getachew Tadesse, Staff Coordinator, presented staff's position as set forth in the staff report. Staff recommended the Board uphold the determination of the Zoning Administrator.

There was discussion concerning the building permit, the installed patios, inspection of the property, the building being constructed on two separate lots, and the second kitchen.

John Noor Ahmad, 3003 Preston Avenue, Alexandria, Virginia, came forward.

Mustafa Wafa, 7909 Yancey Drive, Falls Church, Virginia, acted as interpreter for Mr. Ahmad.

Mr. Ahmad explained his concern with discrepancies between plats and existing infrastructure and neighborhood safety.

Mr. Ahmad submitted documentation to the Board which demonstrated the permits and inspections he had obtained for the construction.

There was discussion regarding the classification of the structure as a duplex, kitchens in the home, occupants of the duplex, and what violations the applicant was disputing.

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

Mr. Byers moved to uphold the determination of the Zoning Administrator. He believed based on the evidence presented in the staff report, it was clear the applicants were maintaining two dwelling units within a single-family dwelling. Each dwelling unit had an independent entrance, living area, bathrooms, bedrooms, and kitchen. Inspections have shown, and the appellants have not disputed, violations related to outdoor storage and accessory storage structure location requirements. The appellants did not dispute the violation of over 30 percent coverage. Staff recommended the Board uphold the determination of the Zoning Administrator. Mr. Byers noted a 2002 letter which notified the appellant that it was prohibited to divide the single residence into two addresses. He explained the installations which constituted the area identified as a


den was a kitchen by Fairfax County standards. Mr. Hammack seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Ms. Gibb were absent from the meeting.

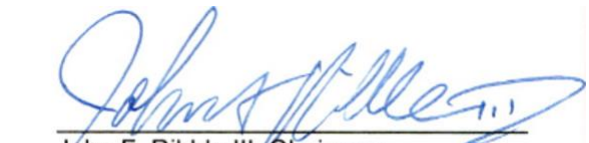
//

As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: October 23, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, September 11, 2013. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr., V. Max Beard; Thomas W. Smith III; James R. Hart; and Norman P. Byers. Absent from the meeting was Nancy E. Gibb.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. During Board Matters, Chairman Ribble called for a moment of silence in remembrance of those who lost their lives in 2001.

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 pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

The meeting recessed at 9:03 a.m. and reconvened at 9:09 a.m.

Mr. Hammack then moved that the Board of Zoning Appeals certified that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

Chairman Ribble called for the first scheduled case.

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. MICHAEL A. OLSON, SP 2013-SU-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.1 ft. from side lot line such that side yards total 17.1 ft. Located at 14725 Cranoke St., Centreville, 20120, on approx. 12,658 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 53-2 ((3)) 283.

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 Olson, 14725 Cranoke Street, Centreville, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Gumkowski noted that this application was within a watershed protection overlay district. Staff recommended approval of SP 2013-SU-047, subject to the proposed development conditions.

Mr. Olson 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 2013-SU-047 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL A. OLSON, SP 2013-SU-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 5.1 ft. from side lot line such that side yards total 17.1 ft. Located at 14725 Cranoke St., Centreville, 20120, on approx. 12,658 sq. ft. of land

zoned R-3 (Cluster). Sully District. Tax Map 53-2 ((3)) 283. 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 11, 2013; and

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

1. The applicant is the owner of the property.
2. It is a minimal reduction.
3. It is an enclosure of an existing carport, the only logical place to complete this sort of construction.
4. The Board has a favorable staff recommendation.
5. The Board has determined that the applicant has presented testimony indicating compliance with subsections 1 through 6 set forth more specifically in the Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 addition (344 square feet), as shown on the plat prepared by George M. O'Quinn, L.S. of Dominion Surveyors Inc., dated October 19, 2012, 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 (2,131 square feet existing + 3,197 square feet (150%) = 5,328 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally 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, 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.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. JOHN E. AND LISA Z. JOINER, SP 2013-BR-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure 8.3 ft. and 10.9 ft. from side lot lines. Located at 8230 A The Midway, Annandale, 22003, on approx. 15,079 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-2 ((2)) 53 A1.

Chairman Ribble noted that SP 2013-BR-048 had been administratively moved to October 9, 2013 at 9:00 a.m. at the applicant's request.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. SPRINGFIELD TRAMPOLINE PARK, LLC, SP 2013-LE-042 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation use. Located at 7200 Fullerton Rd., Springfield, 22150, on approx. 4.77 ac. of land zoned I-5. Lee District. Tax Map 99-1 ((5)) 8 and 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.

Peter Juanpere, 5314 Tractor Lane, Fairfax, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed to establish a new 25,927 square foot trampoline park within an existing 78,581 gross square foot industrial mixed-use building in an existing industrial park. The proposed commercial recreation use would include competition rectangular trampolines and pit trampolines, and an accessory use of party room and a galley. No exterior changes were proposed. Staff recommended approval of SP 2013-LE-042 subject to the proposed development conditions.

Mr. Hart questioned the parking calculations, noting his concern for multiple uses sharing the same parking lot. Ms. Haley stated that it met the requirements of the Zoning Ordinance and still had 30 excess spaces.

Mr. Juanpere presented the special permit request as outlined in the statement of justification submitted with the application. He stated that there was easy access to and from the Interstate 95 corridor, and most of the other uses in the industrial park operated during the day, whereas the trampoline park contemplated mostly evening and weekend use. Further, Mr. Juanpere said the transportation report which had been conducted on this property showed a negligible traffic impact.

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

Mr. Byers moved to approve SP 2013-LE-042 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SPRINGFIELD TRAMPOLINE PARK, LLC, SP 2013-LE-042 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation use. Located at 7200 Fullerton Rd., Springfield, 22150, on approx. 4.77 ac. of land zoned I-5. Lee District. Tax Map 99-1 ((5)) 8 and 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 September 11, 2013; and

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

1. The zoning is I-5.
2. The area of the lot is 4.77 acres.
3. 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 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, Springfield Trampoline Park, LLC, only and is not transferable without further action of this Board, and is for the location indicated on the application, at 7200 Fullerton Road, Springfield, 22150, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, Incorporated, dated May 31, 2013, 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 occupancy is limited to 120 customers and 12 employees on-site at any one time.
5. Parking shall be provided in accordance with Article 11 of the Fairfax County Zoning Ordinance. If required by DPWES, a parking tabulation shall be submitted to and approved by the Director which shows that the required parking for all uses can be provided for on Lot 1A as shown on the special permit plat. All parking for this use shall be on site.
6. The maximum gross floor area of the commercial recreation shall be 25,927 square feet, including 3,040 square feet of mezzanine, as shown on the special permit plat.
7. The floor plan shall be constructed in substantial conformance as shown on Attachment 1.

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

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

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

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. ERIC LARSON, SP 2013-SP-045 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 accesssory storage structures to remain 10.3 ft from rear lot line and 8.4 ft.

and 1.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from the side lot line. Located at 8904 Stewart St., Burke, 22015, on approx. 38,734 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((2)) 12. (Admin. moved from 7/31/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Eric Larson, 8904 Stewart Street, Burke, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SP-045, subject to the proposed development conditions.

Mr. Larson presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing further to add to the staff report.

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

Mr. Smith moved to approve 2013-SP-045 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC LARSON, SP 2013-SP-045 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 structures to remain 10.3 ft from rear lot line and 8.4 ft. and 1.7 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from the side lot line. Located at 8904 Stewart St., Burke, 22015, on approx. 38,734 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((2)) 12. (Admin. moved from 7/31/13 for notices.) 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 11, 2011; and

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

1. The applicant is the owner of the property.
2. The property is zoned R-1.
3. The applicant has presented testimony indicating compliance with Section 8-914 under the mistake section.
4. As indicated in the staff report, there has been minimal impact from the sheds.
5. Frankly, they are not that far over the 8.5 foot height requirement.
6. They would not have a significant impact on neighbors in this case, not be detrimental to the use and enjoyment of other property in the immediate vicinity.
7. With respect to the Section 8-922 application for the construction of an addition, this is a relatively long, narrow lot, a one-story single-car garage proposed for the addition that will sit on the existing footprint for the driveway.
8. It would not have a significant impact.
9. In this case, the staff recommends approval as well.

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

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

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

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

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

- 1. 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 only for the location of proposed garage addition (approximately 482 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated February 22, 2013, as revised through March 12, 2013, signed by George M. O'Quinn, Land Surveyor, 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 (3,274 square feet existing + 4,911 square feet (150%) = 8,185 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 generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
- 5. All applicable permits and inspections shall be obtained for the 203 square foot accessory storage structure within six months of approval of this 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.

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.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. LINDY L. PAULL, SP 2013-MV-050 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 of a corner lot. Located at 6415 Potomac Ave., Alexandria, 22307, on approx. 15,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (37) 14, 14A and 15.

Chairman Ribble noted that SP 2013-MV-050 had been administratively moved to October 23, 2013, at 9:00 a.m., as their notices were not in order.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59. (Admin. moved from 8/7/13 at appl. req.)

Chairman Ribble noted that VC 2013-PR-009 had been administratively moved to October 9, 2013 at 9:00 a.m., as their notices were not in order.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (Decision deferred from 11/28/12, 1/16/13, and 8/7/13.) (Admin. moved from 3/6/13 due to inclement weather.) (Admin. moved from 6/5/13 at appl. req.)

9:00 A.M. MONIKA JEDROL, VC 2013-SP-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit front yard coverage greater than 30%. Located at 6117 Lundy Pl., Burke, 22015, on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (Decision deferred from 8/7/13.)

Chairman Ribble reminded the Board that these applications were for decision only.

Mr. Hart moved to approve VC 2013-SP-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MONIKA JEDROL, VC 2013-SP-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit front yard coverage greater than 30%. Located at 6117 Lundy Pl., Burke, 22015, on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (Decision deferred from 8/7/13.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 11, 2013; and

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

1. The applicant is the owner of the property.
2. The Board has heard this case a couple times.
3. Somewhere along the way, a variance application was added to it.
4. The resolution of the special permit was dependent upon the variance issues because of the problems with access and parking and turnaround.
5. Mr. Hart went out to the site to look at it, and in his judgment, the standards for a variance had been met.
6. Particularly with respect to the extraordinary condition of the lot, he made some observations.
7. This is an unusual pipestem lot.
8. The area in question is technically a front yard because it is on the side of the house that is facing the pipestem, although the area of pavement being talked about is approximately 200 feet-plus from street, and it is down a big hill.
9. The area is also somewhat concealed also by vegetation. It is very difficult to see it.
10. Up at Lundy Place, even with the GPS in the car, Mr. Hart missed it the first time through. It is hard to find this property.
11. If you were driving down Lundy Place, you would not intuitively assume that this area is a front yard of anyone's house. It is not even really a side yard. It is kind of in a backyard as this house is set behind the houses that are up on the street.
12. The widest part of this front yard is also backing up to Park Authority property.
13. It is very difficult to see it, and so at least from a starting point, there is not going to be any significant visual impact on anyone.
14. The driveway itself is also very narrow and compounds the unusual situation with respect to this property.
15. There were perhaps some questionable engineering decisions made at the time the house was built or the house was sited.
16. If the house was built as a mirror image with the garage closer to the street side, there would be a way to go into the garage and do a three-point turn and get back out to the street. But the way they built the house, with the end of the garage even with the end of the easement, there is not really a place to do a three point turn except by going on the neighbor's property.
17. The neighbor had come and testified that people used to pull on the grass to do that.
18. They have built sort of a little concrete turnaround, which the neighbor is fine with people using or he has been fine with it, but technically the bulk of it is on the neighbor's property.
19. The easement probably should have been longer to accommodate the area where the concrete turnaround is, but the Board is stuck with the situation as it is.
20. The geometry also of the placement of this house is problematic.
21. The house should have been at least five or six feet further to the right.
22. If you look at the dimensions on the plat, from the corner of the garage to the lot line is 20.9 feet, but 3.3 feet of that is within the easement.
23. Mr. Hart found that out driving down there. There was a truck parked more or less in the driveway in front of the house but sticking out into the easement a little bit so he could not really turn around. He had to back up to get back out the driveway.
24. That leaves a space of 17.6 feet between the edge of the easement and the front of the garage wall. At 17.6 feet, it is shorter than the length of a parking space. It is shorter than the length of many cars, and it is an unusual condition to have a single- family house with nowhere to park a car except inside

- the garage. That is affecting in some way the use of this property.
25. You would expect with a single-family house if someone came to deliver a pizza or have guests come over, something like it, you would expect they are not going to park up on the street and walk down this big hill to get to the house. They want to park up at the house. But on this lot, there is nowhere really to do it.
 26. The logical place to have a place for a car to park that is not in the garage, that is not sticking out into the easement, is where they have put it. The same for a turnaround.
 27. Having a place to park, having a place to turn around was essential for this lot, whether or not there is a childcare associated with it.
 28. This is enough of an extraordinary condition, with a weird lot, with a technical Ordinance front yard problem, with an odd placement of the house on the lot and an easement that is too short.
 29. The variance would help resolve that hardship on the owner.
 30. Because of the topography, the hill, and the vegetation, the appearance of the paved area is not particularly disturbing.
 31. Mr. Hart was struck by going down there was how tiny the front yard space for this house was.
 32. There is really very little space between the front of the house and the lot line anyway.
 33. This is not a huge area, and it is not particularly bothersome. Sometimes people pave over the front yard and you really notice it, but in a situation like this, it was concealed enough that no one would be impacted by it.
 34. Although the arguments at the public hearing really were about finances and the impacts on the owner financially of having to redo the pavement, we are not really considering that for the purposes of the variance. Even if these geometry issues were not emphasized, they are present and apparent and within the scope of what has been asked for, and the Board can rely on that.
 35. This kind of situation is not going to be easily repeated.
 36. This is not necessarily a convenience for the owner.
 37. This is alleviating a legitimate 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.

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

1. This variance is approved for the front yard coverage as shown on the variance plat prepared by B.W. Smith and Associates, Inc., dated and sealed October 16, 2012, as revised through May 7, 2013, and noted as Option 1, as submitted with this application and is not transferrable to other land.

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

Mr. Smith seconded the motion, which carried by a vote of 5-1. Mr. Hammack voted against the motion.

Mr. Hart then moved to approve SP 2012-SP-059 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage, structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331. (Decision deferred from 11/28/12, 1/16/13, and 8/7/13.) (Admin. moved from 3/6/13 due to inclement weather.) (Admin. moved from 6/5/13 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 11, 2013; and

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

1. The applicant is the owner of the property.
2. The Board had a favorable staff recommendation.
3. The problems on this case largely resulted from the access, drop-off, turn around driveway problem, which the Board hopes the variance has addressed.
4. The application was tricky at the beginning, but when the variance for the front yard coverage was added to it, it helped resolve it.
5. There is a safe way to park and turn around now.
6. The daycare seems to be working appropriately.
7. This is not something that is going to have significant impacts on the neighbors.
8. The shed, there was evidence that the applicable standards had been satisfied.
9. The shed is in the back sort of toward the Park Authority property.
10. It did not seem that there would be any significant negative impact on anyone.
11. On this lot, the Board did not know where you would put a shed.
12. It is technically a side yard because of the sort of odd pipestem configuration, but it really is the rear yard for this house.
13. It is not only a rear yard, it is a rear yard behind rear yards.
14. You cannot even see this from the street.
15. Therefore, the applicable 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 the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

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

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

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

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

- 1. This approval is granted to the applicant only, Monika Jedrol, and is not transferable without further action of this Board, and is for the location indicated on the application, 6117 Lundy Place, Burke, 22015, 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 B.W. Smith and Associates, Inc., dated and sealed June 12, 2012, as revised through October 16, 2012, as revised through May 7, 2013, and noted as Option 1, 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 total maximum daily enrollment at the home child care facility shall not exceed nine (9) children.
- 5. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
- 6. The maximum number of employees shall be limited to two (2) on site at any one time in addition to the provider.
- 7. The dwelling that contains the home child care facility shall be the primary residence of the provider.
- 8. There shall be no signage associated with the home child care facility.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify

the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. BEYER I LLC, A 2012-PR-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, which is a use not permitted, on property in the C-8 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7113 Shreve Rd., Falls Church, 22043, on approx. 33,787 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 40-3 ((12)) 11. (Admin. moved from 1/16/13, 4/3/13, and 6/19/13 at appl. req.)

Chairman Ribble noted that A 2012-PR-029 had been administratively moved to November 6, 2013 at 9:00 a.m. at the applicant's request.

//

~ ~ ~ September 11, 2013, Scheduled case of:

9:00 A.M. G & K, INC. T/A RESTON UHAUL, A 2013-HM-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a truck rental establishment on property in the PRC District without Special Exception approval in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr., Reston, 20190, on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7. (Admin. moved from 7/10/13.)

Chairman Ribble noted that A 2013-HM-010 had been administratively moved to February of 2014 at 9:00 a.m. at the applicant's request.

//

~ ~ ~ September 13, 2013, Scheduled case of:

9:30 A.M. RONALD S. FEDERICI, A 2013-SP-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units and is maintaining an accessory storage structure and an accessory structure (barn) that do not comply with size or location requirements, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 13310 Compton Rd., Clifton, 20124 on approx. 5.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24.

Chairman Ribble called the appellant to the podium.

Mavis Stanfield, Assistant Zoning Director, informed the Chairman that the appellant was not in the Board Room. She directed Terry Heath, Planning Technician, to go find him.

There was a five-minute recess. The meeting reconvened at 9:56 a.m.

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 Long, the appellant's agent, 5240 Lyngate Court, Burke, Virginia, came forward.

Matthew Mertz, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 4, 2013. The property was zoned R-C Residential-Conservation District, was within the Water Supply Protection Overlay District (WS), and contains a lot area of 5.617 acres of land. The property was developed with a single family detached dwelling built in 1991 (structure 1), a separate structure consisting of the original dwelling (structure 2), a pool, a barn (structure 4), and three

storage structures, one with a side carport (structure 3). Structure 4 was deemed vested pursuant to Provision 15.2-2307 of the Code of Virginia, and was no longer an issue with respect to the appeal.

The property had been the subject of several Notices of Violations (NOVs) and appeals. A notice was issued in 1995 for accessory structures not meeting the Zoning Ordinance location requirements. This notice was partially appealed, and the BZA upheld the determination of the Zoning Administrator (ZA).

Structure 2, containing the original dwelling, was subject to NOVs in 1997 and 2002 for use as a separate dwelling. On September 20, 2011, an NOV was issued for the use of Structure 2 as an office and also for illegal signage. The appellant filed, but later withdrew his appeal, though the County is still working to gain compliance. The NOV which is the subject of this appeal was filed on May 14, 2013.

It is the position of the Zoning Administrator that the appellant has three violations of the Zoning Ordinance provisions on his property. Two were violations of Sect. 2-501 for the presence of three separate dwelling units on his property. The appellant had a second dwelling unit located in the basement of Structure 1 and another dwelling unit in Structure 2. Lastly, inspection found that a 10-foot tall accessory storage structure with a side carport (Structure 3) had been constructed 2 feet from the right side lot line.

The appellant also claimed that the County issued a "Home Occupancy Permit" in 2002 for both Structures 1 and 2. The appellant maintained that Structure 3, accessory storage structure with an attached side carport, existed at the time he purchased the property. Fairfax County did not issue any permit with that term. It is possible that the appellant was referring to a Residential Use Permit (RUP) for the occupancy of a dwelling or a Home Occupancy Permit (HOP), which typically allowed a limited office use in a dwelling. Nonetheless, the only record of a RUP being issued was for Structure 1 on March 7, 1991. Also, it appears that the appellant attempted to apply for a HOP on September 29, 2011, but was denied due to violations on his property.

The appellant claims that there was an inspection prior to his purchase of the property in 2002, in which Fairfax County staff inspected the property and deemed all structures legal. He stated that this inspection was documented in Land Records. However, with the exception of Structure 2, for which inspections led to an NOV for multiple dwellings being issued to the previous owner, there were no records of any inspections occurring for the others structures in 2002 or 2003. Home inspections for pending home sales were not a service offered by the County. Further, the recording of a deed or other property document in the Land Records of Fairfax County did not constitute the County's approval of all improvements on a property. Lastly, the County did not issue a permit with the term HOP. The only RUP on record was issued for Structure 1, on March 7, 1991. No home occupation permit, which would allow limited office use on the property, had been issued, though one such permit was denied on September 29, 2011, due to violations on his property.

As for Structure 2, which contained the original dwelling, contrary to the appellant's claim of no evidence of Structure 2 slated for conversion to a non-dwelling, notes on the Building Permit applications for Structure 1 stated that Structure 2 was to become a stable and not a dwelling. The configuration of Structure 2, which included a kitchen, two bathrooms, and rooms that could be used as bedrooms, constituted another dwelling. Also, a sign near the front door of Structure 2 read, "13310 COMPTON RD APARTMENT A," implying a residential use of the property.

The appellant maintained that Structure 3, an accessory storage structure with an attached side carport, was legal because it existed at the time he purchased the property. However, there were no records of building-permit approval for Structure 3, and according to aerial photos of the property, it appeared that it was built under the appellant's ownership of the property.

Staff therefore recommended that the BZA uphold the determination of the Zoning Administrator dated May 7, 2013.

Mr. Byers asked if the Board was to make a judgment on an office and illegal signage, since this was in the Circuit Court, or was that simply informational. Mavis Stanfield, Assistant Zoning Administrator, said it was informational in nature, and not before the Board today.

When Mr. Byers asked if the appellant met the criteria of an ADU, Ms. Stanfield deferred to the appellant. She did say that there were some possibilities for that to happen.

In response to a question from Mr. Byers, Ms. Stanfield noted that you can only have one ADU on a lot. She noted that the basement of Structure 1 constituted as an ADU.

To clarify a question from Mr. Hart, Charles Fitzhugh, Inspector with the Department of Code Compliance, said the County had permits on file which stated that when the new house was built in 1991, the original older residence was to become a stable or similar structure.

Mr. Hart, Mr. Hammack, Ms. Stanfield, and Mr. Mertz further discussed the history of the property, including the location of accessory storage sheds on the property, the vested rights determination, and whether permits were obtained.

John Long, the appellant's agent, presented the arguments forming the basis for the appeal. He provided a brief history on the acquisition, occupancy, and use of the property.

Mr. Beard, Mr. Mertz, and Mr. Fitzhugh discussed Structure 4, with Mr. Mertz noting that it was no longer part of the appeal, since an administrative 10 percent reduction had been granted subsequent to publishing the staff report.

Mr. Fitzhugh stated the Court Order abated the use of the structure for horses, however, it had to meet the 40-foot setback from the property in order to keep the horses.

Mr. Hart summarized that the three ADU violations could be resolved several different ways, including vested rights determination and/or applying for an ADU permit. Mr. Long stated he would want to defer the hearing to work with staff towards a resolution.

Chairman Ribble called for speakers.

Ronald Federici, 13310 Compton Road, Clifton, Virginia, came forward to speak. He said he never received a violation, a warning, a letter, or notification in 2004. If he had, he would have addressed this problem at that time.

In response to a question from Mr. Byers, Ms. Stanfield said that staff was not aware of the second kitchen in the main house until the Department of Code Compliance went in to inspect it.

Turker Ozdogan, 13230 Compton Road, came forward to speak. He said Mr. Federici inherited the problems on the property, and was a good neighbor.

Chairman Ribble closed the public hearing.

Mr. Beard moved to defer decision on A 2013-SP-015 until January of 2014. Mr. Byers seconded the motion. Ms. Stanfield noted that hearing dates in 2014 were not yet available.

//

~ ~ ~ September 11, 2013, After Agenda Item:

Request for Additional Time
La Iglesia De Santa Maria Episcopal Church and New Building Blocks Preschool, LLC,
and Dialogue Russian Center for Cultural Development (Dialogue RCCD, LLC,) D/B/A
Metaphor Russian Language School, SPA 76-S-109-02

Mr. Hammack moved to approve the request for additional time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was December 1, 2013.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:07 a.m.

Minutes by: Suzanne Frazier

Approved on: October 23, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, September 18, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Sharon Theodore; 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 a Board Matter, Chairman Ribble noted the retirement of Ms. Gibb, Secretary, and said he would like to entertain a motion to fill the vacancy. Mr. Beard nominated Sharon Theodore as Secretary to the Fairfax County Board of Zoning Appeals. Mr. Smith second the motion, which carried by a vote of 7-0.

As there were no additional Board matters, Chairman Ribble called for the first scheduled case.

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. LORI BARNES, SP 2013-SU-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 7.2 ft. and open deck to remain 7.5 ft. from rear lot line. Located at 13761 Royal Red Ter., Chantilly, 20151, on approx. 13,571 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 44-4 ((12)) 28. *(Continued from 7/31/13.)*

Chairman Ribble called the applicant to the podium. Lori Barnes, 13761 Royal Red Terrace, Chantilly, Virginia, came forward.

Mr. Hart made a disclosure that his law firm had an active case representing clients adverse to the applicant's contractor, and indicated that he would recuse himself from the public hearing.

Mr. Byers disclosed that he did not attend the public hearing from which SP 2013-SU-035 was continued, and indicated he would recuse himself.

Erin Haley, Staff Coordinator, explained the case had been continued due to the request for additional information from the applicant and the applicant's agent.

There was discussion regarding the approved plans differing from the final construction.

Ms. Barnes explained she was unsure of why issues occurred with acquiring a final inspection and why there were discrepancies between the approved plat and the final structure. She explained the plans she had been shown by the contractor were true to the design of the final structure, but the submitted and approved plan differed from what she had been shown.

In response to Board inquiries, Ms. Barnes stated that no changes had been made to the structure design since she had received the plat from her builder, so any discrepancies between the final structure and the approved plat were done without her knowledge. Additionally, it was noted that the nature of this case was due to failed setback certification requirements, and the property backed up to park land.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2013-SU-035 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LORI BARNES, SP 2013-SU-035 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 7.2 ft. and open deck to remain 7.5 ft. from rear lot line. Located at 13761 Royal Red Ter., Chantilly, 20151, on approx. 13,571 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 44-4 ((12)) 28. *(Continued from 7/31/13.)* Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 18, 2013; and

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

1. The applicant is the owner of the land.
2. It appears that the applicant was shown a design that she agreed to and was, in fact, constructed, in the record before the Board, it also seems to appear that the different footprint was presented to the building contract, which failed the setback requirements.
3. This is a difficult case in some ways.
4. In reading the Ordinance, it seems like the main provision of concern is that the non-compliance was done in good faith or through no fault of the property owner.
5. That section is a little bit ambiguous in some ways, but at least the applicant and her husband acted in good faith and thought that they had gotten what they had contracted for.
6. This may not be a result that the County Board had intended when they adopted that section of the Ordinance, but it seems to apply.
7. The Board has determined that the applicant has satisfied Subsections A through G.
8. Besides satisfying Subsection B, also D is applicable. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
9. The addition backs up to park land or a narrow strip of park land, so it does not impact the neighbors in a detrimental way.
10. In any event, it satisfies the remainder of the statute.

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

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

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

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

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

1. This special permit is approved for the locations of the roofed deck and open deck as shown on the plat prepared by William E. Ramsey, P.C., titled "Special Permit, Lot 28, Maple Hill Estates," dated December 17, 2012, as revised through May 28, 2013, 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. Mr. Hart and Mr. Byers recused themselves from the hearing.

//

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. GUIMAR E. CORDOVA, VC 2013-MA-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.34 ft. from front lot line and accessory storage structure greater than 200 sq. ft. in size. Located at 3711 Munson Rd., Falls Church, 22041, on approx. 10,768 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((22)) 6. *(Decision deferred from 7/31/13.)*

Chairman Ribble reminded the Board that this application was for decision only.

Mr. Byers moved to approve VC 2013-MA-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GUIMAR E. CORDOVA, VC 2013-MA-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.34 ft. from front lot line and accessory storage structure greater than 200 sq. ft. in size. **(THE APPLICANT WITHDREW THE REQUEST FOR THE ACCESSORY STORAGE STRUCTURE.)** Located at 3711 Munson Rd., Falls Church, 22041, on approx. 10,768 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((22)) 6. (Decision deferred from 7/31/13.) 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 18, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,768 square feet.
4. The required standards for a variance that this application satisfies, the subject property was acquired in good faith, under 2 was exceptionally narrow at the time of the effective date of the Ordinance.
5. There was exceptional shape at the effective date of the Ordinance.
6. There is an extraordinary situation or condition of the subject property.
7. Under 6, which are the most strict criteria, 6A and 6B, the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the subject property.
8. This property was originally built in 1925.
9. There is one building permit from the standpoint of an addition, but it is still only 518 square feet, 506 or 518 square feet, which is very small.
10. This is something that would make it a livable home.
11. The current setback on Lewis Lane would not be increased.

12. The applicant is proposing to keep the same line of setback for the proposed addition.
13. The granting of the variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience.
14. The variance will be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest.
15. In the staff report, it is noted that this mixes well with the eclectic nature of the surrounding properties.

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

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

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

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

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

1. This variance is approved for the maximum size and location within the building envelope of the addition, as shown on the plat prepared by Landplan Associates, Inc., dated August 20, 2013, signed by Mirali Mirtaghavi, Professional Engineer, as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the addition and accessory storage structure.
3. The addition shall be generally 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 including requirements for building permits.

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

//

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. SOUTH SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 2013-MV-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 8701 and 8713 Pohick Rd., Springfield, 22153, on approx. 3.56 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 58 and 60. (*Admin. moved from 5/1/13 and 6/5/13 at appl. req.*) (*Decision deferred from 7/24/13.*)

Chairman Ribble called the applicant to the podium.

Mr. Hart moved to approve SP 2013-MV-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SOUTH SPRINGFIELD CONGREGATION OF JEHOVAH'S WITNESSES, SP 2013-MV-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship. Located at 8701 and 8713 Pohick Rd., Springfield, 22153, on approx. 3.56 ac. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((1)) 58 and 60. (*Admin. moved from 5/1/13 and 6/5/13 at appl. req.*) (*Decision deferred from 7/24/13.*) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 18, 2013; 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 staff recommendation of approval, and the Board largely adopts the rationale in the staff report.
3. There have been a number of changes since the public hearing to the proposed development conditions.
4. An application for a non-residential use in a residential district often generates a lot of interest in the community, and this particular application has generated a lot of comments for several months.
5. The site is currently zoned R-1, but it is planned to be a somewhat higher intensity.
6. The Comprehensive Plan text for the site does not really address the cumulative impact of multiple uses in the area, unlike some other places in the county where cumulative impact is a Comprehensive Plan issue front and center.
7. The Board of Supervisors, in its wisdom, has adopted a Zoning Ordinance that allows a number of non-residential uses in residential districts by special permit or special exception, and a place of worship is one of those.
8. The Board has to determine if the proposed use is, among other things, harmonious with the adjacent or adjoining properties and whether it would adversely impact the use or development of those properties. That is sometimes a difficult analysis.
9. Harmony with the surrounding community does not necessarily mean unanimity or that what is going

- in on any given site is identical to what is around it.
10. We are familiar with residential areas throughout the county where the types of institutional uses that are contemplated by the Zoning Ordinance, such as schools, churches, childcares, and things like that, are customarily found in residential neighborhoods and particularly along collector roads and arterials.
 11. If there are open, undeveloped sites or sites that are redeveloping, the Board often sees those come in with an application for a non-residential use, an institutional type use like this, and the Board would have a public hearing to sort it out.
 12. If the Board concludes that the use is harmonious, then the Board's function is to determine what development conditions are appropriate to mitigate impacts from the use.
 13. That analysis involves an identification of what impacts there might be, and the Board gets information at a public hearing.
 14. In this case, there was a lot of testimony on both sides, correspondence going in both directions, a number of questions by the Board, and that led to a deferral and a response from staff. Staff responded pretty thoroughly to the list of issues the Board had generated, and that, in turn, resulted in changes to the proposed development conditions.
 15. The work by Ms. Horner and Ms. Langdon on this case from the beginning is appreciated and particularly their approach to incorporating suggestions into the development conditions and listening to the Board's questions or the comments from the community. The package that is contained in the most recent memorandum is an improvement over what we started out with and what was generating many of the comments from the community.
 16. While maybe everyone is not going to be totally satisfied with everything, in large measure, the changes to the development conditions specifically address the types of concerns that the Board heard and has heard on other cases.
 17. The two principal issues that the Board heard from the public hearing testimony and the correspondence were traffic and stormwater.
 18. With respect to traffic, this neighborhood is not an area in the Plan where there is cumulative impact guidance in the Comprehensive Plan.
 19. There are already a number of institutional uses along Pohick Road. Particularly just up at the intersection with the Parkway, St. Raymond's is a much bigger use than this, although it is in the same category.
 20. Staff had determined in their analysis that the traffic to be generated by this use is a relatively small percentage of the traffic along Pohick Road, and it is also relatively small in magnitude compared to the traffic from St. Raymond's.
 21. There are some new conditions proposed which will help mitigate impacts from the traffic.
 22. One would be that they are going to coordinate their timing of services against the times of services of the other facilities in the neighborhood.
 23. In general, that will help alleviate the concern that multiple churches would be coming and going at the same moment and bringing traffic to a stop.
 24. There are also development conditions regarding what happens for special events, carpooling, and off-site parking, which will help coordinate those times if there was a wedding or funeral or some special event, and there might be additional traffic or additional potential parking impacts.
 25. They are not going to be able to park in the neighborhood. All parking for the use has to be on-site.
 26. There is also a condition about a "no right turn" sign, which whether the police can enforce that or not, it is a zoning issue, and by putting it in the development conditions, if there is a problem with members of the church turning right to generate traffic in the neighborhood, which was a substantial concern, that can be dealt with like any other zoning violation. Hopefully, it will not come to that.
 27. In conjunction with the other conditions, it is hoped that the church will actively work to minimize the traffic impact on the neighborhood.
 28. There really is not a need for the church traffic to be turning right anyway. They would want to go left and either go back to the Parkway or perhaps somewhere else down Pohick Road.
 29. With the sign, it will certainly discourage that turning movement.
 30. There is also a provision for a parking monitor, which is additional protection against parking problems from this use.
 31. Stormwater was the other big issue.
 32. It is fair to say that there is a stormwater problem in the neighborhood.
 33. That problem had been conflated somewhat with the timing of this application or the reasons why this application might be affecting the neighbors.
 34. The stormwater problem in the neighborhood is certainly not caused by this use because it is not there yet, but it is not really caused by this site. It is a pre-existing problem.
 35. As the package of the development conditions and the requirements at the time of site plan is

- understood, this particular application is not going to aggravate the problem with stormwater. In fact, there is going to be some improvements, which are specifically mentioned.
36. Staff also had researched a number of the complaints or observations regarding the stormwater problem.
 37. It is fair to say that the County staff had identified some problems with the existing pipes in the neighborhood. There is going to be some modifications in the near future. The County is doing some of them. This applicant will also be doing some off-site repair or upgrade of a portion of the underground pipes in the neighborhood.
 38. This applicant cannot make the situation any worse anyway, and the work that they are going to do is supposed to improve the existing conditions.
 39. This applicant is also going to be required to have underground detention of the water that is generated from this site, with some pretty rigorous requirements in the development conditions, so it is going to be on-site.
 40. Staff had researched the last four flooding events on file, when those had happened, and what those were. Three of those were Tropical Storm Lee, Hurricane Irene, and Hurricane Sandy, all of which created problems throughout the county.
 41. With the repairs that the County is going to be doing nearby, with the off-site improvements that the applicant is going to do, with the further protection that this is going to be reviewed at the time of site plan, and an expressed provision in the development conditions that there is going to have to be additional upgrades to what the applicant is proposing if DPWES requests, the Board is comfortable that this particular application is not going to be adversely affecting the stormwater situation in the neighborhood. In fact, it will be a significant improvement the way this is worded.
 42. Staff also pointed out that even with the problems that we have had with the amount of water in the neighborhood, and the Board saw a movie of some of the flooding and some photographs, those were during hurricane events or whatever. Staff is saying that the system is still doing what it is supposed to do, and in a worst-case scenario like that, the street is supposed to flood. The water is supposed to go into the street, and it is generally working properly, except for the pipe problems.
 43. Separate from traffic and stormwater, there are some other important development conditions.
 44. In terms of green building, the applicant is going to have to get LEED certification and put up an escrow for that. That should minimize the impacts long-term on the environment in a lot of respects.
 45. There are limits on lighting so that the lighting from the facility is not going to be impacting the neighbors.
 46. There are very strong requirements for tree preservation. There is a bond for tree replacement.
 47. There are specific limits on clearing and grading.
 48. With the design of the site and the tree preservation areas, the surrounding homes are going to be substantially protected.
 49. Those requirements will be in place.
 50. With respect to this use, those trees will have to stay there, and perhaps some additional trees will be going in.
 51. The size and scale of the facility is compatible with other types of churches in residential areas.
 52. This is a relatively small church in a residential neighborhood. It is certainly smaller than some of the institutional uses nearby.
 53. It meets the applicable standards, and the Board agrees with staff's analysis on that.
 54. With the package of development conditions with the modifications that have been made, the impacts from the use have been appropriately mitigated.

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, South Springfield Congregation of Jehovah's Witnesses, and is not transferable without further action of this Board, and is for the location indicated on the application, 8701 and 8713 Pohick 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 Lloyd Ntuk, Professional Engineer, dated August 16, 2013, 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 worship areas is limited to 372.
6. Parking shall be provided as shown on the special permit plat. All parking for this use shall be on site.
7. Prior to approval of the site plan for the building, the applicant will execute a separate agreement and post a "green building escrow" in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council, under the most current version of the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system or other LEED rating system determined, by the U.S. Green Building Council, to be applicable to the building. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that the building has attained LEED certification will be sufficient to satisfy this commitment. If the Applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification within twelve (12) months of the issuance of the final non-RUP for the building, the escrow will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant provides to the Environment and Development Review Branch of DPZ, within fifteen (15) months of the issuance of the final non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant fails to provide, within fifteen (15) months of the issuance of the final non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of certification by three points or less, the entirety of the escrow for the building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

The applicant will include, as part of the site plan submission, a statement certifying that a LEED®-accredited professional who is also a professional engineer or licensed architect is a member of the design team, and that the LEED-accredited professional is working with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of having the project attain LEED certification.

The Applicant will include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system, or other LEED

rating system determined to be applicable to the building by the U.S. Green Building Council, that the Applicant anticipates attaining. A professional engineer or licensed architect will provide certification statements at both the time of site plan/subdivision plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain certification of the project.

Prior to site plan approval, the Applicant will designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

8. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Any outdoor lighting shall be in conformance with the following:
 - a) The lights shall be focused downward directly on the subject property,
 - b) Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - c) The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, and
 - d) Up-lighting of buildings or signs shall not be permitted on the site except at the recessed entrances to the building.
9. Subject to Virginia Department of Transportation (VDOT) and Department of Public Works and Environmental Services (DPWES) approval, right-of-way shall be dedicated and conveyed in fee simple to the Board of Supervisors along the sites Pohick Road frontage as shown on the special permit plat. Dedication of right-of-way and granting of easements shall be made at time of recordation of the site plan or upon demand of either Fairfax County or VDOT, whichever should first occur.
10. The stormwater management and best management practices facilities shall provide a minimum of 40% phosphorous removal.
11. The proposed underground detention facilities shall be designed to reduce the cumulative proposed conditions for the two and ten year release rate from the site 10% below the cumulative existing flow rate.
12. In addition to detaining the two and ten year storms as described above and prescribed by existing County regulations, given approval by DPWES, the outlet devices on the proposed underground SWM facilities shall be designed to maximize the detention of the runoff from the proposed development program for approximately 0.85" of rainfall which equates to a storm frequency of less than one (1) year.
13. Subject to approval of DPWES, the proposed SWM facilities shall be designed to capture a volume of runoff large enough to fully detain the runoff generated by the proposed development program for the mean annual storm.
14. The underground detention vault shall meet detention requirements. A detailed detention computation shall be provided at the time of site plan submission.
15. At time of site plan, the applicant shall demonstrate to the satisfaction of DPWES that an adequate outfall is provided. A detailed hydrologic and hydraulic computation must be provided on the site plan. Upgrades must be provided, if DPWES deems them necessary to meet outfall requirements.
16. Natural drainage divides shall be honored. If a natural drainage divides cannot be honored, a drainage division justification narrative shall be provided at the time of site plan.

17. Landscaping shall be provided as shown on the special permit plat. Non-invasive species and locally common native species shall be used to the greatest extent possible as determined in coordination with the Urban Forest Management Division, DPWES.
18. A Tree Preservation Plan and Narrative shall be provided as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division.
19. The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the special permit plat and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. 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.
20. The applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater located on the application property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.
21. At the time of the respective site plan approvals, the applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the application property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the applicant.
22. The applicant shall retain the services of a certified arborist or Registered Consulting Arborist, 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 chain saw 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. The applicant shall conform strictly to the limits of clearing and grading as shown on the SP, subject to allowances specified in these proffered conditions and 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 special permit 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 the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
24. 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" development condition below.
25. 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 the UFMD, DPWES.
26. Trees shall root pruned, as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
27. The demolition of all existing features and structures within areas protected by the limits of clearing and grading areas shown on the SP shall be done by hand without heavy equipment and conducted in a manner that does not impact individual trees and/or groups of trees that are to be preserved as reviewed and approved by the UFMD, DPWES.
28. During any clearing or tree/vegetation/structure removal on the site, a representative of the applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.
29. Sidewalks shall be provided along all street frontages, as shown on the special permit plat.
30. The maximum gross floor area of the church shall be 12,628 square feet as shown on the special permit plat.

31. The building shall be constructed in substantial conformance with the materials and elevations as shown in the special permit plat.
32. The applicant shall coordinate service schedules with adjacent places of worship based on the attached schedule (Attachment A). In the event that adjacent places of worship modify their service schedules, the applicant will use reasonable efforts to adjust its service schedule accordingly.
33. The applicant shall restrict right turn egress onto Flint Road as shown on the special permit plat (Attachment B). Applicant shall install a sign similar to the attached graphic (Attachment B).
34. The proposed retaining wall shall be constructed with material as shown in the attached specifications sheet (Attachment C).
35. The applicant shall appoint a parking attendant to ensure that the parking lot adequately provides for necessary parking and that kingdom hall parking does not occur within the surrounding neighborhood streets. If a problem is detected, the kingdom hall shall implement one or a combination of the following measures:
 - a. Carpooling
 - b. Announcements by the kingdom hall staff requesting carpooling after a problem is detected, or for special events/services for which a large turnout is expected.
 - c. Staggering of scheduled services (in coordination with schedules of nearby places of worship)
 - d. Arranging for parking at an appropriate alternate facility and providing transportation from such facility to the kingdom hall
 - e. Any other measure necessary to prevent parking into the adjacent residential neighborhood.
36. The applicant shall coordinate project drainage improvements with planned county maintenance improvements according to the attached stormwater drawing (Attachment D).

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

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

Mr. Byers seconded the motion, which carried by a vote of 5-2. Mr. Beard and Mr. Hammack voted against the motion.

//

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. Of land of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. *(Admin. moved from 9/28/11, 11/30/11, 12/14/11, 1/25/12, and 2/29/12 at appl. req.) (Continued from 3/14/12.) (Indefinitely deferred from 8/1/12 at appl. req.) (Reactivated on 6/5/13.)*

Chairman Ribble noted that SP 2011-SP-069 had been administratively moved to October 30, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. FRANCIS S. RATH, A 2012-DR-024 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-E District without an approved special permit in violation of Zoning Ordinance provisions. Located at 1051 Kelso Rd., Great Falls, 22066 on approx. 6.03 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((2)) A. (Admin. moved from 1/9/13 and 5/8/13 at appl. req.)

Chairman Ribble noted that A 2012-DR-024 had been administratively moved to December 11, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ September 18, 2013, Scheduled case of:

9:00 A.M. BOYD TRISTAN CLOERN REVOCABLE TRUST FN, DARA ALDERMAN REVOCABLE TRUST FN, BOYD TRISTAN CLOERN, CO-TRUSTEE, DARA RAE ALDERMAN, CO-TRUSTEE, A 2012-DR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have altered the drainage swale, which is impeding the water pattern, and have erected an accessory structure (a playset) that does not meet size and location requirements on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 1850 MacArthur Dr., McLean, 22101 on approx. 10,043 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 31. (Admin. moved from 1/16/13, 3/20/13, and 5/8/13 at appl. req.)

Chairman Ribble noted that A 2012-DR-028 had been withdrawn.

//

~ ~ ~ September 18, 2013, After Agenda Item:

Approval of 2014 BZA Meeting Dates

Mr. Hammack moved to approve the 2014 BZA meeting dates. Mr. Hart and Ms. Theodore seconded the motion, which carried on a vote of 7-0.

//

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

Minutes by: Kathleen A. Knoth/Emily J. Armstrong

Approved on: December 4, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, September 25, 2012. 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. Absent from the meeting was Sharon Theodore.

Chairman Ribble called the meeting to order at 9:03 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.

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF CALVARY CHRISTIAN CHURCH, SPA 76-S-200-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-S-200 previously approved for place of worship to permit site modifications and deletion of land area. Located at 6408 Spring Lake Dr. and 9800 Old Keene Mill Rd., Burke, 22015, on approx. 9.67 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((2)) 8 and 10. (In association with RZ 2013-SP-005) (*Admin. moved from 7/31/13.*)

Chairman Ribble noted that SPA 76-S-200-02 had been administratively moved to October 30, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. JOHN & LONA SACCOMANDO, SP 2013-SP-049 Appl. under Sect(s). 8-918 and 8-923 of the Zoning Ordinance to permit an accessory dwelling unit and fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 5935 Pocol Dr., Clifton, 20124, on approx. 27,092 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((4)) 20.

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.

Lona Saccomando, 5935 Pocol Drive, Clifton, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SP-049, subject to the proposed development conditions.

Ms. Saccomando presented the special permit request as outlined in the statement of justification submitted with the application. She needed the accessory dwelling unit so that her two elderly parents could reside in the basement. Ms. Saccomando noted that her father could not climb stairs, thus the need for a separate kitchen in the basement. She also wished to keep the current fencing (4.5 feet in height) which contained her dogs in a portion of the yard.

In response to a question from Mr. Hart, Ms. Saccmando said the builder had obtained the building permit. It was at final inspection that she was told that a special permit was also necessary.

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

Mr. Hammack moved to approve SP 2013-SP-049 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN & LONA SACCOMANDO, SP 2013-SP-049 Appl. under Sect(s). 8-918 and 8-923 of the Zoning Ordinance to permit an accessory dwelling unit and fence greater than 4.0 ft. in height to remain in front yard

of a corner lot. Located at 5935 Pocol Dr., Clifton, 20124, on approx. 27,092 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((4)) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2013; 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 with respect to the accessory dwelling unit and adopts their rationale in general.
3. With respect to the fence greater than 4.0 feet in height, it is in a front yard that faces a paper street.
4. It is further pulled back, as far as you can see from the plat, about 25 feet from the paper street, well into the interior of the property.
5. It is only about a half a foot or six inches higher than what would be allowed by right if there no paper street there.
6. It certainly does not impact any of the other residences 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 Sect 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, John Saccomando and/or Lona Saccomando, and is not transferable without further action of this Board, and is for the location indicated on the application, 5935 Pocol Drive (27,092 square feet) and is not transferable to other land.
3. 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 Alexandria Surveys, LLC., dated March 11, 2013, as 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 in the accessory unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 912 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for kitchen components in the accessory dwelling unit.
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 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.
11. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) 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 6-0. Ms. Theodore was absent from the meeting.

//

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. GARY J. SCHWARTZ, SP 2013-MA-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 12.0 ft. from side lot line. Located at 6459 Oakwood Dr., Falls Church, 22041, on approx. 14,964 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 167. *(Decision deferred from 7/24/13.)*

Chairman Ribble reminded the Board that this case was for decision only.

Mr. Hart made a disclosure, and indicated that he would recuse himself from the public hearing. Mr. Hammack stated that he was not present for the public hearing on July 24, 2013, so he would abstain from the vote.

Noting the difficulty of this case, Mr. Byers moved to defer decision on SP 2013-MA-037 to October 9, 2013, at 9:00 a.m., so that the Board could review a copy of the contract.

Mr. Smith seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote. Mr. Hart recused himself from the hearing. Ms. Theodore was absent from the meeting.

//

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. BASIM M. MANSOUR, SP 2013-MV-043 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 11191 Gunston Rd., Lorton, 22079, on approx. 5.26 ac. of land zoned R-E. Mt. Vernon District. Tax Map 119-1 ((3)) 12. *(Deferred from 7/31/13.)*

Chairman Ribble noted that SP 2013-MV-043 had been administratively moved to December 4, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. SILVIA PIZARRO, SP 2013-MV-014 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit home child care facility and reduction in minimum yard requirements based on error in building location to permit patio to remain 0.0 ft. from side lot line. Located at 2907 Douglass St., Alexandria, 22306, on approx. 6,534 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((3)) (2) 44A. (Concurrent with VC 2013-MV-015) *(Indefinitely deferred from 5/1/13 at appl. req.) (Reactivated on 6/28/13.)*

9:00 A.M. SILVIA PIZARRO, VC 2013-MV-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent front yard coverage. Located at 2907 Douglass St., Alexandria, 22306, on approx. 6,534 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((3)) (2) 44A. (Concurrent with SP 2013-MV-014.)

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.

Silvia Pizarro, 2907 Douglass Street, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff believed that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Therefore, staff recommended approval of SP 2013-MV-014 for the reasons as outlined in the staff report and with adoption of the proposed development conditions.

Mr. Hart and Ms. Gumkowski discussed the plans for pick-up and drop-off of children, and the adequacy of parking.

Ms. Pizarro, through Maria DeSosa, an interpreter, presented the special permit request as outlined in the statement of justification submitted with the application. She enlarged the driveway to give parents more space for parking, and asked that she be allowed to keep it. Ms. Pizarro noted her memberships and credentials in the childcare field.

Mr. Byers, Ms. Gumkowski, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the requested hours of operation. Ms. Pizarro noted that she was no longer requesting evening hours, just 6 a.m. to 6 p.m.

Mr. Hart and Ms. Pizarro discussed the conversion of the garage to an enclosed room. However, Ms. Pizarro said there was no plumbing or electricity in that room.

In response to a question from Mr. Hammack, Ms. Langdon said a denial of the variance request would not preclude the granting of the special permit request.

Chairman Ribble called for speakers.

The following people came forward to speak in favor of the application:

Louis Gregory, the applicant's husband;
Juanita Sebatra, Burke, Virginia;
Greta Chacon, 9203 Heather Ridge Court, Lorton, Virginia;
Patricia Aguilar, Alexandria, Virginia;
Maria DeSosa, 2900 Douglas Street, Alexandria, Virginia;
Rosa Basurto, 4909 Shadow Valley Drive, Fairfax, Virginia.

Queenie Cox, 2920 Douglas Street, Alexandria, Virginia, came forward to speak, representing the New Gum Springs Civic Association. She voiced her opposition to the expansion of the front yard coverage. Ms. Cox also pointed out that there was another day care provider on the street at 2912 Douglas Street.

In rebuttal, Ms. Pizzaro stated that all her neighbors had signed a petition in support of the driveway extension and day care center.

Chairman Ribble closed the public hearing.

Mr. Hart moved to deny VC 213-MV-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIA PIZARRO, VC 2013-MV-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent front yard coverage. Located at 2907 Douglass St., Alexandria, 22306, on approx. 6,534 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((3)) (2) 44A. (Concurrent with SP 2013-MV-014.) 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 25, 2013; and

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

1. The applicant is the owner of the property.
2. This is a very difficult situation.
3. At some level, at least in terms of the applicant's presentation and the statement of justification, the Board does not believe the justification offered squarely meets the required standards for a variance.
4. What is suggested is that they needed the variance for the parking for the day care use, and staff had suggested that they seek having parking in the front yard or something to that effect.
5. That is not really a reason for a variance. That is more of a reason why they would need additional parking or why this lot might not be ideal for certain uses.
6. To some extent, although the lot is much too small for the R-3 District and the Board really did not get a lot of evidence about that, something obviously happened because this is Lot 44A, it is next to 43A, and on the other side part of Lot 46, so something happened. The Board did not know what it was.
7. Somehow, this lot ended up being 46 feet wide in a district where 80 feet wide is the minimum for an interior lot.
8. Somehow this lot ended up being 6,534 square feet in a district where the minimum lot size is 10,500.
9. But today was the public hearing, and the Board did not get a whole lot of explanation of that.
10. Even though this lot seems to be exceptionally small and exceptionally narrow, there is a driveway in front of it for two cars.
11. The house also had a garage, and the garage was converted to living space.
12. So to some extent, the problem with the parking on the lot is a self-inflicted hardship because the garage door could be opened and the garage could be converted again, and then they would be back to three spaces.
13. What is particularly the problem with the variance is the photographs.
14. The Board could not get over the appearance of the front yard. It is out of character with the rest of the neighborhood.
15. It appears that it is 44 percent. The Board questioned the numbers, but whatever it is, it is a very different appearance than the rest of the neighborhood.
16. Part of that is because the front yard is so small and so narrow to begin with, but on a lot like this, it is very difficult to expand the driveway without having an impact that creates sort of a non-residential parking lot kind of appearance.
17. Particularly with the additional paving on the side of the house, it is a very urban looking non-residential kind of appearance.
18. That is what seems to be driving the opposition from the homeowners association.
19. Frankly, from the photographs, the Board tends to agree with that.

20. It is a somewhat subjective analysis, but the Board has to find that the use is appropriate for that neighborhood and that it is not of substantial detriment to adjacent property.
21. In a lot that is this narrow, it sticks out. It is not compatible necessarily with what is around it.
22. It is of detriment to the houses around it to have the front yard paved over for a parking lot.
23. Although the use needs the parking, and the Board can see the justification for that, that standing alone does not satisfy the requirements for a variance.
24. It may be a self-inflicted hardship.
25. It is a special privilege or convenience sought by the applicant in a house where they have converted the garage to living space to then need more parking because they do not have enough parking spaces.
26. With the appearance of it from the photographs, it is going to be of substantial detriment to adjacent property.
27. It is not in harmony with the intended spirit and purposes of the Ordinance.
28. The Board was trying to restrict front yard paving coverage for exactly that reason.

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

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

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

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

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

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

//

Mr. Hart then moved to approve SP 2013-MV-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIA PIZARRO, SP 2013-MV-014 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit home child care facility and reduction in minimum yard requirements based on error in building location to permit patio to remain 0.0 ft. from side lot line. Located at 2907 Douglass St., Alexandria, 22306, on approx. 6,534 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((3)) (2) 44A. (Concurrent with VC 2013-MV-015) (Indefinitely deferred from 5/1/13 at appl. req.) (Reactivated on 6/28/13.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2013; 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 recommendation of approval for the child care facility and adopts the rationale in the staff report.
3. For the purposes of the impact on the neighbors, the request to go to a maximum of twelve is minimal.
4. It seems to have been operating with eleven children for somewhat longer hours without complaint.
5. It does not seem that the differential between seven and twelve or seven and eleven children is going to be that significant.
6. With the imposition of the development conditions, the impacts on the neighbors would be minimized.
7. Resolving the issues with the driveway, which can be done with some changes to the conditions, it should be consistent with other approvals that the Board has made.

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

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

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

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

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

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

1. This approval is granted to the applicant, Silvia Pizarro, only and is not transferable without further action of the Board, and is for the location indicated on the application, 2907 Douglas Street, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the plat titled, "Plat Showing the Improvements on Lot 44A, Block 2, Section 1 of a Minor Adjustment of Property Line Part of Lots 42, 43, 44, & 45, Thornrose" by Dominion Surveyors Inc., dated October 5, 2012, as revised through August 28, 2013, and approved with this application, as qualified by these development conditions. Notwithstanding the driveway location shown on the plat, front yard coverage over 30% is not approved.
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 hours of operation of the home child care facility shall be limited to 5:30 a.m. to 6:30 p.m., Monday through Friday.
5. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
6. The dwelling that contains the child care facility shall be the primary residence of the applicant.
7. Pick-up and drop-off of children shall take place in the driveway.
8. A minimum of two parking spaces shall be provided on the subject parcel within the areas of existing paving, one of which shall remain open for pick-up and drop-off of children.
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 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. Theodore was absent from the meeting.

//

~ ~ ~ September 25, 2013, Scheduled case of:

9:00 A.M. MARILYN & WILSON LIVINGOOD, VC 2013-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less and to permit a stoop to remain 4.1 ft. from the side lot line. Located at 1804 Hunting Cove Pl., Alexandria, 22307, on approx. 8,835 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 19.

Chairman Ribble called the applicants to the podium.

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

Chairman Ribble made a disclosure, and indicated that he would recuse himself from the public hearing. Vice Chairman Hammack assumed the chair.

Chairman Hammack 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.

Wilson Livingood, 1804 Hunting Cove Place, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were seeking two variances: one to permit a garage in the front yard; and the other to permit a stoop and stairs to remain in the minimum required side yard.

In response to a question from Mr. Hart, Ms. Gumkowski stated that the Zoning Administrator had made a determination that the house and screened porch were vested. However, the stairs and stoop were not.

Mr. Livingood presented the variance request as outlined in the statement of justification submitted with the application. He said most of his neighbors had garages, and noted that it was difficult to park on the narrow streets. Mr. Livingood said the stairs and stoop had been there over 30 years.

Mr. Beard, Mr. Hart, and Mr. Livingood discussed the sloping topography of the property.

Chairman Hammack called for speakers.

Kamol Farid, agent for the applicants, 5616 Ox Road, Fairfax Station, Virginia, came forward to speak. He supported the application.

Chairman Hammack closed the public hearing.

Mr. Beard moved to approve VC 2013-MV-010 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARILYN & WILSON LIVINGOOD, VC 2013-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less and to permit a stoop to remain 4.1 ft. from the side lot line. Located at 1804 Hunting Cove Pl., Alexandria, 22307, on approx. 8,835 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 19. 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 25, 2013; and

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

1. The owner of the property is the applicants.
2. The present zoning is R-4.
3. The lot area is 9,600 (sic) square feet.
4. The exceptional size at the time of the effective date.
5. The property was acquired in good faith.
6. Exceptional shape and topographical conditions.
7. A strict application of the Zoning Ordinance would effectively prohibit or unnecessarily restrict

utilization of the property.

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

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

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

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

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

1. This variance is approved for the location and height of the accessory structure (garage) and the stoop and stairs as shown on the plat prepared by Dominion Surveyors Inc., titled "Plat Showing the Improvements on Lots 19 and Lot 20, Block 1, Section 1, Belle Haven," dated December 6, 2012, revised March 1, 2013, as submitted with this application, and is not transferable to other land.
2. Prior to commencement of, and during the entire construction process, the applicant shall install tree protection fencing at the drip line of the existing red maple tree located southwest of the dwelling in the front yard to protect this tree from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
3. The garage shall be generally 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 including requirements for building permits.

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. Ribble recused himself from the hearing. Ms. Theodore was absent from the meeting.

//

~ ~ ~ September 25, Scheduled case of:

9:00 A.M. MARY JANE LEE, SP 2013-PR-023 Appl. under Sect(s). 8-914 and 8-919 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line and deck 2.7 ft. from rear and 2.4 ft. from side lot lines and to permit a noise barrier. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with VC 2013-PR-003). (*Decision deferred from 6/5/13 and 7/24/13.*)

9:00 A.M. MARY JANE LEE, VC 2013-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9207 Briary Ln, Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with SP 2013-PR-023). (*Decision deferred from 6/5/13 and 7/24/13.*)

Chairman Ribble called the applicant to the podium. He reminded the Board that these cases were for decision only.

Rebecca Horner, Senior Staff Coordinator, noted the additional information which had been previously requested and recently provided to the staff.

Mr. Smith moved to approve VC 213-PR-003 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY JANE LEE, VC 2013-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9207 Briary Ln, Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with SP 2013-PR-023). (*Decision deferred from 6/5/13*). 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 25, 2013; and

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

1. The owners of the property are Harlan Lee and Mary Jane Lee.
2. The present zoning is R-3.
3. The area of the lot is 10,765 square feet.
4. We started out with 58 percent coverage.
5. We have given this a great deal of scrutiny.
6. It has been back a couple of times.
7. The applicant has done quite a bit of due diligence in trying to reduce the coverage.
8. One of the big differences with the case that we denied earlier at this meeting was the concerns included, if you look at the variance conditions, Number 7 regarding detriment to adjacent property

and Number 8 regarding character of the zoning district, we do not have those issues in this case.

9. The coverage issues here are in the rear yard.
10. They are not visible in the community.
11. The rear yard abuts against Little River Turnpike, a four-lane divided highway, arterial.
12. In this case, walking through the variance provisions, the property was certainly acquired in good faith.
13. Looking at the characteristics of the property, this is a tougher call. This is certainly not an easy case.
14. We have grappled with this quite a bit and have had other coverage cases.
15. In this case, however, there is an extraordinary situation or condition of the subject property.
16. If you look at the location of this house on the plat, it was situated on the lot 25 feet behind the building restriction line. So you have a 30-foot front yard setback.
17. The house was set 25 feet behind that.
18. If it had been set 25 feet forward, we probably would not be in this situation because you would not have had the rear yard coverage issues.
19. You have significantly more pervious space in the front.
20. So if that had not happened, we would not be in this situation, so that is a bit of an extraordinary, unusual situation as far as the condition on the property and where the house is located on the property.
21. The adjacent properties, the grade increases towards the rear of the property, referenced as seven feet towards Little River Turnpike.
22. The condition or situation of the property is not of so general or recurring of nature as to make reasonably practicable the formulation of a general regulation.
23. Strict application of the Ordinance would be an undue hardship.
24. There was a building permit that was obtained for a pool. Unbeknownst to the applicant, it required no deck. It seems a little unusual that you would build a pool without having any kind of a deck. It is normally expected with a pool.
25. It was constructed in good faith.
26. It would be a significant cost to remove the drainage system that has been installed, the plumbing and electrical, et cetera.
27. This hardship is not shared by other properties in the same zoning district and vicinity.
28. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege.
29. The authorization of the variance will not be of substantial detriment to adjacent property looking at what is in the rear of the property.
30. There has been no opposition from any other neighbors in the community.
31. The character of the zoning district will not be changed.
32. The variance will be in harmony with the intended spirit and purpose of the Ordinance.

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

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

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

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

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

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

- 1. This variance is approved for the rear yard coverage (55%) on the property as shown on the plat prepared by William E. Ramsey, June 27, 2012, revised through September 11, 2013, as submitted with this application and is not transferable to other land.
- 2. This variance is granted only for the existing hot tub and gazebo on the site and does not include replacement structures in these locations.
- 3. This variance is granted on the condition that there shall be no future increase in impervious surface on the lot.

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. Ms. Theodore was absent from the meeting.

//

Mr. Smith then moved to approve SP 2013-SP-049 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY JANE LEE, SP 2013-PR-023 Appl. under Sect(s). 8-914 and 8-919 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line and deck 2.7 ft. from rear and 2.4 ft. from side lot lines and to permit a noise barrier. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with VC 2013-PR-003). (Decision deferred from 6/5/13)
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 25, 2013; and

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

- 1. The owners of the property are Harlan Lee and Mary Jane Lee.
- 2. With respect to the barrier, the grade difference between the back yards and Route 236, with the 12-foot high fence, normally you would not see something like that, but that is particularly necessary in this case.

3. You may have cars turning from Taylor Drive onto 236 and lights that would be shining into the home.
4. With the seven-foot grade difference, you are really only going five feet up above the roadway elevation.
5. There was a pretty detailed report relative to the sounds and noise that was recorded in the backyard to justify the barrier, so that is certainly justified in this case.
6. With respect to the errors in building location, they will not have any impact on anyone in the rear of the property given the location of Little River Turnpike.
7. The non-compliance was done in good faith.
8. The reduction will not impair the purpose and intent of the Ordinance.
9. It will not be detrimental to the use and enjoyment of other property.
10. It will not create an unsafe condition with respect to other property and public streets.
11. It would be an unreasonable hardship in this case to remove it as referenced earlier when going through the variance requirements.

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 granted only for the purposes, structures and/or uses indicated on the plat prepared by William E. Ramsey, P.C., dated June 27, 2012, revised through September 11, 2013, as signed and sealed by William E. Ramsey, Land Surveyor, and approved with this application, as qualified by these development conditions.
2. All applicable permits and final inspections shall be obtained for the noise barrier and accessory structure (gazebo) within six months of special permit approval.

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, six (6) months after the date of approval unless the use has been established as noted 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. Theodore was absent from the meeting.

//

~ ~ ~ September 25, Scheduled case of:

9:00 A.M. PAUL & ANN LAWRENCE, SP 2013-DR-046 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 2042 Virginia Ave., McLean, 22101, on approx. 32,294 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 1.

Chairman Ribble left the room, and Vice Chairman Hammack assumed the chair.

Chairman Hammack 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.

Ann Lawrence, 2042 Virginia Avenue, McLean, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Lawrence had nothing to add to the special permit request as outlined in the statement of justification submitted with the application.

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

Mr. Byers moved to approve SP 2013-DR-046 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL & ANN LAWRENCE, SP 2013-DR-046 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 2042 Virginia Ave., McLean, 22101, on approx. 32,294 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 1.

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 25, 2013; and

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

1. The owner of the property is the applicants.
2. The present zoning is R-2.
3. The area of the lot is 32,294 square feet.
4. The Board received several letters of support.
5. It was noted in the staff report there are no sight distance issues.
6. This was a notice of violation that came into existence approximately eight years after the fence was 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 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 fencing as shown on the plat prepared by Alexandria Surveys, LLC, dated November 14, 2012, submitted with this application and is not transferable to other land.
2. The special permit is approved for that portion of the fence that is on the applicants' property.

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

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

//

~ ~ ~ September 25, Scheduled case of:

9:00 A.M. BARUNA RANA, SP 2013-PR-051 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 1909 Hull Rd., Vienna, 22182, on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((10)) (3) 3.

Chairman Hammack noted that SP 2013-PR-051 had been administratively moved to October 30, 2013, for ads.

//

~ ~ ~ September 25, Scheduled case of:

9:00 A.M. RN GOLF MANAGEMENT, LLC, A 2012-HM-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that redevelopment of property in the PRC District from a golf course to residential uses would require an amendment to the Reston Master Plan, a development plan amendment, and Planned Residential Community Plan approval from the Board of Supervisors. Located at 11875 Sunrise Valley Dr. and 2018 Soapstone Dr., Reston, 20191, on approx. 166.11 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-4 ((11)) 4A, 26-2 ((2)) 8 and 26-2 ((5)) 4. (*Admin. moved from 10/24/12, 1/30/13, and 5/22/13 at appl. req.*)

Chairman Hammack noted that A 2012-HM-020 had been indefinitely deferred at the applicant's request.

//

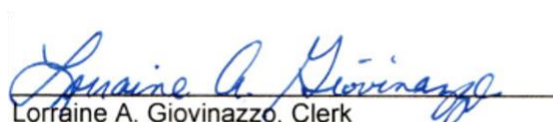
Chairman Hammack reminded the Board that the October 2, 2013 meeting had been cancelled.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:45 a.m.

Minutes by: Suzanne L. Frazier

Approved on: December 4, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 9, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Sharon Theodore; 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. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. WILLIAM WEISS, SP 2013-DR-027 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within a proposed single family dwelling. Located at 9416 Atwood Rd., Vienna, 22182, on approx. 36,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((17)) 23. (In association with PCA 86-D-108)

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.

William Weiss, 12989 Azalea Woods Way, Vienna, Virginia, reaffirmed the affidavit.

Megan Duca, Staff Coordinator, said the applicant requested a deferral of the application.

Mr. Byers moved to defer SP 2013-DR-027 to November 20, 2013, 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.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. MOHAMMAD RAHIM, VC 2013-SU-011 Appl. under Sect(s). 3-0C07 of the Zoning Ordinance to permit dwelling greater than 35 ft. in height. Located at 16454 Glory Creek Tr., Centreville, 20120, on approx. 5.03 ac. of land zoned R-C and WS. Sully District. Tax Map 52-2 ((5)) 3.

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.

Mohammad Rahim, 16454 Glory Creek Trail, Centreville, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation.

Mr. Rahim presented the variance request as outlined in the statement of justification submitted with the application. His main points were that his profession was in water damage and fire and water restoration. He had seen the issues that could be created with those problems in basements, which could create health problems, among other things. The terrain was very difficult, and there had been only three houses built in that area over approximately 20 years. It was only after everything was done, and the Zoning Inspector came out that he realized he was over the height requirements.

After questions from Mr. Hart, it was determined that the house was about 4 feet higher than what it was supposed to be. Approximately 2.5 feet were attributable to the structure, and 1.5 feet attributable to the depth of the basement. The applicant trusted the subcontractor who dug out the basement, and told him they could add dirt later on to be in compliance with the standards. The Ordinance was amended approximately one to two years earlier, which would not allow it to be measured like that. It would have to measure 35 feet and use the lower of the final elevation or the preexisting elevation. The problem with digging out the basement was more of a water issue than anything else, and it was difficult to keep it maintained properly.

The applicant currently had three pumps in the basement which were running full time. The applicant brought in over 250 dump-truck loads to be able to get the grading to where it was.

With regard to the structure, the floor joists on the first and second floors both should have been 1.5 feet, but came to 2 feet. The lumber company which was used by the applicant had ordered the items. It was this mistake which made the roof trusses too high. The water in the basement was a separate issue from the height elevation attributable to the roof trusses.

Mr. Beard questioned staff on why this could not be under an error in building location. Susan Langdon, Chief, Special Permit and Variance Branch, said that since this was a height issue and not how close it was to the lot line, it did not fit under the standards.

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

Mr. Hammack moved to approve VC 2013-SU-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MOHAMMAD RAHIM, VC 2013-SU-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling greater than 35 ft. in height. Located at 16454 Glory Creek Tr., Centreville, 20120, on approx. 5.03 ac. of land zoned R-C and WS. Sully District. Tax Map 52-2 ((5)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 9, 2013; and

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

1. The applicant is the owner of the land.
2. Having read the staff report and listened to the answers made by the applicant, the Board is convinced that he satisfies Sect. 2E, which requires a finding of exceptional topographic conditions; 2F, an extraordinary situation or condition of the subject property.
3. In addition, he satisfies Number 3, that the condition or situation of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of general regulations.
4. The staff report and the justification cites the difficulties that the applicant had in dealing with the ground and water problems, the requirement to bring in truckloads of dirt to remedy it.
5. The requirement that part of the yard, that the lot be sculpted in a different form in order to address water problems.
6. Certainly, Number 4, that the strict application of the Ordinance would produce undue hardship because the only thing that could be done, if this variance were denied, the entire roof would have to be lowered by four feet, which would be a great expense and hardship, although the Board is not supposed to consider expense. But it would preclude the owner from using the property until this type of a restoration could be made, and it may be unlikely that he could do that.
7. Number 5, that such undue hardships are not shared generally by the properties in the same zoning district.
8. Number 6, that a strict application of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
9. Number 7, the authorization will not be of substantial detriment to the adjacent properties.
10. Number 8, that the character of the zoning district will not be changed.
11. It is a five-acre lot.
12. Only the peak of the roof is in violation.
13. Probably no one would notice it if it did not have a sign out front that said this roof is four feet higher than allowed in the zoning district.

14. The ground and water problems were discovered during excavation. Those are things that do not show up or are very difficult to anticipate when designing a building. That's contributed to the problem in part.
15. That part of the overall variance request is compounded by the delivery and installation of floor joists and roof trusses that were larger than the design indicated. Why they were installed and were not caught is unclear.
16. When you look at the case in its entirety, this is one where variance requirements are satisfied.
17. In addition, the Board has a letter in support mailed in by Michael Frey, Supervisor in the district in which this unit is located.
18. There was a case several years ago where some townhouses in McLean were all constructed, and without remembering the reasons why they were constructed too high, they were. They came in, and this relief was granted.
19. With all due respect to staff's interpretation of location of the house, only two dimensions are looked at, and a house has three. The height is a third dimension. If the Zoning Administrator ever took that into consideration, it is unknown.
20. The depth of a basement, how deep can a basement go, could you dig a basement 50 feet deep, put a bunch of floors in, it is a multi-dimensional thing. Maybe that particular position ought to be reconsidered.

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

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

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

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

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

1. This variance is approved for the location and height of the dwelling as shown on the plat prepared by CPJ Associates., titled "Variance Plat, Crooked Creek, Lot 3," dated June 21, 2013, 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 including requirements for building permits.

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

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. JOHN E. AND LISA Z. JOINER, SP 2013-BR-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure 8.3 ft. and 10.9 ft. from side lot lines. Located at 8230 A The Midway, Annandale, 22003, on approx. 15,079 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-2 ((2)) 53 A1. *(Admin. moved from 9/11/13 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.

William G. Foster, IV, 21617 Cedar Lane, Sterling, Virginia, the applicants' agent, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation. Staff recommended denial of SP 2013-BR-048 subject to the proposed development conditions.

There were several questions of staff, where the following was determined. A memo was received by the Board that morning with an attached drawing, in which the Urban Forester only had time for a cursory review. Staff had made suggestions on alternate locations, but the applicants did not agree with them. The chimney would have to be a distance equal to its height from the rear lot line, but to the side lot line, it had to meet whatever the side yard requirements were for that district. There was only one rear lot line on a lot, and the rest were side lot lines. The patio required a permit because it was 12.2 feet from the side lot line and over 7 feet in height with the cover. Without the cover and the chimney, the patio could be placed anywhere in the side or rear yard.

Chairman Ribble noted that the higher the chimney, the safer it was. Staff said that was correct, but in this case this was not just a chimney, but also a pavilion with a roof. There were no utilities, plumbing, or electric. The trees that were closest to the structure would be removed. Urban Forester, in the initial quick review, thought the tree plan met her request.

Mr. Foster presented the special permit request as outlined in the statement of justification submitted with the application. He also gave the following information. The applicants' property was unusual. They came to Zoning with initial concepts of what they were considering for that space, and it was through that effort that a rear lot line was determined. After that, they further developed a concept and drew down the size of the pavilion. Ultimately, the application was submitted with that effort completed. The pavilion was meant to be a destination point for the applicants to expand the use of their back property, and to give a purpose for going into that part of the property. With the current side yards, it was very difficult to do anything with a covered structure in that space without this request for a special permit. With efforts to bring an application that was a minimum for functional use, they only requested the amount of side yard reduction which was necessary to provide a comfortable space for the applicants. With regard to the tree removals, of the twelve plus or minus pieces that they were suggesting, only three or four were even the size that Urban Forestry considered in their interpretation of what was reasonable. The rest of these were 3 inches, with the biggest maybe 4 inches. They were very small, insignificant size trees.

Chairman Ribble called for speakers.

Lisa Joiner, the property owner, came forward to speak. She said they put a lot of thought into this plan, and it was not carelessly done, nor presumptuous on their part. They disagreed that building anything off the back of house was feasible, as their house was so close to the neighbors behind them. They chose an area

where they thought it would be farthest away from neighbors with minimal impact. They would also be putting in additional trees and screening.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2013-BR-048 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN E. AND LISA Z. JOINER, SP 2013-BR-048 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure 8.3 ft. and 10.9 ft. from side lot lines. Located at 8230 A The Midway, Annandale, 22003, on approx. 15,079 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-2 ((2)) 53 A1. (Admin. moved from 9/11/13 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 October 9, 2013; and

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

1. The applicants are the owners of the land.
2. It is understood that staff has recommended denial.
3. The Board listened to what the chairperson said, which was that there is a safety issue from the standpoint of having a fireplace.
4. The lot itself is unusual from the standpoint of its shape.
5. From the standpoint of the size, the applicants' point was that if things were reduced, at a certain point it does not make any sense to build it.
6. There has to be a balance between what the Board thinks is the minimum necessary and what the property owner happens to want to do.
7. The Board does not necessarily accept the argument from the standpoint of noise and affecting the light of other properties.
8. It looks like there is sufficient space between this home and the other homes.
9. It is assumed that these will not be wild parties, that we are talking about the socialization and that kind of thing from the standpoint of trying to improve the home and improving the value of the homes around it, although that is not something that the Board necessarily considers.
10. It was not found that it is not harmonious with the surrounding off-site uses.
11. The proposed development will not adversely affect the use or enjoyment of other properties.
12. When talking about the urban forester, the short answer is that they do meet the tree canopy requirements.
13. Additional tree plantings were talked about.
14. These folks can probably do this, and this is the minimum that is necessary in order to make this a viable pavilion in their backyard.

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

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

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

1. This special permit is approved for the location and size of the accessory structure (530 square feet), as shown on the plat prepared by Reid M. Dudley, of Runyon, Dudley, Associates, Inc., dated May 15, 2013, as submitted with this application and is not transferable to other land.
2. The accessory structure shall be generally consistent with the architectural renderings and materials as shown on the special permit plat.
3. The accessory storage structure (shed) and accessory structure (play set) shall be removed or relocated from the required yard areas to comply with applicable Zoning Ordinance provisions within 90 days of this special permit approval.
4. Tree protection fencing shall be installed prior to demolition of the accessory storage structure (shed) and construction of the accessory structure (pavilion) to protect trees on Lots 53-A-2 and 54-A-1, the 11-inch beech, and other trees indicated to be protected as shown on the existing vegetation plan (sheet 2 of 2 of the special permit plat) on the subject property. It shall be placed at the drip-line of the trees. The fencing shall remain in place until all construction and final grading is complete. Additional trees shall be planted as shown on the tree conservation and landscape plan (sheet 2 of 2 of the special permit 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, 30 months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

Discussion ensued regarding the unusual size of lot, no opposition to application, tree and neighbor impacts, and perhaps having a deferral, but all agreed to support the motion.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. GARY J. SCHWARTZ, SP 2013-MA-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 12.0 ft. from side lot line. Located at 6459 Oakwood Dr., Falls Church, 22041, on approx. 14,964 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 167. (*Decision deferred from 7/24/13 and 9/25/13.*)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that his law firm had one case currently, where an adverse party was the agent for the applicant. He said that because that matter was ongoing, he would recuse himself from the public hearing.

Mr. Hammack said he was not here for the original hearing and was going to recuse himself.

Chairman Ribble said he was going to entertain a motion to defer, as he thought there was too much for the Board to review on the handouts that they received that morning.

Gary Schwartz, 6459 Oakwood Drive, Falls Church, Virginia, the applicant, agreed to a deferral.

Mr. Byers asked staff to compare what was requested from the permits branch for construction, versus what the homeowner was told, and to look at the change orders.

Mr. Beard moved to defer decision on SP 2013-MA-037 to October 23 2013. Chairman Ribble called for the vote. The motion carried by a vote of 4-0. Mr. Hart and Mr. Hammack recused themselves from the hearing, and Mr. Smith was absent from the meeting.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. VIKRAMDEEP DHILLON, SP 2013-DR-053 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit in a proposed accessory structure. Located at 520 Lost Acre Ln., Great Falls, 22066, on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-1 ((2)) 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.

Farhang Mojgani, 20924 Nerine Court, Sterling, Virginia, the applicant's agent, and Vikramdeep Dhillon, 520 Lost Acre Lane, Great Falls, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-DR-053 subject to the proposed development conditions.

Mr. Mojgani said he had nothing to add to 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. Theodore moved to approve SP 2013-DR-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIKRAMDEEP DHILLON, SP 2013-DR-053 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit in a proposed accessory structure. Located at 520 Lost Acre Ln., Great Falls, 22066, on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-1 ((2)) 6. Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-E, residential estate.
3. The area of the lot is five acres.
4. A majority of the site is wooded.
5. The property is greater than two acres in size; therefore, such an accessory dwelling unit in a detached accessory structure is permitted.
6. The parents of the owner, both over the age of 55, will be residing in the accessory dwelling unit.
7. In terms of impacts to neighbors, the surrounding properties are single-family detached dwellings with the same zoning designation on large lots ranging in size from two to five acres.
8. The Board has not heard concerns or opposition to the proposed accessory dwelling raised by adjacent homeowners or neighbors at the public hearing.

9. The staff report determines the request is in conformance with the applicable Zoning Ordinance provisions with implementation of certain proposed development conditions and recommends approval of the special permit, and the Board agrees with those findings.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the accessory structure. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Vikramdeep Dhillon and/or Preetika Sidhu-Dhillon, and is not transferable without further action of this Board, and is for the location indicated on the application, 520 Lost Acre Lane (5.00 acres), and is not transferable to other land.
3. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 1,182 square feet, and the layout shall be generally 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 the accessory structure.
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 years from the final approval date of the special permit and may be extended for five 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 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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ October 9, 2013, Scheduled case of:

9: A.M. CHARLES B. MOLSTER, III, AND SHARON B. MOLSTER, SP 2013-DR-052 (riding and boarding stable)

Chairman Ribble noted that SP 2013-DR-052 had been administratively moved to November 6, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. LORENA S. DENNEHY, SP 2013-SU-040 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 13921 Waterflow Pl., Centreville, 20121, on approx. 1,650 sq. ft. of land zoned R-8 and WS. Sully District. Tax Map 65-2 ((3)) (16) 46. (*Admin. moved from 8/7/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Lorena Dennehy, 13921 Waterflow Place, Centreville, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-SU-040 subject to the proposed development conditions.

There were several questions from Board members where the following was discussed and determined. With Development Condition 6, staff intended the parents of the home child care to use the curbside parking, rather than assigned and numbered stalls for pickup and drop off of children. The back yard area used for outdoor play was not enclosed by a fence, which was not a requirement of the County's Ordinance. With no outdoor enclosure, there was concern from the Board with respect for adjoining neighbors' property rights, as far as children encroaching on their properties, and concern for the safety of the children. The state allowed applicants to take the children to a neighborhood playground, and did not require an onsite play area. The applicant had a current state license. She was allowed to have five children by right.

Ms. Dennehy presented the special permit request as outlined in the statement of justification submitted with the application. She said she had been doing this for over five years. She said the reason they didn't put in a fence was because she had a really good relationship with her neighbor who had two children. His children used her yard when they played soccer on the weekends. The applicant said most of her children were referrals. She said the reason she wanted nine children was if she lowered it to five, she would have to let some parents go. She said she spoke with neighbors about parking, and they had no issues.

Mr. Hammack asked staff whether having a small refrigerator and microwave in the storage room did not conflict second kitchen prohibitions. Staff said since these were associated with the home child care, it was approved with that special permit for its use. If the special permit was no longer valid, they could not have a second kitchen without a special permit for that specific use. The applicant said that all cabinets and utensils were in the upstairs main dwelling kitchen, where they washed everything daily and got it ready for the next day. She said that downstairs there was only a refrigerator and a microwave.

With questions from Mr. Hart and Mr. Hammack of the applicant, it was determined that she had read the proposed development conditions and agreed with them. Both her and her assistants were outside when all the children were outside, which would be around six children. If a couple of the children stayed inside to nap, she watched them. Sometimes they stayed in her backyard, and sometimes they went to the playground. The children never went through the woods in the back of the house. She had checked with the homeowners association to make sure it was okay for the childcare children to play in the common areas.

She had two assigned parking spaces, which was mostly what her parents used for pickup and drop off. They came at different times, so two spaces were enough. The applicant had a license from the County and also a state license.

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

Mr. Hart moved to approve SP 2013-SU-040 for the reasons stated in the Resolution.

Discussion ensued regarding reservations about the children playing off site, and having no enclosed space in which to play in.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LORENA S. DENNEHY, SP 2013-SU-040 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 13921 Waterflow Pl., Centreville, 20121, on approx. 1,650 sq. ft. of land zoned R-8 and WS. Sully District. Tax Map 65-2 ((3)) (16) 46. (Admin. moved from 8/7/13 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 October 9, 2013; 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 staff recommendation of approval.
3. The Board adopts the rationale in the staff report.
4. This is a relatively modest request.
5. The applicant is asking for only nine children. She can have five by right.
6. With the imposition of the development conditions, the impacts on the neighbors would be appropriately mitigated.
7. The applicant has explained that the children are supervised while they are outside.
8. As shown on the drawings, the neighbor to the east has a fenced backyard.
9. The neighbor to the west, there is a fence along most of the property line, except for the last ten feet or so.
10. Even if the backyard is not totally enclosed, it is mostly enclosed.
11. The applicant also has permission to go out into the lawn behind.
12. As to the issue of the kitchen, it is questionable whether that needs to be addressed in the development conditions.
13. The Board is not approving a second kitchen within the scope of Development Condition 2.
14. If the special permit use ceased, they are just like any other property owner, and Zoning Enforcement can deal with whether they can have a microwave in the basement or not.
15. Ordinarily, the Board might want a fenced area for playing. That may not always be practical in a house with a very small lot, in a townhouse.
16. With the explanation, every case is different, and this is probably going to be okay the way it is.

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, Lorena Dennehy, only and is not transferable without further action of the Board, and is for the location indicated on the application, 13921 Waterflow Place, 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 titled "Property Report, Lot 46, Section 16, Little Rocky Run" prepared by Universal Title, dated May 21, 2013, as revised by Lorena Dennehy, the applicant, 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 hours of operation of the home child care facility shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.
5. The maximum number of children on site at any one time shall be nine (9), excluding the applicant's own children.
6. During the hours of operation of the child care facility, the two assigned parking spaces in front of the applicant's unit shall be kept open for drop-off and pick-up of children, and the applicant and assistants shall not park in the assigned parking spaces on Waterflow Place and shall either use on-street parking on Braddock Creek Road or park in unassigned spaces.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
8. 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, six months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59. (Admin. moved from 8/7/13 at appl. req.) (Admin. moved from 9/11/13 for notices.)

Chairman Ribble noted that VC 2013-PR-009 had been administratively moved to November 6, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. MANSION HOUSE CLUB, INC., SPA 77-V-247-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP-77-V-247 previously approved for a swim and tennis club to permit site modifications including increase in height of light poles. Located at 9321 Old Mount

Vernon Rd. on approx. 5.04 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 9D. (Admin. moved from 4/6/11, 6/8/11, 9/14/11, 11/16/11, 4/18/12, 9/26/12, and 4/17/13 at appl. req.)

Chairman Ribble noted that SPA 77-V-247-02 had been withdrawn.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. CHARLES B. MOLSTER, III; SHARON B. MOLSTER, A 2012-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Riding/Boarding Stable on property in the R-E District without an approved special permit in violation of Zoning Ordinance provisions. Located 815 Blacks Hill Rd., Great Falls, 22066, on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26. (Admin. moved from 10/24/12 at appl. req.) (Continued from 10/31/12, 11/28/12, and 4/3/13.)

Chairman Ribble called the appellants to the podium.

Discussion ensued regarding the reason for the appeal, and whether the appellants were still in violation. Staff said that while waiting for the special permit case to be heard, the appellant's had stopped giving lessons on their property, which was the cause of concern for the Notice of Violation.

Mr. Hammack moved to continue A 2012-DR-019 to January 29, 2014, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-1. Mr. Beard voted against the motion. Mr. Smith was absent from the meeting.

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. THE SHEILA E. FRACE TRUST, A 2013-DR-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining an accessory storage structure that does not meet location requirements on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 1836 Cherri Dr., Falls Church, 22043 on approx. 10,058 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 311.

Chairman Ribble called the appellant to the podium.

The meeting recessed at 11:26 a.m., and reconvened at 11:33 a.m.

Matthew Mertz from the Zoning Administration Division, presented staff's position. It was noted that assuming the shed was less than 200 square feet in size, the appellant could have applied for a special permit for error in building location in an attempt to resolve this violation. Staff recommended that the Zoning Administrator's determination dated May 24, 2013, be upheld.

The following was determined with questions from Board members of staff. The appellant was informed that they could have applied for a special permit for mistake in building location, which was in the information submitted with the Notice of Violation. The cost was cheaper for an appeal than it was for a special permit, and it was likely that an applicant for a special permit would also have to include the cost of getting a plat. The appellant most likely believed they would win the appeal.

There were three plats in the staff report for the years 1952, 1964, and 1993. In the first two, there was no shed. It was assumed that the shed first appeared sometime between 1964 and 1993, and a building permit would have been required for it when it was built within those dates. Staff did not know if there was any electrical, plumbing, or utilities for the shed, and there was no record of a building permit or any other type of trade permit associated with the structure. If the shed was 8½ feet tall at its peak or less, it could be located in its current location, although a permit still should have been pulled for it because of the footprint.

Sheila E. Frace, 1836 Cherri Drive in Falls Church, Virginia, came forward, and presented the arguments forming the basis for the appeal. Her main points follow. She purchased the property in May 1993. There

was no disclosure by the seller that there was a violation of the Zoning Ordinance. She had the property and structures inspected, and there was nothing that was noted amiss. The plat was done, and the only thing which was identified as being problematic relative to zoning, was that her neighbor's fence actually encroached on her property by about five inches. She did not do anything about it at that time.

In May, the County came out to inspect the property. The appellant was told she had 15 days to either remove the storage structure from the property in its entirety, or reduce the height of the structure to 8½ feet or less to allow it to remain in its present location. Relocating the structure to a distance from the rear and side lot lines in accordance with Paragraph 10E of Section 10-104 of the Zoning Ordinance would mean she would need to move it in basically 9½ feet from the rear lot line and 15 feet from the side line, and would have to cut down a tree to do that.

The appellant was given another alternative, which was to apply for a special permit. This would cost her more money, plus money to have a new plat done. The shed was not actually part of the original anonymous complaint, so she did not know whether she should go through the permit process, considering she might still have to do an appeal.

The appellant had already spent between \$10,000 and \$15,000 clearing up the maintenance issues. She said she wanted to make sure she had a fair hearing, with the opportunity to do things in a reasonable timeframe with a reasonable cost.

She pointed out one error in the report. It said she pointed out a garage at 1843 Lusby Place, but she was noting a shed at 1845 Lusby Place, which appeared to her to be about the same height within a foot of the same setbacks as her shed. In terms of visual lines from any of the abutting properties, one had a big garage and outbuilding shed, which had a roofline way above hers, and the one diagonal had a fairly similar structure as her shed situated at about the same height.

With questions from the Board of staff the following was determined. The shed was not part of the original complaint, which was about items in the front and rear yards. These items included a swimming pool and a vehicle in the rear yard. The inspector had not been back out to the property to determine whether the violations had been abated. The shed had not been shown to be taxed over the past 15 years. If the inspector had not been granted access to the backyard by the owner, the violation would not have been seen, and no notice of violation would have been sent for that issue. The only times investigators could initiate something would be if they actually saw a life safety issue.

Mr. Hart noted that the applicant was not challenging the location or the measurements of the shed, but the equities of the situation. He said that was more of a special permit justification than a statement that the Zoning Administrator measured wrong or the lot lines were in a different place. He said if the shed was built after 1978, then it was definitely subject to the current Ordinance.

Mr. Hart asked whether there was plumbing or electricity in the shed. The appellant said there was no plumbing, but electricity was put in by the prior owner. He asked whether the appellant was disputing the Zoning Administrator, or her issue was with the fairness of the overall process. She said it was the fairness.

Chairman Ribble called for speakers.

Kellie Budd, 2500 North Van Dorn, Alexandria, Virginia, the appellant's attorney came forward. Her main points were that when the notice was first given, it was their understanding that the shed was grandfathered in. That was why they appealed. There were other sheds like the appellant's shed in the neighborhood. They were not opposed to doing a special permit. She noted the shed was in harmony with the neighbors' sheds.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the determination of the Zoning Administrator in Appeal Application A 2013-DR-018. He said that as Mr. Hart indicated, their sole responsibility was to determine whether the Zoning Administrator was correct when a notice of violation issued. He said on that basis, the answer was that they uphold the Zoning Administrator, and that this was in violation of Paragraph 10, Section 10-104, of the Zoning Ordinance.

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

//

~ ~ ~ October 9, 2013, Scheduled case of:

9:00 A.M. CESAR C. AQUINO, A 2013-LE-019

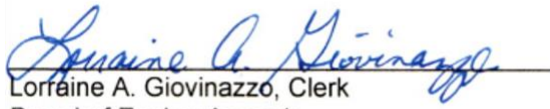
Chairman Ribble noted that A 2013-LE-019 had been administratively moved to November 20, 2013, at 9:00 a.m., at the appellant's request.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:45 p.m.

Minutes by: Kathleen A. Knoth/Lorraine A. Giovinazzo

Approved on: September 21, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 23, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Sharon Theodore; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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.

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. MAC W. L. SELBE - TRUSTEE FOR THE SELBE FAMILY TRUST, VC 2013-DR-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 25 percent front yard coverage. Located at 1907 Kirby Rd., McLean, 22101 on approx. 20,759 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((1)) 45.

Chairman Ribble called the applicant to the podium.

Mr. Hart made 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, and the public hearing was opened.

Mac W. L. Selbe, 1907 Kirby Road, McLean, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit greater than 25 percent front yard coverage. The existing driveway accessing the property from Kirby Road covered 42 percent of the front yard. A notice of violation was sent on April 16, 2013. When the applicant applied for a variance, the plat supplied showed that the total front yard coverage was 48 percent. A maximum of 25 percent coverage is permitted.

Mr. Byers questioned whether this came about as a result of a complaint. Ms. Haley said yes, it did, and that Bruce Miller, Zoning Inspections Branch, was present to answer any questions in that regard.

Mr. Miller said they received a complaint on this from the Department of Public Works and Environmental Services, as well as from a member of the community. He said that they initiated their inspections and determined that Legacy Homes had built the driveway in excess of 25 percent of the front yard area, and at that time, they also suspected that they encroached in the front yard with the building three feet. Mr. Miller said his office asked for a house location survey, which was provided, and at that time they determined that the minimum yard requirements were met; however, it was determined that Legacy Homes exceeded the 25 percent.

Mr. Byers asked if a determination was made about who reinstated a driveway, because he understood that it was deleted. He said this had come up before, and the prior owner had essentially the same percentage of coverage. Mr. Byers said we asked them to take it out, it was taken out, and then it came back again. He wanted to know how that happened. Mr. Miller said he could give some history on that. Legacy Homes brought it into compliance. He had a drawing that showed what they did to resolve the front yard coverage. He said the next property owner reinstalled the driveway, and a new notice was issued to that property owner. Mr. Miller was advised by a previous Supervisor for that district to hold off until the variance issue was addressed by the General Assembly. By the time it was brought back to Mr. Miller's attention, the property had changed hands once again. Mr. Miller said he believed the notice was issued in 2007.

Mr. Beard noted that Appendix 2, the attached affidavit, was not approved by the Office of the County Attorney. He wanted to know if the County Attorney or someone from that office was present at the meeting. Ms. Haley said it was approved by the County Attorney's office on Tuesday, the morning before the meeting, but she did not bring copies of the approved affidavit.

Mr. Hammack said Mr. Miller had mentioned in his testimony that he thought the house itself might need some special permit or variance. Mr. Hammack wanted to know why Mr. Miller had that information since the house had been constructed for some period of time and had been before the Board before. Mr. Miller said his suspicion that the house did not meet the minimum front yard requirement was at the time that the house

was under construction. He said that at that time it was difficult to determine where the front property line was as a result of the grading work that was taking place. As a precaution, he said Zoning Inspections asked Legacy Homes to do a wall check survey. He said they did the survey and proved that the minimum front yard requirements were satisfied.

Mr. Hammack asked when the house was constructed. Mr. Miller said that Zoning Inspections, which at the time was Zoning Enforcement, became involved in 2006. Mr. Miller believed that the building permit was issued before that in early 2006, and Zoning Enforcement became involved after the permit was issued.

Mr. Hammack asked why they did not follow up on it then, but chose to follow up on it in 2013. Mr. Miller said they did follow up with Legacy Homes in 2006. Zoning Enforcement required them to remove paving stones in the front yard to satisfy the 25 percent coverage.

Mr. Hammack said he was talking about the front yard setback. Mr. Miller said the wall check survey showed that they met the minimum required front yard. Mr. Hammack asked if that was not until 2013. Mr. Miller said it was in 2006. Mr. Hammack questioned whether they satisfied their inquiry of 2006. Mr. Miller said yes, that Legacy Homes, the builder, did satisfy that in 2006 in pretty short order after the request was made.

Mr. Beard asked if this was a 20-some-thousand square foot property. Mr. Miller said that was correct.

Mr. Beard asked if he caught the three feet by just looking. Mr. Miller said they measured the distance from the presumed front property line at that time to the foundation wall. He said it was suspected that it may have been three feet too close to the property line. Mr. Miller said that as their office does not employ surveyors, if they had a suspicion that there was an encroachment, they asked the builder to provide a wall check survey, and that was fairly standard. At that time, the builder did provide it and satisfied the minimum required front yard.

Mr. Beard asked if Mr. Miller takes this measurement as a matter of course on every property that they go to in a situation like that. Mr. Miller said that generally they would measure front yards, side yards, and rear yards. In this case, they did front yard and side yard, because the rear yard was under construction, and he did not presume that it would encroach into the rear yard. He said it was such a distance to the rear property line that he did not have a concern.

Mr. Beard asked if Mr. Miller had pulled a tape on it. Mr. Miller said that he actually ran a wheel.

Mr. Byers said he wanted to go back and talk about the agent or Legacy Homes. He asked whether it was correct that if the garages were on the other side of the house as opposed to where they were currently, with the exception of safety issues of backing out onto Kirby Road, that there would, in fact, not be a violation of the 25 percent rule. Mr. Miller said that he suspected that would be correct, but did not know what type of driveway they would have put in at that time and how much area would have been covered. He said that at the time that Legacy Homes, his office, and site inspections from the Department of Public Works and Environmental Services met, that issue did come up.

Mr. Miller said that Legacy Homes constructed the home and driveway in accordance with an approved grading plan. He said that grading plan showed the driveway in the current configuration. He said that was an error on the side of the review, and it was not caught until after the foundation and walls were up. Legacy Homes could have reversed the footprint, and it may have resolved the matter at that point. Mr. Miller said that at the time his office became involved, it was so far along in construction that it could not be accomplished without tearing it out and rebuilding it.

Mr. Byers asked if initially it was the office that made a mistake. Mr. Miller said that yes, an error was made at review.

Mac Selbe presented the variance request as outlined in the statement of justification submitted with the application. He said that he and his wife acquired the property in 2009 with the surface as it appeared today. They were unaware of any zoning violations at that time, and the home sale was approved with no restrictions.

Mr. Selbe said that Kirby Road was also known as Route 695, which was an urban arterial roadway, a state highway by definition. It was owned by the State and operated under the authority of the Virginia Department

of Transportation. He said that Kirby Road has been referred to as a colonial road, which meant that there were no sidewalks, no shoulders, poor sight lines, and open drainage ditches.

Mr. Selbe said the speed limit was posted at 35 miles per hour, but a recent traffic study showed an average speed of 45 miles per hour, with the traffic volume exceeding over 9,000 in a 24-hour period. He said that, in fact, over 80 percent of northbound traffic on Kirby Road traveled at a speed exceeding 46 miles per hour, which was a full 11 miles per hour over the speed limit. Speeding was a concern for the area residents, and the community worked closely with the Supervisor, John Foust, to voice their concerns. He said that few options were available to them, because the road was owned by the State and not by the County.

Mr. Selbe said speed cameras, speed bumps, and additional stop signs were not options for them. He said the only authority Fairfax County had over the road was to issue speeding tickets, which sounded like a reasonable measure, but the police department had publicly acknowledged that the road could not even accommodate motorcycle police officers. He said the shoulder width was five inches and could not hold a motorcycle. Mr. Selbe said that as a result the speeding continued.

Mr. Selbe said his point was to show the conditions that he and his wife faced each morning exiting their property from a dead stop onto a road where the average speed was 45 miles per hour. He said that most residents in his zoning district did not face that hardship.

Mr. Selbe said his home was built in 2006, and in the staff report it showed that the garage was located on the north side of the home, and the driveway entrance was on the south side. He said that entering the property involved exiting the roadway and driving across the base of the property to enter the garage. That was the largest contributing factor to the surface area of their front yard, and VDOT determined entrances and exits from a State-owned road. In 2006 at the time of construction, Mr. Selbe said it was deemed that the entrance should be a shared use entrance with their immediate neighbors at 1909 Kirby Road, and they did share an entrance with their neighbors.

Mr. Selbe said the current design of their driveway served a functional purpose, and they had no access to street parking. He said that if contractors had to reach their home, they had to park on their lot. Most homes in the zoning district could use street parking for guests, contractors, and for their own vehicles. Mr. Selbe said that in addition, the surface area in their front yard was used to turn their vehicles around. He said that in a normal driveway a resident would be able to pull in and back out of their driveway and use the intersecting roadway, but that was not an option for them with frontage on a state highway.

Mr. Selbe said they understood and appreciated the need for the Ordinance, as excessive surface area could cause irrigation concerns and also detract from the aesthetic value of the property. He said, focusing on the irrigation concerns, that their property was built with a rain garden that was formerly submitted in the final survey and accepted by the Zoning Administrator. He said that the rain garden funneled water leakage from the surface to the landscaped portion of the front yard, and they believed the rain garden to be very successful. He said they did not receive any complaints from local residents or the County, and flooding was not an issue.

Mr. Selbe said that pictures in the staff report showed that their use of surface area were pervious pavers, not asphalt or concrete. He said that it was relevant that you could actually see grass growing between the pavers, and irrigation was not an issue for their surface area.

As for the aesthetics, Mr. Selbe said that they felt they have an attractive entranceway. He said they were not aware of the history of earlier violation notices and that the previous owners had removed a portion of the surface area to get the yard into compliance.

Mr. Selbe said the yard consisted of various plats of surfaced area and grass to meet the requirement. He said access to the garage, space for parking, and vehicle turn around space were all still needed, and the result was the grass quickly deteriorated into mud and dirt. Mr. Selbe noted that in the staff report was an account from their neighbors how this detracted from the aesthetic value of the property and that removing the surface area caused erosion rather than preventing it.

Mr. Selbe said the strict application of the Ordinance left them two alternatives, one of which was to move the driveway entrance to the same side as the garage. He said cost was a factor, but more important, the entrance to the State-owned road was at the discretion of VDOT and not the property owner. He brought with him VDOT's road design manual, which said a private entrance is placed at a useable location along the

property owner's highway frontage with the best possible sight distance as determined by VDOT. VDOT can deny the applicant's preferred location. Mr. Selbe said it did not matter where they wanted the driveway if VDOT made the decision for them. He said the manual stated VDOT's preference for restricting ingress and egress points along a state highway and their preference for shared used entrances. The minimum sight distance requirement for a private entrance is 360 feet. Mr. Selbe said that they did not even qualify for that at the proposed new entrance.

Mr. Selbe said to keep in mind that they had a functioning driveway that existed in a location that was approved by VDOT in 2006, and it was a shared use driveway, so it was not a matter of moving the driveway and relocating it. He said they would have two entrances to their property, and it was unlikely that VDOT would have allowed them to have two entrances at a location that did not meet the sight requirements and went against their stated preference for shared use and limiting entrances to the state highway. He said the cost was irrelevant, because VDOT would probably have never given them approval.

Mr. Selbe said the other alternative was to remove a portion of the surfaced area, which was what the previous owner tried for a limited period. He said that meant they would not have surface area for guests and contractors, asking them to park across Kirby Road and accessing their home by foot, which would endanger their guests, contractors, and motorists. Mr. Selbe said asking guests to park on unsurfaced areas of their property would have risked a separate zoning violation if they remained for longer than 48 hours.

Mr. Selbe said that as it was already proven, they would not have been left with nice luscious grass mixed with surface area, but the area would have been left with dirt and mud as the space would have been used for vehicle turnaround and parking.

Mr. Selbe said that any modification to the current design of the driveway represented an additional safety concern in an area that was already challenged by limited opportunities for controlling traffic and would have contributed to the hazardous condition of the roadway. He said it was their opinion that having surfaced area to access their garage, for parking because of the complete absence of street parking, for turnaround space because of the lack of intersecting roadways, and most importantly having safe access for entry and exit from their property was all a reasonable use of their property. He said the strict application of the Ordinance would have prohibited these uses.

Mr. Beard asked staff if it was correct that Mr. Selbe elected to apply for variances as opposed to appealing. Ms. Haley said yes. Mr. Beard asked if the fee for filing an appeal was \$600, and Ms. Haley said yes. He asked what fee was for a variance. She said she believed it was \$910. Mr. Selbe said that was correct. Mr. Beard asked whether Mr. Selbe's only option would be to go to court if he had appealed and it was denied. Ms. Haley said yes. Mr. Beard asked whether Mr. Selbe's only option would be to go to court if the variance was denied. Ms. Haley said yes.

Mr. Hammack said the back yard looked largely undeveloped with almost no coverage, and he asked staff how much rear yard coverage would be allowed and would it exceed the amount of the front yard coverage that was in dispute, the 23 percent. He asked whether there was a section under the Ordinance that would allow the Board to offset one against the other. He said the concern was with impervious surface, and he asked why the total lot was not considered when there was a front yard like this pulled fairly forward which reduced the amount in the computation of the percentage.

Ms. Langdon said the Zoning Ordinance permitted coverage of up to 30 percent of the minimum required rear yard, not the total rear yard. She said zoning-wise she did not believe that there was a maximum to coverage of the lot. She said that in the Public Facilities Manual (PFM), once coverage was more than a certain percentage, which she believed was 18 percent, there were other means to address runoff and those sorts of things. She said that was where rain gardens and some of the other structures came in. Ms. Langdon said that in the Zoning Ordinance there was not a way to offset the front and rear yards, as they were separate issues.

Mr. Hammack said, although that was the way the Ordinance was written, it seemed to him that the idea was to limit the amount of impervious surface on any given lot. Ms. Langdon said that she was not sure that was the only reason for the front yard coverage, as part of that has to do with parking and the appearance of the house from the front and other reasons why that Ordinance was enacted.

Mr. Byers asked staff if that was the Ordinance that became effective in July of 2002. Ms. Langdon said that was correct. He asked what the intent was of the Board of Supervisors in enacting the Ordinance. Ms.

Langdon said that she could not specifically answer that as she was not involved in the Ordinance amendment, but she thought part of it had to do with excessive parking in the front yard, and it only applied to R-1 through R-4 Districts and not all of the districts. She said if he wanted more of an answer to that, she could go back to the Zoning Administration Division. Mr. Byers said the reason he was bringing that up was because he had been involved in the Ordinance discussions, and the intent was the fact that there was a significant issue with regard to boardinghouses being established in residential neighborhoods. He thought that the Board wanted to preclude that, which he thought was a very good idea. Ms. Langdon said she thought that tied into the parking and the number of cars in the front yard. Mr. Byers said that was exactly right, that there were multiple cars, and the point he was trying to make was that he thought this was an entirely different situation from the circumstances of this particular applicant.

Mr. Smith asked if there was a definition of impervious, as the applicant raised that fact that in some ways this is pervious with grass growing in between the pavers, which is a little different than the normal asphalt or concrete driveway that you might see. He wanted to know where the line was drawn between pervious and impervious. Mr. Selbe said the pavers consisted of large bricks, and when the brick is laid down, there is still a pattern of grass around it. He said using asphalt or concrete, there is a foundation there, with no opportunity for water seepage. With the pavers, there is still ground and grass visible through the surface area, and water can seep into those little crevices. Mr. Smith said he understood, but it was still defined as pervious cover, and he was curious as to where that line was drawn between pervious and impervious in the Ordinance.

Chairman Ribble said that was a question for staff. Ms. Langdon said that she would have to look in Article 20 of the Ordinance and see if there was a definition, although she did not believe there was. She said she knew there was an interpretation from the Zoning Administrator, and also that it may have come from the PFM on what was pervious and not. Mr. Smith said there was pervious concrete that you could put down, and some mesh netting that you could put down. He said there were a lot of different things that could have been put down, and somewhere they drew a line between these. Ms. Langdon said that was right, but if you looked at the amount of pavers and how close together they were, there was not enough space between the pavers, and it was still over 25 percent. She said gravel also counted as impervious material, but she did not believe there was a definition in the Ordinance.

Mr. Smith said the Board had a variance application a couple of weeks prior with a similar issue with flagstone, and there was significantly more pervious surface between them. He said that also raised an issue similar to what Mr. Hammack had talked about where they went over the coverage limit in the rear yard, but the placement of the house had some impact on that, and there was significant impervious surface in the front yard. He said here we had somewhat of the reverse of that. Ms. Langdon said there was no definition in the Zoning Ordinance, but she knew there had been a determination made.

Chairman Ribble called for speakers.

Katherine Selbe, the applicant's wife, came forward to speak. She said her primary concern was the safety of their children, their three-year-old daughter and one-year-old son. She was going to show a brief video that was taken in the morning at 7:45 as her husband was leaving to take their children to daycare. She said you could see in the video almost every square foot of the driveway was used to turn around and position the car in order to merge with oncoming traffic going at upwards of speeds of 45 miles per hour. There was a problem showing the video. She said the point of the video was that her husband had to pull out, back up, and make a turn, and when he was coming through in front of the house, there was only room for one car to pull forward, so he had to angle himself to merge with oncoming traffic. She said there was also a view of the shared driveway, and they used some of their neighbor's shared entrance to position the car whether they went right or left. Ms. Selbe said you could see in the video all the cars coming, and she said her husband liked to roll down the window so he could hear traffic coming to pull the car out. Her concern was that if the driveway were reduced, they would not have enough surface area to position the car in order to merge with traffic.

Ms. Selbe said their other main concern was parking. She said she and her husband both worked full time, so a lot of times they had a babysitter or her mother come and stay. Ms. Selbe said that if her mother could not park in the driveway, the only other suitable parking was across the street on Ivy Hill, because there was a storm drain there and they cannot park on Kirby. Her mother would have to cross the street with the two children and a diaper bag, and it would be very dangerous. She said Kirby Road was very dangerous, and they did not want to add to the danger of the road by modifying their driveway. She asked that the Board please consider the safety of their family as it make its decision.

Margaret Donnelly, 1909 Kirby Road, McLean, Virginia, came forward to speak. She said she and her husband bought their house in 1972 and had seen Kirby road go from a small rural road to the major road that it is now. She said that since they had lived there for 40 years, they had seen the time when their neighbors took out a lot of pavers to make the 25 percent allotment that they were supposed to, and the situation did not work at all. She said when they came in from Kirby Road, they had to turn and they could not get the front and back wheels on the pavers at the same time. Also, the same thing happened when they turned into their garage or when they parked at the side of the house and backed around. They were constantly running off the pavers. She said it would rain, and they had a constant mud hole next to them, which was very unsightly and impacted their driveway, because the mud ran over into their driveway. That was why they put the pavers back. Ms. Donnelly said she did not know the legal ramifications of any of that, but just knew that was what happened.

Ms. Donnelly said that it was also a safety issue. When they and the Selbes have guests, they use each other's driveways to help the cars turn around and get out safely into the street, because backing out onto Kirby Road was not an option. She said that they are on the downhill side of the Selbes, and in all the rainstorms that they had this summer and fall, they did not get any excess water flowing from the Selbes' yard to their yard, as the pavers seem to stop the water enough. Ms. Donnelly said that for those reasons she supported the variance and hoped that it would be granted to the Selbes.

Chairman Ribble said he understood that there was a video and asked if there was a problem. Ms. Haley said they still needed a minute or so for rebooting. Chairman Ribble said he understood the traffic on Kirby Road. He did not know if a video was going to tell him more or not. He said they had testimony from three people saying that traffic on Kirby Road was bad.

Mr. Beard said he thought what she wanted to show was how, when they back out, the width of the pavers in the front yard were not excessive and would not even allow two cars, so they were making do with what they felt was minimal. He thought there were a couple of pictures that specifically endorsed her statement.

Ms. Haley said the video was not going to play, but having seeing the video herself, she said she concurred with Mr. Beard's interpretation of what was going to be shown.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 2013-DR-013 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Mr. Beard said he thought that if there was ever an application that begged for a variance, this was it, and assuming it was granted, he was glad.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAC W. L. SELBE - TRUSTEE FOR THE SELBE FAMILY TRUST, VC 2013-DR-013 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit greater than 25 percent front yard coverage. Located at 1907 Kirby Rd., McLean, 22101 on approx. 20,759 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((1)) 45. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 23, 2013; and

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

1. The applicant is the owner of the land.
2. In general, this is an unusual situation.

3. Kirby Road is a difficult road.
4. This is an old area.
5. There is no on-street parking.
6. There is no curb, gutter.
7. It has a shared driveway.
8. This situation is unusual in certain respects, in that the original builder had an approved building plan.
9. The configuration of the house with the garage on the left side of the house, as you face it, with the driveway on the right side of the house, in order to comply with VDOT standards, with the shared entrance was not caught by Fairfax County staff in their review, according to testimony of Mr. Miller.
10. The recognition that they might have too much front yard coverage was not caught until the house was so far in construction that the County decided not to do anything about it and allowed the house to be constructed.
11. Now the County comes back and would like to have part of the driveway removed, which would probably result in the applicant violating some other sort of ordinance about driving through the front yard to get to the garage.
12. That is an extraordinary situation or condition in the use and development of the subject property.
13. The reasons set forth in the written justification outlined in great detail the traffic and the use issues involved with this common entranceway.
14. It satisfies the other conditions set forth in the nine paragraphs or some subsections under the variance standards.
15. In particular, 2F that was addressed.
16. Also 3, that the condition or situation of the subject property or intended use of the subject property is not so general or recurring in 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.
17. Strict application of the Ordinance would produce undue hardship.
18. 5, the undue hardship is not shared generally by other properties in the zoning district.
19. 6, that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
20. 7, that the authorization of the variance will not give substantial detriment to the adjacent property. Indeed, the adjacent property owner supports this.
21. It seems to be, in part, their conformance with VDOT standards that is what started this whole process in motion.
22. The character the zoning district will not be changed.
23. It is the Board's understanding, according to the testimony, that the front yard coverage was for an entirely different purpose than the use intended by this applicant.
24. The variance will be in harmony with the intended spirit and purpose of the ordinance and not contrary to the public interest.

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

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

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

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

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

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

1. This variance is approved for the front yard coverage as shown on the plat prepared by Dominion Surveyors, Inc., titled "Plat, Showing Improvements on the Property Located at #1907 Kirby Road," dated May 21, 2013, as revised through July 10, 2013, 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 including requirements for building permits.

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. GARY J. SCHWARTZ, SP 2013-MA-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 12.0 ft. from side lot line. Located at 6459 Oakwood Dr., Falls Church, 22041, on approx. 14,964 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 167. (Decision deferred from 7/24/13, 9/25/13, and 10/9/13.)

Chairman Ribble noted that SP 2013-MA-037 had been deferred for decision only.

Mr. Hart made a disclosure and indicated that he would recuse himself from the public hearing, as he had recused himself previously when the case was before the Board.

Mr. Byers moved to approve SP 2013-MA-037 for the reasons stated in the Resolution.

Mr. Byers said that originally when the case came up, he had moved that the application be denied. He said the reason that he did that was because on December 28, 2010, the applicant's agent, in fact, had a building permit that was approved that specifically delineated that steps would not be in the side yard. Mr. Byers said that based on what the applicant had said and stated in a letter that he sent to Chairman Ribble on October 4, 2013, this information was never transmitted to the applicant. He said although each applicant and each property owner is ultimately responsible for what occurs on their property and what occurs to an individual agent, that it was very hard to do if you did not know that information was transmitted to the applicant. He continued that what made the case even more difficult was that this was the first of two cases, citing the Lori Barnes case, where precisely the same thing happened with precisely the same agent. Mr. Byers said that, as he indicated in his earlier remarks when they first approached this case, there were remedies that could have been made from the standpoint of an amended permit, the Board of Zoning Appeals could have been approached to receive an 8-922 determination, and this would not have been an issue for this property owner. He said the reason that he was recommending approval was that he believed, in this case, the applicant was not complicit in this. He said the thought the applicant was a victim just as much as Ms.

Barnes was, and what this would have entailed was that even if the applicant would have remedies against this particular agent, it would be long, time-consuming, and costly. Mr. Byers said he really tried to step through this from the standpoint of the facts as he saw them, and this really was a bifurcated case based on the agent versus the homeowner, as it was in the Lori Barnes case. He said that when he considered everything, he thought the Board should rule in favor of approval based on the homeowner.

Mr. Beard seconded the motion. He said that he agreed with Mr. Byers, as he felt the applicant was blameless in this. He said that the Board had seen certain contractors come in that seem to feel that once they get their permit, start the job, and get change orders, they do not need to come back and address the system. He said he thought that fell in the category of this situation, so he would support the motion.

Chairman Ribble said that he, too, would support the motion. He said the big loser in this was the County, because the system had been tilted because of the contractor and builder. He said he hoped that a way could be figured out that it would not happen again.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GARY J. SCHWARTZ, SP 2013-MA-037 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 12.0 ft. from side lot line. Located at 6459 Oakwood Dr., Falls Church, 22041, on approx. 14,964 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 167. (Decision deferred from 7/24/13, 9/25/13, and 10/9/13.) 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 23, 2013; 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 applicant has essentially met all of the criteria under 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 the existing deck as shown on the plat prepared by William E. Ramsey, P.C., Land Surveyor, titled "Special Permit, Lot 167, Section Three, Belvedere Park" dated December 17, 2012, as revised through December 31, 2012, 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 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. SALVADOR GARCIA, SP 2013-LE-057 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 8.2 ft. from side lot line and reduction of certain yard requirements to permit construction of accessory storage structure 6.5 ft. from side and rear lot lines. Located at 4807 Flower Ln., Alexandria, 22310, on approx. 11,036 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (H) 2.

Chairman Ribble noted that SP 2013-LE-057 had been administratively moved to November 20, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. MIRUNA TECUCI, SP 2013-BR-056 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 5313 Danas Crossing Dr., Fairfax, 22032, on approx. 14,364 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 68-4 ((22)) (2) 12.

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.

Miruna Tecuci, 5313 Danas Crossing Drive, Fairfax, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an accessory dwelling unit in the basement of an existing single-family dwelling. The proposed accessory dwelling unit would be 1,835 square feet and accounted for 31 percent of the total gross floor area of the structure. The accessory dwelling would contain one bedroom, two bathrooms, a kitchen, a living area, an office, and a storage area. The two parents of the applicant, both over the age of 55, would reside in the accessory dwelling unit. Stairs were located that could access the main level, and a set of French doors provided access to the rear yard. Two parking spaces existed in the garage, and four cars could park in the asphalt driveway, for a total of six parking spaces. The applicant and her husband each had a car, and her parents had one car, for a total of three cars. Adequate parking existed for

residents of the home and the accessory dwelling unit. Staff recommended approval of SP 2013-BR-056 subject to the proposed development conditions.

Mr. Hart asked about Note 9 on the plat. He said the staff report said the house was built in 2005, and the plat said the house was built in 1962. It looked like a new house in the pictures to him, and he wondered whether there were others things that were wrong on the plat if the note on the plat was wrong. Ms. Gumkowski said she confirmed with the tax records that 2006 was correct. Mr. Hart said 2005, but he said whatever it was, it probably was not 1962. He also said it said the other structures were built with dates unknown. He did not see any other structures. Ms. Gumkowski said she believed the note was in error, and the tax records did say 2005.

Ms. Tecuci presented the special permit request as outlined in the statement of justification submitted with the application. The property had been approved for a finished basement with a bedroom, office/den, living room, and wet bar. She said they would like to extend the wet bar to include an oven, a range, a full refrigerator, and a microwave so that it could be used as an accessory dwelling for her parents. The finished basement would be occupied by her parents, both 59 years old. They would be the sole occupants of the dwelling, and it would not be used as a rental unit. Currently, she and her parents were the owners of the property, and she and her husband were currently living there.

Ms. Tecuci said the basement was a daylight/walkout, and it would allow her parents to live independently. The basement could be accessed from both outside the house and through the house. Her mother had many health problems, including obesity, insulin-dependent diabetes, high blood pressure, and mobility issues. It was very hard for her to walk up and down the stairs, so living on a single level would be ideal. Living in the same house would also let Ms. Tecuci take care of her, helping with medication, administering insulin, her diet, her exercise, and her general well-being. Ms. Tecuci currently went to her mother's house every day after work, got groceries, and cleaned her house. She said living in the same house would ease some of the burden. She said they met all of the Fairfax County requirements for a special accessory dwelling. There would be no additional construction or land disturbance as part of the application.

Chairman Ribble called for speakers.

Gheorghe Tecuci, father of the applicant, came forward to speak. He said he and his wife, Sanda Tecuci, were requesting to move into the basement. He said he lived at 4921 Gainsborough Drive. He confirmed the medical condition of his wife, adding congestive heart failure and sleep apnea. He said his wife needed constant help with medication, insulin, and screening. He was a university professor and a research center director and was out all day working. His daughter was the one that had to help his wife with her health conditions, bringing groceries, and cleaning. He said it would be a significant improvement for them to be able to move in with their children, and they would stay in the basement on a single level, as his wife cannot climb the stairs and also needed to use oxygen most of the day and during the night with a sleep mask. He said it was very important for them to be in the same building. In case there was a health crisis, he would have the help of his children.

Chairman Ribble closed the public hearing.

Ms. Theodore moved to approve SP 2013-BR-056 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MIRUNA TECUCI, SP 2013-BR-056 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 5313 Danas Crossing Dr., Fairfax, 22032, on approx. 14,364 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 68-4 ((22)) (2) 12. Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 23, 2013; 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 PDH-3.
3. The area of the lot is 14,364 square feet.
4. The proposed basement accessory dwelling unit would account for 31 percent of the total gross floor of the home, which is below the 35 percent cap of square footage for such structures.
5. Adequate parking exists in the current driveway for both the current residents and the residents of the accessory dwelling unit.
6. There is access to the backyard with the French doors in the current basement.
7. The parents of the owner, both over the age of 55, will be residing in the accessory dwelling unit.
8. In terms of impacts to neighbors, the Board has not heard concerns or opposition to the proposed accessory dwelling raised by adjacent homeowners or neighbors at the public hearing.
9. The staff report determines the request is in conformance with the applicable Zoning Ordinance provisions with implementation of certain proposed development conditions, and recommends approval of the special permit.
10. The Board supports staff's findings.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in sections 8-903 and 8-918 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the accessory structure. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Miruna Tecuci, and is not transferable without further action of this Board, and is for the location indicated on the application, 5313 Danas Crossing Drive (14,364 s.f.) and is not transferable to other land.
3. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 1,835 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
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. All applicable permits and final inspections shall be obtained for the kitchen components in the accessory dwelling unit.
8. The accessory dwelling unit shall be approved for a period of five years from the final approval date of the special permit and may be extended for five 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 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.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. LINDY L. PAULL, SP 2013-MV-050 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 of a corner lot. Located at 6415 Potomac Ave., Alexandria, 22307, on approx. 15,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (37) 14, 14A and 15. (Admin. moved from 9/11/13 for notices.)

Chairman Ribble called the applicant to the podium.

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

Lindy L. Paull, 7000 Clemson Drive, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The subject properties and surrounding properties were zoned R-3. The applicant requested a special permit to allow an existing fence greater than 4.0 feet in height to remain in the front yard of a corner lot. Woodhaven Road was designated as an alley. An existing 6.0 foot tall vinyl fence was located within the northern front yard adjacent to H Street. The applicant indicated she constructed the fence to provide privacy and security. The Zoning Ordinance currently permitted fences 4.0 feet in height in a front yard by right; however, through a special permit, an applicant could request a fence in the front yard up to 6.0 feet in height.

Mr. Hart wanted to know if the fence on the other side of the alley was taller than the subject fence. Ms. Horner asked if he was asking about an adjacent parcel. He said it looked like it was across the street, but he was assuming it was across the alley. In some of the pictures, there was a gray wooden fence. He said that he and Ms. Horner must have different pictures. He thought that maybe the Board had approved that one, too. Ms. Horner said they did not have any records on that, and there was no plat to show the height. She said they did not review the adjacent parcel, so she could not answer his question.

Mr. Hart said that in the staff report there was a memorandum dated October 2, 2012, that was a report of an inspection and had a couple of issues he wanted to make sure had been resolved. One of the things was that the inspector said there was a sight distance issue at the corner of Tenth Street and the alley. Mr. Hart was not sure where that was or what the problem was, but wanted to know if that issue had been resolved. Ms. Horner said yes, it was something that she did discuss with the Department of Code Compliance, and they could address that. Staff did a cursory review and did not find a sight distance issue, which had been confirmed with the inspector.

Steve Mason, Department of Code Compliance, said the investigator who was assigned to the case, Nancy Stallings, was in court, and he was the Division Supervisor for the Department of Code Compliance, but not the investigator of the case. He said the alley was now known as Woodhaven Road. Mr. Hart said that it looked like Tenth Street was two blocks away, and that was what he could not figure out. Potomac Avenue would be Twelfth Street if it had a number. Mr. Hart thought that Tenth was two blocks away, so he wanted to know why that was a problem. Mr. Mason said he believed Mr. Hart was correct.

Mr. Hart asked about the statement that the fence was built on an outlot, and he saw that on the plat. He quoted, "One cannot construct on an outlot, so either way the fence cannot remain in the outlot or on the front yard, unless there is BZA action." He said that since the Board was obviously being asked to approve it, he wanted to make sure that they could indeed approve it on the outlot. Mr. Mason said that was correct. Those were the investigator narrative notes for the case file.

Mr. Hart said he wanted to confirm that the application had been correctly advertised and the advertisements included all parcels which had the fence. Ms. Horner said that was correct.

Ms. Paull presented the special permit request as outlined in the statement of justification submitted with the application. She said she had purchased the property the previous year for investment and rented the property to a single mother with a young child who was five. She had purchased the house after the original owners had passed away. In the process of getting the house ready for rental, she took steps to secure the property so it would be a safe environment for a single mother.

Ms. Paull said she worked with her landscaping company instead of a fencing company, because she had a long relationship with them, and they were going to do some pretty significant landscaping at the property. They were willing to bury the fence two inches so it would be very secure. She said she was a novice at fences and did not understand that a corner lot with a backyard was considered a second front yard. She had the fence erected. It was not on the property when she bought it. Ms. Paull said the corner was encroached on originally when the fence was put up. She said the compliance officer, Nancy Stallings, who was very helpful, said that had to be fixed, and it was fixed to meet the requirements for the corner.

Ms. Paull said the piece of property was in the middle of a two-block stretch of Potomac Avenue, where the houses had their backyards on an alley called Woodhaven. On Woodhaven, there were houses that were on the other side of it and backed into a creek. She said she thought that was relevant and hoped the Board would take into consideration that H Street was on the side of the property that you enter. The front of the house was on Potomac, which was a main thoroughfare. She said that H Street ended at Woodhaven, and there was a pathway and footbridge over the creek to go to the neighborhood that was heavily used to go to the next neighborhood and on a few more blocks to the parkland that was along the Potomac River. Basically, the people who used H Street were the people who lived on Woodhaven. There was a lot of foot traffic there, and the corner lot was quite exposed from a safety and security standpoint. She said when you drive the two-block stretch of Woodhaven, almost all of the houses that faced Potomac Avenue had secured their backyards with fences. Almost all of the houses on Woodhaven had secured their backyards with fences. Most of the fences were the taller fences of five to six feet.

Ms. Paull said she was not aware that she was running into a problem until the compliance officer came to visit her about it. She said the reason for the fence was to secure the property so it was a safe environment for her tenant and perhaps for herself in a decade or so if she moved there. It was a small house, basically on one level, with a small basement.

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

Mr. Hart moved to approve SP 2013-MV-050 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Discussion ensued regarding the property. Mr. Beard said that he visited the property, and it reminded him of the case that was before the Board in the previous couple of months, where a lieutenant colonel had a shed, and even though there were sheds all around, he had gotten singled out perhaps because of a complaint. Mr. Beard said this was a similar situation. He said the fence was definitely in conformity with proximity properties, so he did not see an issue, and he would support the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDY L. PAULL, SP 2013-MV-050 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 of a corner lot. Located at 6415 Potomac Ave., Alexandria, 22307, on approx. 15,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (37) 14, 14A and 15. (Admin. moved from 9/11/13 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 October 23, 2013; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony showing compliance with the applicable standards.
3. This is a lot with three front yards because of the frontage on three streets.
4. The fence encloses what is the functional backyard for this house.
5. It has been explained about the need for privacy and security on this lot.
6. The sight distance issue referenced by the inspector has been addressed.
7. There does not seem to be a technical problem with the fence going out onto the out lot, as well.
8. There does not appear to be any opposition to it.
9. The fence appears to be well constructed and maintained.
10. It also appears to be lower than the fence on the other side of the alley in the photographs.
11. Whatever is going on with that, whether that fence is approved or not, it does not seem that this is out of line with what is going on in the neighborhood.
12. There are a lot of fences in New Alexandria that are taller than four feet. The Board is not sure all of those fences have been approved, but that seems to be consistent with the pattern.

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 6.0 feet vinyl fence as shown on the plat prepared by Dominion Surveyors, dated June 3, 2013, 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 7-0.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC., SP 2013-LE-055 Appl. under Sect(s). 4-503 of the Zoning Ordinance to permit a commercial recreation facility. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 15,560 sq. ft. of land zoned C-5 and HC. Lee District. Tax Map 81-3 ((5)) 4.

Chairman Ribble noted that SP 2013-LE-055 had been administratively moved and questioned the pending status. Ms. Langdon said a final date had not been determined, but it would probably be after the first of the year.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. SUBWAY, A 2012-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating a Fast Food Restaurant on property in the C-8 and SC Districts without a valid Non-Residential Use Permit or Special Exception approval, in violation of Zoning Ordinance provisions. Located at 6711 Spring Mall Rd., Springfield, VA 22150 on approx. 5.04 ac. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51. (Admin. moved from 12/12/12, 3/20/13, and 4/24/13 at appl. req.)

Chairman Ribble noted that A 2012-LE-016 had been administratively moved to December 11, 2013, at 9:00 a.m., at the appellant's request. Ms. Stanfield said the appellant had filed a special exception application, and once it was approved by the Board of Supervisors and implemented, she believed the appellant would withdraw the appeal.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. HAJIMOHAMMAD REVOCABLE TRUST, MOHAMMAD HAJIMOHAMMAD, TRUSTEE AND FLORA HAJIMOHAMMAS, TRUSTEE, A 2012-LE-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a vehicle sale, rental and ancillary service establishment to operate on property in the C-6 District without Special Exception approval or a valid Non-Residential Use Permit, in violation of Zoning Ordinance provisions. Located at 5630 South Van Dorn St., Alexandria, 22310, on approx. 32,210 sq. ft. of land zoned C-6. Lee District. Tax Map 81-2 ((3)) 8A. (Admin. moved from 10/3/12, 11/28/12, 2/6/13, and 4/24/13 at appl. req.)

Chairman Ribble noted that A 2012-LE-017 had been administratively moved to June 4, 2014, at 9:00 a.m., at the appellants' request. Ms. Stanfield said the appellants had filed a special exception application, which was in the early stages, so staff had given them a little extra time.

//

~ ~ ~ October 23, 2013, Scheduled case of:

9:00 A.M. DEBORAH A. SEVIER, A 2013-DR-020


Chairman Ribble noted that A 2013-DR-020 had been administratively moved to October 30, 2013, at 9:00 a.m., at the appellant's request. Ms. Stanfield said the appellant had a conflict with the hearing date, so it had been moved to the following week.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:29 a.m.

Minutes by: Lorraine A. Giovinazzo

Approved on: June 4, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 30, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Sharon Theodore; James R. Hart; and Norman P. Byers. Absent from the meeting was 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. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, SP 2013-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 storage structure to remain 2.9 ft. from side lot line and 14.5 ft. from front lot line and to permit fence greater than 4.0 ft. in height in front yard. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (2) 11. (Concurrent with VC 2013-MV-012). (*Admin. moved from 10/30/13 at appl. req.*)

9:00 A.M. ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, VC 2013-MV-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (2) 11. (Concurrent with SP 2013-MV-059). (*Admin. moved from 10/30/13 at appl. req.*)

Chairman Ribble noted that SP 2013-MV-059 and VC 2013-MV-012 had been administratively moved to November 6, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. JOSHUA P. TENUTA, SP 2013-DR-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on errors in building locations to permit accessory structure to remain 7.4 ft. from side lot line, accessory storage structure to remain 1.3 ft. from side lot line and 9.7 ft. from rear lot line, another accessory storage structure to remain 2.3 ft. from side lot line, deck to remain 1.6 ft. from side lot line and trellis to remain 7.6 ft. from side lot line. Located at 2212 Boxwood Dr., Falls Church, 22043, on approx. 10,357 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((10)) (D) 4.

Chairman Ribble noted that SP 2013-DR-068 had been administratively moved to November 20, 2013, at 9:00 a.m., for ads.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. EVAN DAVID WESSER AND AUBRY NOEL WESSER, SP 2013-PR-058 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 covered stoop to remain 27.4 ft. and stairs to remain 21.6 ft. from front lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 2906 Rose Pl., Falls Church, 22042, on approx. 9,009 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 89.

Chairman Ribble noted that SP 2013-PR-058 had been administratively moved to January 15, 2014, for notices.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN, SP 2013-DR-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.5 ft. from rear lot line. Located at 2090 Grace Manor Ct., McLean, 22101, on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Concurrent with VC 2013-DR-014).

9:00 A.M. DANIEL J. GERKIN, VC 2013-DR-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30% minimum rear yard coverage. Located at 2090 Grace Manor Ct., McLean, 22101, on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Concurrent with SP 2013-DR-061).

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.

John McBride, attorney for the applicant, 1775 Wiehle Avenue, Reston, Virginia, reaffirmed the affidavit.

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

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. In 2011, the applicant applied for a special permit to allow construction of a pergola/fireplace and to allow an existing playset to remain. On January 12, 2012, the Zoning Administration Division made a Vested Rights Determination and found the pool, associated decking, and screened porch were vested for location and coverage. The determination also found that a proposed pergola/fireplace and existing playset were not vested. These applications were made subsequent to the issuance of a Notice of Violation (NOV) for the playset.

Mr. Byers, Mr. Hart, and Ms. Horner discussed the placement of the playset in another location on the property.

Mr. McBride presented the special permit and variance requests as outlined in the statement of justification submitted with the application. He disagreed with the County's contention that the playset was no different than a 14-foot, 250-square-foot shed. Mr. McBride also disputed that the subject property was a corner lot since it did not abut two streets. He said the shallowness of the lot caused an undue hardship to the homeowners.

In response to a question from Mr. Byers, Mr. McBride said even with removal of the top bars, the playset would still require a variance for rear yard coverage. He noted that the playset had been in place since 2008, without complaint.

Mr. Hart, Mr. McBride, Susan Langdon, Branch Chief, Special Permits and Variances, and Mavis Stanfield, Assistant Zoning Administrator, discussed the size of the lot, the definition of a corner lot, and the requirements for a hardship determination.

Chairman Ribble called for speakers

Steve Delbianco, 1920 Virginia Avenue, McLean, Virginia, came forward. He spoke as President of the Franklin Area Civic Association and supported the McLean Citizens Association resolution in opposition to the applications.

Mark Zetts, representing the McLean Citizens Association, 6640 Kirby Court, McLean, Virginia, came forward and asked that the Board deny the applications.

Chairman Ribble closed public hearing.

Mr. Byers moved to deny VC 2013-DR-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL J. GERKIN, VC 2013-DR-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30% minimum rear yard coverage. Located at 2090 Grace Manor Ct., McLean, 22101, on approx. 21,448 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Concurrent with SP 2013-DR-061). 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 30, 2013; 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 21,448 square feet.
4. It meets the first required standard, that the property was acquired in good faith.
5. Under 3, the Board did not agree that the condition or situation of the subject property or the intended use of the subject property is not so general or recurring in nature.
6. There is a lot directly across the street that basically has the same dimensions.
7. The Board did not agree that strict application of the Ordinance would produce undue hardship, and that the hardship is generally shared by other properties.
8. The key element is under 6, and that is that the strict application of the Zoning Ordinance would not effectively prohibit or unreasonably restrict all the use of the subject property.
9. The Board did not agree that the granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
10. The authorization of the variance could be of substantial detriment to adjacent properties and change the character of the neighborhood.
11. The character of the zoning district would be changed by the granting of the variance.
12. The variance is not in harmony with the intended spirit and purpose of the Ordinance and would be contrary to the public interest.
13. The play set could be moved to what is being interpreted as a side yard, and originally there was a mistake.
14. Regardless of what the homeowners association says or the other civic associations that are involved, there are other places this could be placed.
15. This is a convenience.
16. It is not going to deny reasonable use of the applicant's property.

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

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

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

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

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

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

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

//

Mr. Byers then moved to deny SP 2013-DR-061 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL J. GERKIN, SP 2013-DR-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.5 ft. from rear lot line. Located at 2090 Grace Manor Ct., McLean, 22101, on approx. 21,448 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (Concurrent with VC 2013-DR-014). 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 30, 2013; 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 such reduction will impair the purpose and intent of the Ordinance.
3. It will be detrimental to the use and enjoyment of other property in the immediate vicinity.
4. To force compliance with minimum yard requirements would not cause unreasonable hardship upon the owner.
5. The granting of the special permit will not create an unsafe condition with respect to other properties.

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

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

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

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

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. BARUNA RANA, SP 2013-PR-051 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 1909 Hull Rd., Vienna, 22182, on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((10)) (3) 3.

Chairman Ribble noted that SP 2013-PR-051 had been administratively moved to December 4, 2013, for notices.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. SILVIO ARMANDO DIAZ GUZMAN, SP 2013-MA-060 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 1.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 3820 Barcroft Ln, Alexandria, 22312, on approx. 10,500 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((9)) 34.

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.

Through an interpreter, Silvio Guzman, 3820 Barcroft Lane, Alexandria, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report.

Chairman Ribble relinquished the Chair to Mr. Hart.

Through the interpreter, Mr. Guzman presented the special permit request as outlined in the statement of justification submitted with the application. He did not know he had to ask for the County's permission to build a shed.

Chairman Ribble resumed the Chair, and called for speakers.

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

Mr. Hart moved to approve SP 2013-MA-060 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIO ARMANDO DIAZ GUZMAN, SP 2013-MA-060 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 1.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 3820 Barcroft Ln, Alexandria, 22312, on approx. 10,500 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((9)) 34. 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 30, 2013; and

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

1. The applicant is the owner of the property.
2. The shed, although it is quite close to the rear line, is not necessarily inconsistent with what is going on in the neighborhood.
3. Given the testimony about it being attached to the ground on a foundation, it is not going to be possible to move it.
4. With the development conditions and the additional planting that is going to be required, the impact of having the shed that close is going to be sufficiently mitigated.

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

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

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

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

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

1. This special permit is approved for the location of the shed/workshop as shown on the plat prepared by Real Estate Surveyors & Developers, LLC, dated September 27, 2013, signed by Fitzroy J. Bertrand, as submitted with this application and is not transferable to other land.
2. A minimum of two large deciduous trees in the oak, hickory, beech, blackgum, or maple (except silver maple) family shall be planted in the rear yard within six months of approval of this special permit. The trees shall be a minimum of six feet in height at the time of planting.
3. The applicant shall obtain any appropriate permits and inspections for the shed within 180 days of approval of this special permit.
4. The applicant shall complete the installation of siding and/or trim on the exposed wood portions of the northeast side of the shed within 180 days of approval of 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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. Of land of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. *(Admin. moved from 9/28/11, 11/30/11, 12/14/11, 1/25/12, 2/29/12, and 9/18/13 at appl. req.) (Continued from 3/14/12.) (Indefinitely deferred from 8/1/12 at appl. req.) (Reactivated on 6/5/13.)*

Chairman Ribble called the applicant to the podium.

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

Lloyd Ntuk, the applicant's agent, 2655 Prosperity Avenue, Fairfax, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that the public hearing was continued from March 14, 2012, and then deferred indefinitely. It was reactivated on June 5, 2013. Staff recommended approval of SPA 2011-SP-069, subject to the proposed development conditions.

Mr. Smith and Ms. Haley discussed several aspects of the application, including the requested barrier requirements waiver, development of the site by right, dedication of Doyle and Braddock Roads, the hours of operation, and the proposed apartments within the church.

Mr. Byers and Mr. Beard were concerned about the timing of the State's new stormwater management policies. Durga Kharel, Center Branch Chief, DPWES, said the County was currently going through the certification process. He noted that the new regulations would take effect in July of 2014. Based on these changes, Mr. Kharel asked that the Board modify the proposed development conditions so that they will comply with the new regulations.

Mr. Hart and Mr. Kharel discussed the current stormwater outflow conditions on the property and the how the County intended to remedy the issue, with Mr. Hart noting that Kings Chapel Church on the adjacent property had inadequate stormwater management practices.

Mr. Ntuk presented the special permit request as outlined in the statement of justification submitted with the application. He did not have much to add, but outlined the sequencing of stormwater retention ponds and underground boxes, which would help alleviate the current flooding and explained how it would work.

Victor Amole, a planner/engineer with Vitech Engineering, who had drawn up the stormwater management plans, explained how the proposed control box would hold the water and then lessen the discharge of runoff by 50 percent.

Chairman Ribble called for speakers.

Deborah Rood, 5728 Doyle Road, Clifton, Virginia, came forward and spoke in opposition to the proposal, as did John Erickson, Morse & Ritchey Associates, an engineer hired by Ms. Rood to review the stormwater management plans.

Eric Madillo (phonetic), Fairfax, Virginia, appeared before the Board in support of the application.

In rebuttal, Mr. Ntuk discussed the County's Public Facility Manual and its position of don't make the situation worse, and noting that he was aware of the poor soil conditions. He addressed some of the discrepancies brought up by Mr. Erickson, stating that they had already been addressed.

Chairman Ribble closed the public hearing.

Mr. Smith moved to defer decision on SP SP 2011-SP-069 to January 15, 2014, at 9:00 a.m.

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

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF CALVARY CHRISTIAN CHURCH, SPA 76-S-200-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-S-200 previously approved for place of worship to permit site modifications and deletion of land area. Located at 6408 Spring Lake Dr. and 9800 Old Keene Mill Rd., Burke, 22015, on approx. 9.67 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((2)) 8 and 10. (In association with RZ 2013-SP-005) *(Admin. moved from 7/31/13 and 9/25/13.)*

Chairman Ribble noted that SPA 76-S-200-02 had been administratively moved to December 11, 2013, at 9:00 A.M., at the applicant's request.

//

~ ~ ~ October 30, 2013, Scheduled case of:

9:30 A.M. DEBORAH A. SEVIER, A 2013-DR-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has obstructed a swale in the side yard of property in the R-1 District in violation of Zoning Ordinance provisions. Located at 9227 Vernon Dr., Great Falls, 22066 on approx. 25,086 sq. ft. of land zoned R-1. Dranesville District. Tax Map 19-4 ((19)) 13. *(Admin. moved from 10/23/13 at appl. req.)*

Chairman Ribble called the appellant to the podium.

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

Arturo Hernandez, agent for the appellant, 107 E. Holly Ave, Sterling, Virginia, came forward.

St. Clair Williams, Deputy Zoning Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. He said the appellant had constructed a retaining wall on her property which changed the natural flow of the water runoff, violating the regulations of the Zoning Ordinance and causing flooding onto adjacent property. Although the appellant contended that this was not a swale, the Zoning Administrator had determined that it inhibited the natural outflow of water from the property, and was indeed a swale. He asked that the Board uphold the determination of the Zoning Administrator.

Mr. Hernandez presented the arguments forming the basis for the appeal. He presented a video of water runoff after a recent storm, which showed water runoff onto the appellant's property even with the retaining wall. Mr. Hernandez said it was the County's fault for approving the grading plan for the adjacent house, contending that if the appellant was forced to remove the retaining wall, her basement would flood.

Mr. Beard and Mr. Hernandez discussed the water runoff from lot 14 onto lot 13 and possible solutions for managing the stormwater runoff.

Mr. Hart asked if it was just a matter of whose house would get flooded, and where the natural drainage of the lots was intended to be. Steven Rudy, Engineering Tech, DPWES, said the wall was causing the adjacent new house to flood.

Mr. Byers and Mr. Rudy discussed routing the runoff into the front yard, which Mr. Rudy said would reduce the runoff, but not eliminate it.

Chairman Ribble called for speakers.

Deborah Sevier, 9227 Vernon Drive, Alexandria, Virginia, stated she was the appellant. She said even with the small wall she erected, stormwater flows onto her property and then onto lot 18, as it should. Ms. Sevier stated she constructed the retaining wall to stop her basement from flooding.

Mr. Smith noted that the grading plan for lot 14 was filed in 2006, and asked the appellant when the flooding began. She said it was within the last 5 to 6 years, and that she only constructed the wall in May of 2013 to stop the flooding.

In response to a question from Ms. Theodore, Mr. Williams stated that the adjacent homeowner did experience not any flooding until the appellant built her wall.

Chairman Ribble closed the public hearing.

Ms. Theodore moved to uphold the determination of the Zoning Administrator. She noted the difficulty to the appellant, but agreed with the determination.

Mr. Smith seconded the motion.

Mr. Beard said he would reluctantly support the motion, but asked where you draw the line in protecting your property.

Mr. Hart also said he would support the motion. On the narrow question presented, he felt the Zoning Administrator was correct. However, he expressed his concern with the County's approval of the new house, since it appeared that the patio came up to the property line and was contributing to the outflow of stormwater.

Mr. Byers said he would be the lone dissenting vote. He did not feel this was a simple issue, noting that the County could be just as culpable as the appellant and the next-door neighbor. Mr. Byers felt the County did not do enough to mitigate the situation, putting the homeowners in an impossible position, which was inherently unfair.

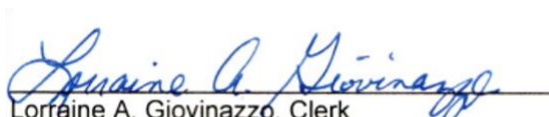
The motion carried by a vote of 5-1. Mr. Byers voted against the motion. Mr. Hammack was absent from the meeting.

//

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

Minutes by: Suzanne L. Frazier

Approved on: December 4, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, November 6, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Sharon Theodore; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. FAKHRI ELMOHTASEB, SP 2013-SP-036 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in the front yard. Located at 5969 Colchester Rd., Fairfax, 22030, on approx. 1.25 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) 2B. (*Admin. moved from 7/24/13 at appl. req.*)

Chairman Ribble noted that SP 2013-SP-036 had been administratively moved to December 18, 2013 at 9:00 a.m., due to ads, and it was converted to a variance.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. APPLETREE MONTESSORI, LLC, SP 2013-PR-044 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 8809 Arlington Blvd., Fairfax, 22031, on approx. 41,216 sq. ft. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 41. (*Decision deferred from 8/7/13.*)

Chairman Ribble noted that a decision deferral for SP 2013-PR-044 to January 8, 2014 was requested.

Mr. Beard moved to defer decision on SP 2013-PR-044 to January 8, 2014, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, SP 2013-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 storage structure to remain 2.9 ft. from side lot line and 14.5 ft. from front lot line and to permit fence greater than 4.0 ft. in height in front yard. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (2) 11. (Concurrent with VC 2013-MV-012). (*Admin. moved from 10/30/13 at appl. req.*)

ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, VC 2013-MV-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (2) 11. (Concurrent with SP 2013-MV-059). (*Admin. moved from 10/30/13 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.

Mr. Beard made a disclosure that he was a neighbor of the Baldwins, but indicated he did not believe his ability to participate in the case would be affected.

Robert F. Baldwin, Jr., 1901 Belfield Road, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. With questions from the Board to staff, they determined the following. A corner lot in R-4 should have a minimum width of 95 feet, and this lot was 84.84 feet on the lot line along Lot 12. There was a Notice of Violation due to an anonymous complaint with regard to the fence and not the shed.

Mr. Baldwin presented the special permit and variance requests as outlined in the statement of justification submitted with the application. He provided the following information. All three issues on the application related to what Fairfax County considered their backyard, which included the front yard portion of their lot on Woodmont Road. He and his wife made the beautification of their property a primary objective, and had developed a landscape that was entirely consistent with the type of property that zoning regulations were designed to encourage and protect. He had successfully completed the Master Gardener Program at Green Spring, and later took a botany course at George Washington University. He personally did much of the work with the lawn and garden, maintained a list of the botanical and common names of their plants, as well as ensured that all of their significant plants were clearly labeled for visitors and for their own purposes. They were asked to have their garden included on the Belle Haven Garden Tour, and it was designated as a certified wildlife habitat by the National Wildlife Federation. His wife, Anne, had been involved in garden activities for years as a member of the Garden Club of Alexandria, and for which she served as president for three years. She had also served for several years on the Board of the Garden Club of Virginia, including work on the Restoration Committee, where she had overseen financing associated with the restoration of the Beatrix Farrand landscape design of the Green Spring Garden's historic house.

Mr. Baldwin continued that they lived on a corner lot, which was highly visible, but their proximity to US 1 also seemed to attract a number of unwelcome visitors. This had led to their share of vandalism, and car and house break ins. Several years ago, a car backed down Woodmont at a high rate of speed, destroyed a large portion of their fence, and nearly crashed into their living room, except for the presence of a large Japanese maple. The fence not only provided them with a degree of privacy, but also protected them from unwelcome visitors, including dogs walked along Woodmont. It also enabled them to conceal their garbage cans, compost, potting and other items.

From what they could tell, their neighbors were pleased by the appearance of the fence. Following the anonymous complaint about the height of their fence in October 2011, which also on the same day there was a complaint about their neighbors' fence, they engaged an attorney to request a vested rights determination for their fence, given that it or a similar fence had been in the same place for over 40 years. The request was denied, because they could not prove that they had paid property taxes on the fence itself. Given the uneven topography of the fence line, it caused the new fence to exceed six feet in places. They determined it would be necessary to remove the lattice portion of the fence in the front yard, reducing its height to approximately five feet.

With regard to the garden shed, it had a Williamsburg design, was compatible with the architecture of the house, and it was located in the only feasible spot, given a large Pin Oak with a wide root system and their patio.

With regard to the variance, the percentage of their rear yard coverage exceeded the 30 percent allowed by 7.3 percent due to the combination of the brick patio and shed. The only potential runoff of rainwater would be on Belfield Road.

With several questions from the Board, it was determined that there were certain Virginia Department of Transportation (VDOT) requirements which would have to be addressed if Mr. Baldwin got the application approved, and he had already spoken with VDOT about those. There was a lot of neighborhood support, which also included the Belle Haven citizens association. Mr. Baldwin had no problems with the development conditions which were outlined in the staff report. He had been dealing with this issue for over two years, and had spent \$4,600 so far, including the \$600 to remove the lattice top that was originally put on the fence, about \$2,000 in attorney's fees, the \$900 application fee, and a new survey which was about \$700.

Chairman Ribble called for speakers.

Suzanne Long, 1903 Belfield Road, came forward to speak. Her main points were that she felt lucky to be a neighbor of the Baldwins. She told people that she lived next to the beautiful house on the corner. To her knowledge, she had not seen any other complaints or issues arise regarding their fence, the drainage of the yard, or anything else. She thought what the Baldwins were trying to do was to improve the existing rotting

fence that was there for 40 years, and made measures to put up a new fence to match hers and another neighbor's fence.

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

Mr. Hammack moved to approve SP 2013-MV-059 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, SP 2013-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 storage structure to remain 2.9 ft. from side lot line and 14.5 ft. from front lot line and to permit fence greater than 4.0 ft. in height in front yard. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (2) 11. (Concurrent with VC 2013-MV-012). (Admin. moved from 10/30/13 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have met the requirements set forth in subsections A through G.
3. In particular, the compliance was done in good faith or through no fault of the property owners.
4. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
5. It is interesting that these anonymous complaints are received regularly.
6. In this particular case, the applicant is replacing a fence.
7. It has been there 40 years.
8. It is a consistent design with another fence in the neighborhood.
9. The applicants had to go through the expense and time and effort of trying to legalize the fence.
10. In this particular case, the Board has many letters in support, including the citizens association and a letter in support from one of our supervisors.
11. Under the circumstances and based on the testimony, the applicant has satisfied all of these standards.
12. The shed is only 74 square feet.
13. Because of double front yard requirements, three are actually three (sic) front yards according to the plat.
14. It sits in a front yard, but it sits behind the distance or the setback of the house.
15. It is a functional backyard.

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 height and location of the shed and of the fences as shown on the plat titled "Plat, Showing the Improvements on Lot 11, Block 2, Section 1, Belle Haven," prepared by George M. O'Quinn of Dominion Surveyors Inc., dated December 20, 2011, and revised through April 2, 2013, as submitted with this application and is not transferable to other land.
- 2. The fence in the front yard along Woodmont Road located in the Virginia Department of Transportation's (VDOT) right-of-way shall be removed, moved onto the application property, or a permit request for the fence to remain in the right-of-way shall be submitted to VDOT's Fairfax Permits Office for review and approval.
- 3. Notwithstanding any VDOT approval, the portion of the fence over 6.0 feet in height shall be reduced to a maximum of 6.0 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.

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

//

Mr. Hammack moved to approve VC 2013-MV-012 for the reasons stated in the Resolution.

Discussion ensued regarding some of the 30-percent lot coverage cases. The discussion included the thought that this was a substandard lot. The house was built in 1936, which was before the Ordinance was first adopted. The lot was narrow with the long part of the house being on the short side of the lot. That created a dysfunctional rear yard on the short side. Because those extraordinary conditions were present, it were within the scope of the Statute. It was noted that in addition to the many letters of support, the Board received a letter from Supervisor Hyland which strongly supported the application.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT F. BALDWIN, JR. AND ANNE G. BALDWIN, VC 2013-MV-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage. Located at 1901 Belfield Rd., Alexandria, 22307, on approx. 11,071 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4

((3)) (2) 11. (Concurrent with SP 2013-MV-059). (Admin. moved from 10/30/13 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 6, 2013; and

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

1. The applicants are the owners of the land.
2. The applicant has satisfied the conditions set forth in Subsection 2 of the Ordinance, specifically, set forth in A through G.
3. This house is a corner lot.
4. It has three (sic) front yards, actually no side yards, according to the plat.
5. Even though the 30 percent requirement, minimum yard required, is slightly over the 30 percent, being at 37 percent, under the definition of the front yards, the backyard is left with a tiny area of 766 square feet, which is unusual.
6. In addition, in that part of the lot, there are converging side yard/rear yard lines that further minimize the amount of area that can be computed to determine the 30 percent minimum rear yard requirement.
7. This satisfies the subsection that this lot meets either exceptional narrowness or an exception shape or an extraordinary condition to the extent that it satisfies the requirements for granting the variance.
8. Further, this application satisfies Condition 3, that the situation of the subject property or intended use is not so general or recurring a nature to make reasonably practical the formulation of a general regulation.
9. The strict application of the Ordinance would produce undue hardship.
10. It further meets the other standards down through Number 9.

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

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

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

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

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

1. This variance is approved for the 37.3% percent rear yard coverage on the property as shown on the plat titled "Plat, Showing the Improvements on Lot 11, Block 2, Section 1, Belle Haven," prepared by George M. O'Quinn of Dominion Surveyors Inc., dated December 20, 2011 and revised through April 2, 2013, 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 including requirements for building permits.

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

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. MALIHA MAHMOOD AND LIFESKILLS MONTESSORI AND DAYCARE, LLC, SP 2013-BR-069 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 11340 Nancyann Way, Fairfax, 22030, on approx. 20,471 sq. ft. of land zoned R-3. Braddock District. Tax Map 56-2 ((8)) 6. (*Admin moved from 11/20/13 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.

Maliha Mahmood, 11340 Nancyann Way, Fairfax, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-BR-069 subject to the proposed development conditions.

With questions from Board members to staff, it was determined that there were six parking spaces available, which included two in the garage and four in the driveway. It seemed like four cars would fit in the driveway without encroaching on the sidewalk.

Ms. Mahmood presented the special permit request as outlined in the statement of justification submitted with the application. She also gave the following information. She was the owner and provider of Lifeskills Montessori and Daycare, which she had been running in Fairfax County for about four years, and was licensed to operate with a maximum of ten children. She gave her all to the caring and nurturing of all the tiny babies and toddlers who kept coming by references and word of mouth. She always made sure her neighbors were never inconvenienced by traffic or any other visible distraction of any kind. In her endeavor to constantly improve and provide better service, they decided to move from a townhouse to a single-family home. They went from barely 1,300 square feet with a tiny yard with two assigned parking spots, to a home on a cul-de-sac with more than 20,000 square feet, a two-car garage, a driveway, four parking spaces to their right, and an empty lot with at least four parking spots on the left. Their new home was just two miles away from their previous home, so all the parents would find it convenient to move their children to her new home and daycare, which they did.

Ms. Mahmood continued that the daycare was their primary source of income. When they moved to their new home she was surprised to find she could only have seven children by right because of new zoning regulations, and that the daycare would be considered new and not a continuation of the previous set up. She was devastated and could only foresee an enormous financial crisis ahead of her, as she was going from ten children in a small place with minimum expenses to a large place with increased expenses and only seven children.

Ms. Mahmood read a letter from one of the parents, and passed the other letter to the Board.

Mr. Beard asked Ms. Mahmood if she was familiar with the proposed Development Conditions of the County, and if she would have any trouble abiding by those. She said she was familiar with them, and indicated she would not have any trouble abiding by them.

Chairman Ribble called for speakers in support of the application.

Ms. Allison McHugh, 12960 Pinecrest View Court, Oak Hill, Virginia, came forward to speak. Her main points were that she had two boys, one which was four-and-a-half years old and the other, a two-year old. Ms. Mahmood did not just care for her child, but loved and nurtured him and provided an education at a young age. When she had her second child, they had moved, and put her son in KinderCare where he started to withdraw. When the applicant moved to the new place, Ms. McHugh said the expense and commute was worth it.

Chairman Ribble asked if there were any speakers in opposition.

The following speakers came forward to speak: Fred Bailey, 11317 Nancyann Way, Fairfax, Virginia, President of the Deerfield Forest Homeowners Association; Lee Wilson, 11337 Nancyann Way, Fairfax, Virginia; Daniel Kennedy, husband of Ms. Wilson, 11337 Nancyann Way; and Kathy Miller, 11309 Nancyann Way, Fairfax, Virginia. Their main points dealt with complaints from the neighborhood when people realized there was a daycare in operation on the cul-de-sac. An application must be filed for approval of an in-home business with their homeowners association (HOA), and none had been received for this business, although it was understood that HOA requirements were not a concern of the Board. There were a lot of parking issues and the sounds of shrieking children, which caused a problem for the neighbors who teleworked. There were also multiple traffic incidents, driveways being blocked, and concerns that 12 children at this daycare would have a negative impact for this small neighborhood. There was also a general concern for a negative impact on the property values in the neighborhood due to the home child care.

Ms. Mahmood came forward for rebuttal. She said that when they bought their home, they were fully aware of the homeowners association's bylaws and had a document which read that Fairfax County regulates in-home businesses in which her business falls. Ms. Mahmood said she was in compliance with the following special regulations, a) no signs or other advertising devices of any nature shall be placed upon any lot; and, b) operating personnel shall be not more than one person who is not a permanent resident. She said it was correct that they did not apply to the homeowner's association, but reading the bylaws, it did not seem that prior to starting the business they had to do that. Ms. Mahmood said she would be happy to adhere to any homeowners association requirement as far as applying.

Ms. Mahmood addressed the concern of multiple cars. The picture that was circulated to the Board was a day they had Halloween on a Friday, which was an unusual occurrence. Ms. Mahmood told her neighbors she would not even do that one day from then on if it was bothersome, and the neighbor admitted there were never any driveways that were blocked. Ms. Mahmood said she now saw that cars were parked in a way they should not have been, but should have been parallel instead. She said in the future she would definitely take care of that, but wanted to reiterate that was not a normal occurrence. Ms. Mahmood said some of the opposition had discussed noise. She indicated these owners were new, and when she moved into her house in April, the previous owners had no complaints. She said their yards were vast. She did not understand how anyone working inside the home could hear the noise of the children. Ms. Mahmood said the kids only went out on a schedule at 10:00 in the morning for 45 minutes, and then at 4:30 for 45 minutes.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2013-BR-069 for the reasons stated in the Resolution. The motion was seconded by Mr. Hammack.

Discussion ensued regarding the motion. Mr. Beard, Mr. Hart and Mr. Smith all said they supported the motion. It was noted that although it was a close call, this met the applicable requirements, and the concerns were addressed in the development conditions

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MALIHA MAHMOOD AND LIFESKILLS MONTESSORI AND DAYCARE, LLC, SP 2013-BR-069 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 11340 Nancyann Way, Fairfax, 22030, on approx. 20,471 sq. ft. of land zoned R-3. Braddock District. Tax Map 56-2 ((8)) (2) 6. (Admin moved from 11/20/13 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 November 6, 2013; 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 20,471 square feet.
4. Staff recommends approval.
5. The Board adopts their rationale.
6. Specifically, from the standpoint of the parking, staff has done an excellent job of restricting where this parking can be, and the pick-ups and the drop-offs have to be in the driveway, because there is room for it.
7. Essentially, there are six parking spots, two in the garage.
8. There is a development condition that precludes that garage from being converted to any other use.
9. Even if the additional employee parks in the driveway, there are three additional slots for folks to actually drop-off and pick-up their children.
10. Typically, that is a very, very short turnaround.
11. It is noted by Mr. Hammack and confirmed by staff, under the new zoning amendment, this is not a specific requirement.
12. It actually could be less restrictive, because there can be parking on the street or offsite parking.
13. That is a restriction that has been loosened since we have had the zoning amendment.
14. This home childcare center meets all state and county codes.
15. She has been licensed for seven.
16. She is going to apply for twelve assuming this special permit is approved.
17. The Board is going to be dealing with childcare centers or home childcare centers that are in condominiums, and in townhouse developments that are going to be very, very difficult from the standpoint of parking.
18. The board looks at each one of those on a case-by-case basis.
19. Mr. Hart has said on many occasions that the Board deals with balls and strikes.
20. The reality is that the General Assembly, the Commonwealth of Virginia, and the Fairfax County Board of Supervisors, in accordance with each one of those, the state requirement is you can have twelve children.
21. Fairfax County has a zoning amendment that has increased the number of children from ten to twelve by special permit so that it conforms with the state requirement.
22. Every member of the Board looks at home childcare facilities extraordinary closely.
23. The Board looks at the residential characteristics of every place that the Board allows these things to occur.
24. That means the no signage, the parking, all the things that there is concern about.
25. The parking does need to be parallel.
26. They cannot block driveways.
27. In fact, Mr. Byers has reported this in his neighborhood in the past. That's what you do. You report it.
28. That does not preclude you from taking whatever action as a homeowners association that you deem appropriate with your board and your residents from the standpoint of how you proceed from this point.
29. Based on what the state and what the Fairfax County Board of Supervisors have said, this particular application meets all the applicable requirements.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Maliha Mahmood and Lifeskills Montessori and Daycare, LLC, only and is not transferable without further action of the Board, and is for the location indicated on the application, 11340 Nancyann Way, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the plat entitled, "Plat Showing Location Survey on Lot 6, Section 2, Deerfield Forest," prepared by Michael L. Flynn of Champion Title & Settlements, Inc., dated February 26, 2013, as revised by Maliha Mahmood on August 12, 2013, 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 hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
7. Pick-up and drop-off of children shall take place in the driveway.
8. A minimum of six parking spaces shall be provided on the subject parcel within the garage and areas of existing paving.
9. The existing two-car garage shall not be converted to a use other than for off-street parking and shall be kept clear of storage and debris at all times in order to accommodate parking for the dwelling and home child care uses.
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 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.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. WASHINGTON APOSTOLIC CHURCH, INC., SPA 91-S-036 (place of worship to add child care center)

Chairman Ribble noted that SPA 91-S-036 had been administratively moved to December 11, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. WILMER CARCAMO, SP 2013-LE-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit dwelling to remain 16.3 ft. from rear lot line and such that side yards total 16.4 ft. and accessory storage structure to remain 2.1 ft. from side lot line and 4.9 ft. from rear lot line. Located at 6916 Lodestone Ct., Alexandria, 22306, on approx. 8,874 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((10)) 8083.

Chairman Ribble noted that SP 2013-LE-063 had been administratively moved to December 4, 2013, at 9:00 a.m. for notices.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. GARY L. LYLES, SP 2013-LE-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 accessory storage structure to remain 2.4 ft. from side lot line. Located at 7016 Forest View Dr., Springfield, 22150, on approx. 27,092 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((4)) 16.

Chairman Ribble noted that SP 2013-LE-064 had been administratively moved to December 11, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59. (*Admin. moved from 8/7/13 and 10/9/13 at appl. req.*) (*Admin. moved from 9/11/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Minday, Hoang, 2734 Oldewood Drive, Falls Church, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation. Staff recommended approval of VC 2013-PR-009 subject to the proposed development conditions.

With questions from Board members, the following information was given by staff. If the Board were to approve this, it might not go forward, as they would need to make sure it met all of the regulations at that time. The easement which was within the RPA looked like it was in a lot in the back, which was owned by someone other than the applicant. They would add the word driveway to Development Condition 6, which would be for ingress and egress to lot 60 only. Lot 60 appeared to be totally landlocked.

Ms. Hoang presented the variance request as outlined in the statement of justification submitted with the application. She stated the following information. She bought the property in 2002. The neighbors in her community were very friendly and very supportive of her application, due to the fact that everyone in her neighborhood had improved their houses with additions, modernizing their houses. Her house was very small with three bedrooms and one bathroom, and sometimes she sent her kids to the neighbors to go to the

bathroom. Ms. Hoang indicated that she stumbled across a lot of constraints and restrictions during her process of the applications, which started in 2012, when she applied for a grading plan in order to demolish and construct a home. After the application was submitted, she found out that the grading plan was not the way to go, and that the normal process would be a special exception plan, due to the flood and RPA line restrictions. Ms. Hoang applied for a special exception back in 2012. After reviews, personnel did not support that application, and it was suggested she go through FEMA directly to apply for a Letters of Map Amendment (LOMA). She did that, was granted a LOMA permit, brought it back to County personnel, and consulted with them as far as the next process. It was suggested to her to apply for a variance to move the house forward because of the restriction in the back due to the flood plain.

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

Mr. Hart moved to approve VC 2013-PR-009 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59. (Admin. moved from 8/7/13 and 10/9/13 at appl. req.) (Admin. moved from 9/11/13 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 6, 2013; and

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

1. The applicant is the owner of the land.
2. This is a lot that is substantially within a 100-year flood plain and resource protection area.
3. There is a small house on the lot already that was built in 1947.
4. The current location of the house is too close to the resource protection area and flood plain.
5. The house in the photographs appears to be somewhat rundown.
6. What the applicant is proposing to do is replace the existing house with a somewhat larger dwelling, although it is fairly modest in size, closer to the street and further away from the flood plain and RPA line.
7. The applicant has presented testimony showing compliance with the variance standards.
8. The constraints on this lot, because of the RPA and flood plain and the circumstance that there was an existing house there that cannot really be rebuilt in the same location, suggest that relief is warranted.
9. Although the new house would be somewhat closer to the street than what appears to be the pattern of development in the neighborhood, it is still significantly back from the edge of pavement.
10. With the imposition of the development conditions, which address substantially environmental impacts and tree preservation among other issues, the impact of allowing this project has been satisfactorily mitigated.
11. One of the current requirements that was not in place in 1947 deals with the height of the house above the flood plain line.
12. This house basically cannot have a basement now.
13. That is another reason why the new house might need to be a little larger than the existing house.
14. They are not going to be able to have any storage or basement or something like that.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the maximum size and location within the building envelope of the dwelling, as shown on the plat prepared by GeoEnv Engineers, dated August 13, 2013, as revised through August 14, 2013 and signed by Ibrahim A. Chehab, Professional Engineer as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. The infill lot grading plan or any plan required by the Department of Public Works and Environmental Services (DPWES) shall include a tree preservation plan which depicts proposed limits of clearing and grading at both the southwestern corner of the existing gravel driveway and the northern corner of the property to preserve the existing 27-inch diameter red oak tree and the 22-inch diameter white oak tree. The tree preservation plan shall be reviewed and approved by the Urban Forest Management Division (UFMD), DPWES.
4. An undesirable vegetation management plan shall be provided at the time of infill lot grading plan (or other plan) that provides for the management and treatment of invasive and undesirable plants, growing in the 'Undisturbed Area/Wooded Area'. This plan shall be reviewed and approved by UFMD. The management plan shall:
 - a. Identify targeted undesirable and invasive plant species to be suppressed and managed.
 - b. Identify targeted area of undesirable and invasive plant management plan, which shall be clearly identified on the landscape or tree preservation plan.
 - c. Incorporate recommended government and industry method(s) of management, i.e. hand removal, mechanical equipment, chemical control, other. Identify potential impacts of recommended method(s) on surrounding trees and vegetation not targeted for suppression/management and identify how these trees and vegetation will be protected (for

example, if mechanical equipment is proposed in save area, what will be the impacts to trees identified for preservation and how will these impacts be reduced).

- d. Identify how targeted species will be disposed.
 - e. Require that if chemical control is recommended, treatments shall be performed by or under direct supervision of a Virginia Certified Pesticide Applicator or Registered Technician and under the general supervision of Project Arborist.
 - f. Provide information regarding timing of treatments, (hand removal, mechanical equipment or chemical treatments) when will treatments begin and end during a season and proposed frequency of treatments per season.
 - g. Identify potential areas of reforestation and provide recommendations.
 - h. Provide for monthly monitoring reports to UFMD and SDID staff until Bond release or release of Conservation Deposit or prior to release if targeted plant(s) appear to be eliminated based on documentation provided by Project Arborist and an inspection by UFMD staff.
5. A landscape plan shall be submitted at the time of plan review and shall be subject to the review and approval of UFMD, which shows a variety of native and desirable tree species, of various sizes, to be planted on the site. All trees proposed to be planted shall be identified as Category I, II, III, or IV deciduous trees and/or Category I, II, III, or IV evergreen trees. In addition, minimum planting areas for proposed trees shall be provided in accordance with PFM 12-0601.1B.
 6. The limits of clearing and grading shall be no greater than shown on the variance plat as modified by Condition 3 and for the installation of utilities and/or trails, or for ingress and egress to Lot 60, as determined necessary by the Director of DPWES. If it is determined necessary to install utilities and/or trails, or for ingress and egress to Lot 60, in areas protected by the limits of clearing and grading as shown on the variance 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 the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities, or for ingress/egress to Lot 60.
 7. 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.

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 the UFMD, DPWES.”

8. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater located on the Application Property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called “Trunk Formula Method” contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the “Bonded Trees”) that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall

be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Application Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

9. A site specific RPA boundary certification per Letter to Industry #08-12 shall be provided at the time of plan review.

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.

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

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. CHARLES B. MOLSTER, III, AND SHARON B. MOLSTER, SP 2013-DR-052 Appl. under Sect(s). 8-609 of the Zoning Ordinance to permit a riding stable. Located at 815 Blacks Hill Rd., Great Falls, 22066, on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26. (*Admin. moved from 10/9/13 at appl. req.*) (*Admin. moved to 2/26/14 at appl. req.*)

Chairman Ribble noted that SP 2013-DR-052 had been administratively moved February 12, 2014, at 9:00 a.m.

[This hearing was subsequently moved to February 26, 2014.]

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN & ALLYSON G. BLOOM, A 2012-DR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an accessory structure (a playset) contributes to the coverage of over 30% of the minimum rear yard on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 2090 Grace Manor Ct., McLean, 22101 on approx. 21,445 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((33)) 11. (*Deferred from 1/9/13 at appl. req.*) (*Admin moved from 4/3/13 and 5/15/13 at appl. req.*) (*Admin. moved to 1/29/14.*)

Chairman Ribble noted that A 2012-DR-025 had been administratively moved to January 29, 2014, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. ESKRIDGE (E&A), LLC, A 2013-PR-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a sign erected on property in the PDC and H-C Districts is located in the sight distance triangle in violation of Zoning Ordinance provisions. Located at 2910 District Ave., Fairfax, 22031 on approx. 2.71 ac. of land zoned PDC and H-C. Providence District. Tax Map 49-3 ((37)) J. (*Admin. moved to 4/23/14 at appellants' req.*)

Chairman Ribble noted that A 2013-PR-021 had been administratively moved to April 23, 2014, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. NRG EV SERVICES LLC, D/B/A EVGO, A 2013-SU-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an electric vehicle charging station located in the C-7 District is a principal automobile-oriented use and would require special exception approval. Located at 14100 Lee Hwy., Centreville, 20122 on approx. 9.32 ac. of land zoned C-7, H-C and SC. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman Ribble called the appellant to the podium.

Ms. Theodore made a disclosure that the appellant was a member of the trade association where Ms. Theodore was employed, and even though they worked on matters other than what was in front of the Board, she recused herself from the public hearing.

Mr. Hart made a disclosure, saying that he may have played a part in getting this hearing in motion, by sending a letter to the Zoning Administrator with some questions about the Ordinance, and had sent copies of those letters to Ms. Stroble, the appellant's agent. He had no idea this would end up in front of the Board. He also disclosed that he was the Chairman for the Planning Commission's Environment Committee, which was working on recommendations for implementation of certain policies to facilitate infrastructure to electric vehicles throughout the County. He recused himself from the public hearing, because of those issues.

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.

Lynne Strobel, Walsh Colucci Lubeley & Walsh PC, 2200 Clarendon Boulevard, Arlington, Virginia, the appellants' agent, came forward.

Cathy Belgin with the Zoning Administration Division, presented staff's position. This was an appeal of a determination that the electric vehicle charging station located in the Newgate Shopping Center, which was zoned C-7 with overlay districts, was a principal automobile-oriented use as constructed and, therefore, required special exception approval.

The Zoning Administrator's position was that while the charging station itself provided a convenience that may be used by customers of the shopping center, and could be permitted as an accessory use under the right conditions, the station in this location as constructed with the associated canopy and signage was designed to draw customers to the use, and as such functioned as a principal use.

According to the appellant's marketing materials, the EVGO model of charging stations were designed to be used primarily as a subscription service. Subscription holders would pay a monthly fee to be eligible for use of the charging facilities, although the stations could also be used on a per charge basis by calling an 800 number located on the pump and using a credit card. According to the appellant, the majority of the users of the charging station would be EVGO subscribers coming to the site for the primary purpose of the charging their vehicles, and then while the vehicle was being charged, would make use of other parts of the shopping center. An accessory use, by definition, was intended to serve customers of the principal use, and in this instance, the Zoning Administrator believed the principal use would be serving the customers of the accessory use. In addition, given the potentially long use times for one of the chargers and given that the use would be able to be accessed 24 hours a day, the charging station could potentially be in use when the other

parts of the shopping center were closed, and as such would be a principal use operating on the property.

The appellant maintained that the charging station met the definition of accessory use, because it was subordinate to the shopping center in purpose, area, and extent, was customarily found in association with the principal use of the shopping center, served the principal use of the shopping center, and contributed to the comfort, convenience, or necessity of the users and employees of the principal use.

In conclusion, based on the reasons outlined in the staff report in greater detail, the subject use, an electric vehicle charging station, as constructed on the referenced property, constitutes a principal automobile oriented use, which required special exception approval in the C-7 District where it was located. Should the appellant remove the components of the existing structure, such as the canopy and associated signage, it could be deemed an accessory use. Staff, therefore, recommended that the Board of Zoning Appeals uphold the determination of the Zoning Administrator, as set forth in the letter issued by Leslie B. Johnson on June 20, 2013.

The following was determined by questions from the Board of staff. Having the canopy and signage on the canopy rendered the use visible from offsite, and changed the nature of it such that it was intended to draw customers from off the property by virtue of it being more visible. All the other businesses in the shopping center were considered principal uses, as far as staff knew. Removal of the full canopy structure would have to occur in order for it to be considered an accessory use.

Stand-alone ATM machines in the middle of a parking lot would, in most instances, be deemed a special exception use.

A car charging station installed adjacent to a gas station would most likely be deemed an expansion of the use. It would be like adding another pump island, which would then require the gas station to amend their special exception approval. There are some charging stations associated with uses in an office building, and those were deemed to be accessory.

Staff put together a memorandum as a guideline, which was included in the staff report dated July 12, 2013. It outlined some basic conditions under which such facilities could be deemed accessory.

Removing the signage itself would not be enough. It was the canopy and the lighting which made this a principal use, according to the Zoning Administrator.

Ms. Strobel, the appellant's agent presented the arguments forming the basis for the appeal. Her main points were as follows. The appellant thought it was okay to build this structure at this site, as it was verbally approved for the original site in Centreville. This site did not have some of the challenges they were facing in the Centreville site, so they thought they would be okay. The plans for the original site were a little bit different from what was submitted for this, but there was no discussion that it would not be deemed accessory if there were signs on it, so they did not think that would be an issue. They believed that because of the small size of the site, it being less than 250 square feet, it would not be something which would require a site plan or minor site plan.

This was not an effort to circumvent the County requirements. It was because this is a somewhat new technology, and a new type of use, they went to the County. They got information, and they thought they were doing the correct thing. It was noted that at that time, the policies which were currently available in the memorandum dated July 12, 2013, were published after the Zoning Administrator had made her determination, and before the appeal was filed. The appellant did not think it was appropriate to consider those as a part of this appeal, because they were not in place when this was ongoing.

The appellant did not agree that two lattice panels changed the characteristics of a use, so that it no longer met the definition of accessory. It took up one parking space in a parking field of 500 spaces. The owner of the shopping center had elected not to charge rent, because the owner believed the charging station would be a service and a convenience to the people who came to the shopping center.

The overhead panels were for the safety and the convenience of the users, and it identified the location of the use. The common characteristic of gas stations, fast-food restaurants, drive-through banks, and drive-through pharmacies were that you either were sitting in your car, or if pumping the gas, might be out for approximately five minutes and get back into your car. The average person who charged their car left the car there for about 20 minutes.

It was noted that some of the local counties, such as Arlington County and Prince William County, did not require any sort of special permit approval. They found these to be accessory uses.

Michael Krauthammer, the appellant's agent, Director of NRG EV Services for the mid-Atlantic region, 5809 Nicholson Lane in North Bethesda, Maryland came forward to help answer some questions from the Board. He gave the following information. The canopies did not offer any protection from the elements when one was hooking up the car. Because of the nature of charging, which was fairly quick, they had not experienced queuing. They encouraged vehicles to turn over by charging by the minute, so people would not camp out there for a long time. The pricing was fluid, because it was such an evolving market. Customers could pay \$14.95 a month, and get access to any fast charger on the entire network of chargers across the region for ten cents a minute.

When the appellants first met with the County about the Walgreen's site, they did not even have a design. Subsequently, as they prepared to build at Dulles Town Center and at the Newgate Shopping Center, they had come up with multiple designs. They had highly efficient LEDs embedded in the lattice, which shine directly down, providing a level of safety and comfort to customers. The lighting also provided the required illumination for their security cameras, because they monitored all of their sites 24/7. They could actually see what a customer was doing, and had the ability to talk them through the process on the phone, if they were having difficulty with a charge.

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

Mr. Smith moved to overturn the determination of the Zoning Administrator in Appeal Application A 2013-SU-022 for the following reasons as stated.

This was a use which should certainly be encouraged, and the County did encourage it, as referenced with things like LEED and the fact that this type of thing was in use in commercial office buildings. It was something which promoted a mode of transportation that is good for the environment, and considered public health, safety, and welfare issues. The policy issues seemed to be supportive. It came down to whether this was an accessory use or an automobile-oriented use.

The determination which was made in this case was that it was an automobile-oriented use. Looking at the definition of automobile-oriented use, it was any use of land not otherwise defined, which provided a service directly to a motor vehicle, or which provided goods or services to the occupants of a motor vehicle while seated therein. Focusing where it says not otherwise defined, the Board wondered whether it was defined elsewhere. In the Zoning Ordinance there were provisions for an accessory use. So this really boiled down to whether it met the four criteria identified for an accessory use. The questions were whether it was clearly subordinate to, customarily found in association with, and served a principal use.

The Board believed that this was a use subordinate to the shopping center use, and the County even acknowledged, as well, that this was something that would benefit folks in the shopping center. The other question was, when a canopy and lighting was added, did it start to look so much like a service station. This was about a 50th of the size of a service station. If it were as large as a service station, it would no longer be just an accessory use. Part of this just boiled down to what the reaction was to it. Looking at a 64-square-foot canopy and photographs, where it showed it was not really visible over many vans, trucks, or even some cars, depending on where one might have been located in the parking lot, and with limited visibility from Route 28, it did not look like a destination use. It looked like it was subordinate to and served a principal use.

It was compelling that the shopping center provided this use without any rent, because they saw it as a benefit to for their patrons. They had a place where they could charge their car, and it seemed that would be a use the County would want to encourage. The fact was that it took up one parking space out of 513 parking spaces. It still exceeded the minimum parking spaces required as an 80,000-square-foot shopping center, so the charging station seemed subordinate in purpose. It was subordinate in area. It was a very small area that was used, or in extent to the principal use served.

Regarding the third criteria, which was contributing to comfort, convenience, or necessity of the occupants, the business enterprise, or industrial operation within the principal use served, the Board did not believe it contributed to their comfort, convenience, and transportation necessity. It was located on the same lot as the principal use. It seemed that it met the requirements of an accessory use.

In the future it would be helpful to have more regulatory guidance on uses like this, and the Board understood that was being looked into. To require a use like this to go through the special exception process seemed rather onerous. The Board did not know the significant filing fees involved for that level of process for something like this that the County is trying to encourage.

The canopy alone with the security camera on it and lighting seemed like worthwhile features to have in association with a charging station such as this. To the Board, that did not push it over the level of moving out of the accessory use and into an automobile-oriented use. The Board sympathized, and thought that with all the discussion that the County staff had gone through, they analyzed all the issues very well, and had considered all the different ramifications. The Board just came to a different conclusion on it. The Board did not agree that this moved outside of an accessory use.

Mr. Beard seconded the motion, which carried by a vote of 4-1. Mr. Hammack voted against the motion. Ms. Theodore and Mr. Hart had recused themselves from the hearing.

Discussion ensued regarding this as a close call, with this being a new technology. The canopy, sign and the ability to add additional charging outlets to the structure were also discussed.

//

~ ~ ~ November 6, 2013, Scheduled case of:

9:00 A.M. BEYER I LLC, A 2012-PR-029 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard, which is a use not permitted, on property in the C-8 and H-C Districts in violation of Zoning Ordinance provisions. Located at 7113 Shreve Rd., Falls Church, 22043, on approx. 33,787 sq. ft. of land zoned C-8 and H-C. Providence District. Tax Map 40-3 ((12)) 11. (Admin. moved from 1/16/13, 4/3/13, 6/19/13, 9/11/13 and 11/6/13 at appl. req.)

Chairman Ribble noted that A 2012-PR-029 had been administratively moved to March 19, 2014 at 9:00 a.m.

//

~ ~ ~ November 6, 2013, After Agenda Item:

Requests for Reconsideration regarding Daniel J. Gerkin
SP 2013-DR-061 and VC 2013-DR-014

Chairman Ribble stated that there was a letter from John McBride, who was with the law firm Odin, Feldman and Pittleman. Mr. Hammack said that he was not there for the meeting, so he abstained from the proceedings.

Discussion ensued regarding the request. It was determined that many of the Board members felt no objection to the special permit, but for the decision on the variance. The concern was in the event that there would be some consideration with the work plan about modifying the 30 percent requirement, so the applicant would prefer that the Board not deny the special permit.

It was thought that what Mr. McBride was saying was that the Board was arbitrary in denying this, because the variance was denied. The Board could waive the one year, and then if the 30 percent changed, the action would stand, and the applicant would need to reapply for a special permit or variance, starting at the beginning, and paying the fees all over again. The Board would just be allowing them to reapply on the same property for the same action within a year.

Discussion ensued about other locations for the play set might be. The Board believed the applicant had created their own hardship, which was the reason for the original motion.

It was thought by some of the Board members that because the variance was going to be denied, there was no point in granting the special permit. The availability of other locations on the lot for the structure would be a separate and sufficient justification for the denial of the special permit.

Mr. McBride came forward and spoke on the issue. His main points were that the sole issue which drove the decision was whether there was another place on the property to put the play set. That revolved around the fact of whether it was a through lot or not, and the Zoning Administrator made a decision that it was a through lot. This decision was what they relied on as they went through this arduous process.

With regard to the special permit, the concern was even if the 12 months was waived, that the Board would have made findings that the specific and general criteria applicable to that special permit on the height setback issue were not met. He submitted that if you look at the criteria that they had been met, so he believed it was an independent decision from the variance. They just could not implement the special permit until the 30-percent cover requirement was resolved. He believed the Board was bound to deal with them independently. The criteria that there was another spot on the lot for the play set was not a criteria for the special permit when you look at the general standards and the special standards.

With more questions and discussion by the Board, it was determined that they would not need to come in for a special permit for mistake in building location with a side yard, because it would be by right. It was 31 percent coverage that was existing without the play area, and it was 38 percent with the play area.

The rear yard issues did not trigger the pending appeal, and they would have needed a special permit. It was thought they could defer the decision on the reconsideration until after the appeal, waive the one year in the meantime, and if the appellant wanted to file something else, they would be free to do that.

Mr. Hart made a motion to waive the one year for refiling. Mr. Beard seconded the motion, which was carried by a vote of 6-0. Mr. Hammack abstained from the vote.

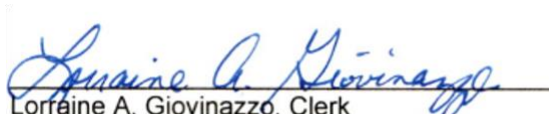
Mr. Hart then made a motion to defer the consideration of the reconsideration until after the appeal. Mr. Hart said that his motion was to defer Mr. McBride's request until the After Agenda of the day of the Appeal. Ms. Theodore seconded it. The motion carried by a vote of 7-0.


//

As there was no other business to come before the Board, the meeting was adjourned at 12:32 p.m.

Minutes by: Lorraine A. Giovinazzo

Approved on: September 21, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, November 20, 2013. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; Sharon Theodore; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and

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

~ ~ ~ November 20, 2013, After Agenda Item:

Request for Reconsideration
NRG EV Services LLC, D/B/A EVGO, A 2013-SU-022

Chairman Ribble noted that they were going to go with the After Agenda item first. It was a request for a reconsideration from Leslie B. Johnson, the Zoning Administrator, regarding NRG EV Services LLC, doing business as EVGO, Appeal 2013-SU-022.

Mr. Hart said that since he had recused himself during the public hearing, he was not going to participate in this decision, and recused himself.

Ms. Theodore noted that she also had recused herself previously, and dismissed herself from this discussion.

Mr. Smith said that having made the motion in this case, he was not inclined to reconsider it. He had gone back through the staff report, and also read the motion for reconsideration. He clarified for the record that the decision was limited to the specific facts and circumstances of this case. He said you need facts and circumstances, including the different factors that were discussed in the motion and during the public hearing, including the size of the lot in the shopping center, the number of parking spaces that were available and that were required and that were being used by the charging station, the visibility from the surrounding roadways and visibility on the site, the uses on the site, uses in the parking lot, the business relationship between EVGO and the shopping center, the rent free, and the other factors that were discussed. He continued that it was really meant to apply to this location only under these unique facts and circumstances, and not as precedent throughout the County, because he thought each case had to be evaluated on its own merits, facts and circumstances. He wanted this clarified as he saw that that was a concern which was referenced in the motion for a reconsideration.

Mr. Smith said that the motion did not include removal of the logos on the canopy. He did not believe that that was a concern, although he knew that there had been discussion with the appellant about doing that voluntarily. He thought that was fine, but it was not included in the motion.

There was no motion made for reconsideration, so the request was denied.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. WILLIAM WEISS, SP 2013-DR-027 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within a proposed single family dwelling. Located at 9416 Atwood Rd., Vienna, 22182, on approx. 36,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((17)) 23. (In association with PCA 86-D-108) (*Deferred from 10/9/13 at appl. req.*)

Chairman Ribble noted that SP 2013-DR-027 had been administratively moved to December 4, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. JOSHUA P. TENUTA, SP 2013-DR-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on errors in building locations to permit accessory structure to remain 7.4 ft. from side lot line, accessory storage structure to remain 1.3 ft. from side lot line and 9.7 ft. from rear lot line, another accessory storage structure to remain 2.3 ft. from side lot line, deck to remain 1.6 ft. from side lot line and trellis to remain 7.6 ft. from side lot line. Located at 2212 Boxwood Dr., Falls Church, 22043, on approx. 10,357 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((10)) (D) 4. (Admin. moved from 10/30/13 for ads.)

Chairman Ribble called the applicant to the podium.

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

Scott Boddie, 42990 Gold View Drive, South Riding, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of numerous special permits:

- 19.6 foot tall garage to remain 7.4 feet from the northeastern side lot line;
- 12.1 foot tall shed to remain 1.3 feet from the northeastern side lot line;
- 9.8 foot tall shed to remain 2.3 feet from the southwestern side lot line;
- an open deck to remain 1.6 feet from the southwestern side lot line, and
- an arbor to remain 7.6 feet from the southwestern side lot line.

Ms. Gumkowski stated that all of the building permits were obtained prior to the applicant purchasing the property in August 2012.

Mr. Hart, Ms. Gumkowski, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed whether the breezeway was connected to the house, and, if not, why it was not considered an extension instead of an accessory structure.

Mr. Boddie presented the special permit request as outlined in the statement of justification submitted with the application. He explained that what he thought of as a shady contractor took advantage of elderly homeowners, and built structures which were not up to Code.

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

Mr. Hammack moved to approve SP 2013-DR-068 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSHUA P. TENUTA, SP 2013-DR-068 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on errors in building locations to permit accessory structure to remain 7.4 ft. from side lot line, accessory storage structure to remain 1.3 ft. from side lot line and 9.7 ft. from rear lot line, another accessory storage structure to remain 2.3 ft. from side lot line, deck to remain 1.6 ft. from side lot line and trellis to remain 7.6 ft. from side lot line. Located at 2212 Boxwood Dr., Falls Church, 22043, on approx. 10,357 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((10)) (D) 4. (Admin. moved from 10/30/13 for ads.) 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 20, 2013; and

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

1. The applicant is the owner of the property.
2. According to the record, the non-compliance was done in good faith or through no fault of the present property owner.
3. The Board was not too concerned with the garage structure itself. It seemed to have been lined up incorrectly after the issuance of a building permit.
4. The setbacks are to the eaves.
5. There is really a little bit more setback than that.
6. It is almost in compliance, although it exceeds the 10 percent.
7. The other structures fall within the ambient of this Ordinance.
8. The applicant has satisfied Standards A through G set forth in the Ordinance in order to grant a special permit for all of these uses.

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

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

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

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

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

1. This special permit is approved for the location of the two accessory structures (garage and trellis) two accessory storage structures (sheds), and an open deck, as shown on the plat prepared titled, "Setback Certification Survey, Lot 4, Section One and Two, Block 'D', Churchill Subdivision," prepared by Remy G. DuCote, L.S., dated September 26, 2012 as revised through July 29, 2013.
2. All applicable permits and final inspections shall be obtained for the garage and breezeway within 180 days of 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.

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

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. SALVADOR GARCIA, SP 2013-LE-057 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 8.2 ft. from side lot line and reduction of certain yard requirements to permit construction of accessory storage structure 6.5 ft. from side and rear lot lines. Located at 4807 Flower Ln., Alexandria, 22310, on approx. 11,036 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (H) 2. (Admin. moved from 10/23/13 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 affirmed that their testimony would be the truth, and the public hearing was opened.

Salvador Garcia, 4807 Flower Lane, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of the application.

Mr. Garcia (through an interpreter) said he had nothing to add to the special permit request as outlined in the statement of justification submitted with the application.

Mr. Hammack and Mr. Garcia discussed the location of the shed, with Mr. Garcia noting that the shed had been removed. Concerning the carport conversion, Mr. Garcia said the addition was present when he purchased the property in 2005.

In response to a question from Mr. Hart, Al Sanchez, Inspector with the Department of Code Compliance, stated that the carport was not complete, and noted that the matter was due to be heard in circuit court tomorrow.

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

Mr. Byers moved to approve SP 2013-LE-057 in part for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SALVADOR GARCIA, SP 2013-LE-057 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit addition to remain 8.2 ft. from side lot line and reduction of certain yard requirements to permit construction of accessory storage structure 6.5 ft. from side and rear lot lines. **(THE BOARD DID NOT APPROVE THE ACCESSORY STORAGE STRUCTURE.)** Located at 4807 Flower Ln., Alexandria, 22310, on approx. 11,036 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((14)) (H) 2. (Admin. moved from 10/23/13 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 November 20, 2013; and

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

1. The applicant is the owner of the property.
2. The application does not meet all the submission requirements set forth in Section 8-922, specifically Standards 6 and 7, and General Standard 3 in Section 8-006.
3. The staff recommends denial of the application basically because the applicant did not provide the information required under Standards 6 and 7.
4. The Board adopts the rationale of the staff.
5. The applicant indicated that this shed could be moved and could be placed in a by-right location so there really is no necessity for the 8-922.
6. The carport was enclosed before this applicant bought the property and, therefore, it falls under the Code section that allows up to that approval.

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

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

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

1. This special permit is approved only for the location and size of the 344 square foot addition (enclosed carport) as shown on the plat titled "Special Permit Plat, Lot 2, Block H, Rose Hill Farm," prepared by Joseph W. Bronder of DiGuilian Associates, P.C., dated April 1, 2012, as revised through August 26, 2013, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the carport enclosure within six months of approval of 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. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. PATRICIA A. SAWHNEY, TRUSTEE, SP 2013-BR-065 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 4212 Saint Jerome Dr., Annandale, 22003, on approx. 40,678 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-1 ((3)) 60A.

Chairman Ribble noted that SP 2013-BR-065 had been withdrawn.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. MALIHA MAHMOOD AND LIFESKILLS MONTESSORI AND DAYCARE, LLC, SP 2013-BR-069 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 11340 Nancyann Way, Fairfax, 22030, on approx. 20,471 sq. ft. of land zoned R-3. Braddock District. Tax Map 56-2 ((8)) 6. (Admin moved from 11/20/13 at appl. req.)

Chairman Ribble noted that SP 2013-BR-069 had been administratively moved to November 6, 2013, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. AIMEE GRINNAN, VC 2013-MV-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yards. Located at 6804 Duke Dr., Alexandria, 22307, on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 7. (Concurrent with SP 2013-MV-066).

9:00 A.M. AIMEE GRINNAN, SP 2013-MV-066 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 the side lot line. Located at 6804 Duke Dr., Alexandria, 22307, on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 7. (Concurrent with VC 2013-MV-016).

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.

Aimee Grinnan, 6804 Duke Drive, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant wished to construct a two-story addition. She noted that an existing arbor and deck was proposed to be removed to accommodate the addition. Staff recommended approval of SP 2013-MV-066, subject to the proposed development conditions.

Chairman Ribble made a disclosure, and indicated that he would recuse himself from the public hearing.

Vice Chairman Hammack assumed the chair.

Ms. Grinnan presented the special permit and variance requests as outlined in the statement of justification submitted with the application.

In response to several questions from Mr. Hammack and Mr. Beard, Neale Hergenrather, agent for the applicant, said the fence was present on the property when the applicant purchased the property. He said the fence would collapse if the applicant removed 1 foot off the top, noting that it contained a brace connected to the post.

Although the applicant had a letter from her neighbor stating that she did not care if a large sycamore was removed during construction, Ms. Horner said staff was still concerned about saving as many trees as possible. Jay Banks from the Urban Forestry office suggested changing the development conditions to include alternative language to alleviate the need for heavy equipment on the property.

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

Mr. Hart moved to approve SP 2013-MV-066 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

AIMEE GRINNAN, SP 2013-MV-066 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 the side lot line. Located at 6804 Duke Dr., Alexandria, 22307, on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 7. (Concurrent with VC 2013-MV-016). 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 20, 2013; 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 recommendation of approval subject to some limitations, only with adoption of the proposed development conditions.
3. In large measure, the Board adopted the rationale of the staff report.
4. This was a close call because of the length of the addition.
5. It is 40 feet long, it is squared to the lot line, and it has a second floor on top of it.
6. It is unusual.
7. It is mitigated somewhat; it is not entirely out of line with what is in the neighborhood, although this is somewhat closer to the lot line than the other examples.
8. There is not a lot of wiggle room on this lot. The lot is too narrow to begin with and it is too small.
9. With the imposition of the development conditions, the impact that staff has identified would be sufficiently mitigated.
10. The Board determined that the Section 8-922 criteria 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 granted only for the purposes, structures and/or uses indicated on the plat "Special Permit Plat, Lot 7, Block 5, Bucknell Manor" prepared by Joseph W. Bronder, Land Surveyor, of Digiulian Associates, P.C., dated July 19, 2013, as revised through July 22, 2013, and approved with this application, as qualified by these development conditions.
3. The footprint of the addition shall be reduced or the addition shall be moved westward if possible to decrease the impact to the roots and limbs of off-site trees. If the footprint cannot be adjusted, then an alternative foundation footing system, such as a pier and grade beam on the front portion of the foundation, or hand digging, shall be used to reduce the loss of tree roots.
4. The applicant shall retain a certified arborist or a registered consulting arborist to determine and implement methods to reduce construction impacts to adjacent off-site trees. Such methods may include the use of a supersonic air tool to locate and avoid large structural roots and properly tying back limbs so materials may be lifted onto the building without damaging the trees.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the northern property boundary as a tree save area to protect existing off-site vegetation and shall install tree protection fencing along the northern property line to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.
6. The proposed windows shown on the north elevation of the upper-level of the addition shall have blinds or other window coverings so that the property owner to the north retains privacy.
7. 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 (2,085 square feet existing + 3,127.5 square

feet (150%) = 5,212.5 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.

8. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions, with the qualifications set forth in condition #3 above.

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 noted 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. Theodore seconded the motion, which carried by a vote of 4-2. Mr. Byers and Mr. Beard voted against the motion. Chairman Ribble recused himself from the hearing.

//

Mr. Hart then moved to deny VC 2013-MV-016 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

AIMEE GRINNAN, VC 2013-MV-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 7.0 ft. in height to remain in side and rear yards. Located at 6804 Duke Dr., Alexandria, 22307, on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (5) 7. (Concurrent with SP 2013-MV-066). 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 20, 2013; and

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

1. The applicant is the owner of the property.
2. The applicant has not presented testimony showing compliance with the required standards for a variance.
3. Although the lot is exceptionally narrow and small, there is not a nexus between the delta of a 7-foot fence and what they have got.
4. The narrowness or the size of the lot does not really have anything to do with that.
5. The problem with the fence is that it was pre-existing and it was bought that way. It is going to cost them money to change it or move it.
6. Unfortunately, under the case law that the Board has to follow, things like expense to the owner are not a permissible consideration.
7. The variance standards are somewhat more difficult than a special permit.
8. Under Section 6B, this is a convenience to the applicant as opposed as a clearly demonstrable hardship.
9. There are situations in which a property might be slammed up against a very busy highway or a very

- obnoxious use next to it, or some extraordinary condition adjacent to the property where you would want to hide something and there might be a reason for taller fence, or extreme topography where there is a cliff or something and a shorter fence does not really hide anything.
10. In this situation, it is just a coincidence that the lot is smaller and narrower.
 11. The Board did not believe, given the standards that the Board has to follow for a variance, that this particular situation meets that.
 12. It is unfortunate, but hopefully the fence can be modified.

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

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

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

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

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

Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Ribble recused himself from the hearing.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, A VIRGINIA CORPORATION, SPA 99-Y-065-03 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-065 previously approved for a place of worship and child care center and/or private school of general education to permit increase in students, addition of temporary structures and modifications of development conditions Located at 15450 Lee Hwy., Centreville, 20120, on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7.

Chairman Ribble noted that SPA 99-Y-065-03 had been administratively moved to December 4, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. LUIS MARCELO VALENCIA, SP 2013-MV-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 12.58 ft. from rear lot line. Located at 8492 Brutus Ct., Springfield, 22153, on approx. 9,040 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 36.

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.

Luis Marcelo Valencia, 8492 Brutus Court, Springfield, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-MV-067, subject to the proposed development conditions.

Ms. Theodore, Mr. Hart, and Ms. Haley discussed the stormwater runoff situation and the change in grading between this property and the property abutting the rear lot line. Ms. Haley noted that there were two proposed development conditions which addressed stormwater management.

Mr. Valencia presented the special permit request as outlined in the statement of justification submitted with the application. He stated his agreement with the staff report.

Chairman Ribble called for speakers.

Jacob Kramer, 8490 Brutus Court, Springfield, Virginia, said he was the neighbor to the rear of the subject property. He spoke in favor of the application, and thanked staff for their assistance.

Chairman Ribble closed the public hearing.

Ms. Theodore moved to approve SP 2013-MV-067 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUIS MARCELO VALENCIA, SP 2013-MV-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 12.58 ft. from rear lot line. Located at 8492 Brutus Ct., Springfield, 22153, on approx. 9,040 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 36. Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 20, 2013; and

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

1. The applicant is the owner of the property.
2. Staff is recommending approval of this proposal with the adoption of certain conditions and the Board supports those findings.
3. The adjacent homeowner supports the application although he did have concerns about the runoff.

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 addition (427 square feet), as shown on the plat prepared by Roddy A. Reyes of ATCS, P.L.C., dated August 6, 2013, 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 (2,310 square feet existing + 3,465 square feet (150%) = 5,775 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. In accordance with State and local provisions, the Applicant shall not discharge surface drainage onto lower lying property (i.e. Lot 35, the adjacent property to the west) at a rate greater than the pre-development rate without an adequate drainage facility.
6. In addition to the requirements of the Public Facilities Manual, the applicant shall connect a series of roof drains/downspouts which shall be directed to the side or front yard to minimize any further additional runoff to the backyard and the adjacent property owner, subject to the approval of the Department of Public Works and Environmental Services.
7. No construction vehicles shall use the pipestem driveway to access the subject property. All access from the right-of-way shall be solely on the applicant's property.

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

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

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

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF GRACE ORTHODOX PRESBYTERIAN CHURCH, SPA 73-P-068-02 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to amend SP 73-P-068 previously approved for place of worship to permit increase in land area, increase in seats and reduction in the minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.3 ft. from side lot line. Located at 2381 Cedar Ln., Vienna, 22180, and 2371 Cedar Ln, Vienna, 22182, on approx. 3.64 ac. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 31, 31A and 39-3 ((9)) 26.

Chairman Ribble noted that SPA 73-P-068-02 had been administratively moved to January 29, 2014, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC. C/O GARCIA ARIAS, ZULMA, A 2012-LE-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a commercial recreation use, which is not a permitted use, on property in the C-6 and H-C Districts in violation of Zoning Ordinance provisions. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 19,135 sq. ft. of land zoned C-6 and H-C. Lee District. Tax Map 81-3 ((5)) 4. (*Admin. moved from 9/26/12, 11/28/12, 2/6/13, 4/24/13, and 7/14/13 at appl. req.*)

Chairman Ribble noted that A 2012- LE-013 had been administratively moved to May 21, 2014, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. CARL EY AND JENNIFER KRALY EY, A 2013-MA-016 (*Admin. moved from 10/2/13 at appl. req.*)

Chairman Ribble noted that A 2013-MA-016 had been administratively moved to January 15, 2014, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:30 A.M. CESAR C. AQUINO, A 2013-LE-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established four dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 7415 Loisdale Rd., Springfield, 22150 on approx. 16, 236 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 288. (*Admin. moved from 10/9/13 at appl. req.*)

Chairman Ribble called the appellant to the podium.

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

Cesar C. Aquino, 7415 Loisdale Road, Springfield, Virginia, came forward.

St. Clair Williams, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. He said there were six people living in a single-family home which contained four kitchens. The Notice of Violation (NOV) required removal of three of the four kitchens, along with all interior locks that prevented free access to the living areas. Mr. Williams said a follow-up inspection showed that two of the four kitchens had been removed. The appellant said that he had permission from the County for a second kitchen. However, the County's documentation noted that the second kitchen could not be used in combination with a separate living facility.

Mr. Hart, Mr. Byers, Mr. Williams, and Mavis Stanfield, Assistant Zoning Administrator, discussed if there were Ordinance requirements which would require forfeiting a building permit on a second kitchen. Ms. Stanfield stated that one of the conditions for the second kitchen approval was that it could not be used in conjunction with a separate living space, and if/when the residence was listed for sale, it could not be advertised as having a separate apartment unit, both of which occurred. She continued that any new owner would have to apply for another special permit.

In response to a question from Mr. Beard, Ms. Stanfield stated that the property owner was not occupying the property.

Mr. Williams and Mr. Hammack discussed the requirements for a second kitchen letter authorization, with Mr. Williams noting that any subsequent owner would have to apply for another letter of authorization.

In response to a question from Mr. Beard, Charles Forshee, Inspector with the Department of Code Compliance, stated that when he first inspected the property, it contained four dwelling units. When he, Mr. Williams, and Ms. Stanfield did a follow-up inspection, there were only two kitchens.

Mr. Beard and Ms. Stanfield discussed the possibility of a house with an approved accessory dwelling unit being sold to a new owner, who then leases it as an apartment unit. Mr. Beard was concerned that the County could not do anything about it until a complaint was received.

Mr. Aquino presented the arguments forming the basis for the appeal. He said he had removed the second kitchen, and presented pictures to Ms. Stanfield and the Board.

Mr. Beard felt that the appeal should be deferred until the County had an opportunity to confirm the removal of the second kitchen.

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

Mr. Beard moved to defer decision on A 2013-LE-019 to December 11, 2013, at 9:30 a.m. Mr. Byers and Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Smith was not present for the vote.

//

~ ~ ~ November 20, 2013, Scheduled case of:

9:00 A.M. KATHLEEN AND JOSEPH WHITCRAFT, A 2013-SU-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a proposed storage building (resource center) on property in the R-E District is part of the public benefit use and not a separate principal use and, therefore, could be approved in conjunction with Special Exception Amendment SEA 81-C-082-2. Located at 10900 Vale Rd., 10968 Stuart Mill Rd., 10891 and 10899 Justin Knoll Rd., Oakton, 22124 on approx. 66.93 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((1)) 25A, 26, 38, 39A, 40.

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.

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

Patrick M. Via, attorney for the appellants, 1900 Gallows Road, Vienna, Virginia, came forward.

St. Clair Williams, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. This appeal disputed the Zoning Administrator's determination that the proposed resource center was part of the public benefit association. The resource center would house camping equipment and Girl Scout supplies to be used locally and at other Girl Scout facilities.

Lorrie Kirst, Assistant Zoning Administrator, explained that determinations were made on a case-by-case basis, and acknowledging that some consideration was given to the resource center supporting 300 campers versus 90,000 members.

In response to a question from Mr. Hammack, Ms. Kirst said the determination might be different if this involved a stand-alone warehouse use, but this was a 6,000 square-foot building on 66 acres. Mr. Beard, Mr. Hart, and Ms. Kirst discussed the location of the use on the property, however, Mr. Williams stated that the location was not part of the appeal. Mr. Hart felt it should be. To clarify, Mavis Stanfield, Assistant Zoning

Administrator, reiterated that the issue at hand was whether or not the proposed building would be classified as a public benefit use.

Mr. Hammack, Mr. Beard, and Ms. Kirst talked about the word appropriate in the use description. Ms. Kirst noted that the appropriateness of the use would be determined by the Board of Supervisors, however, she stated that there was no commercial definition of the word.

Mr. Byers, Mr. Hart, and Ms. Stanfield discussed whether the fact that the Girl Scouts were a fee-generating enterprise should change the definition. Ms. Kirst said it would not.

Mr. Via's argument consisted of two assertions: 1) that the resource center was actually a warehouse distribution center, which was prohibited in a residential area; and, 2) the use was tantamount to a commercial use, noting that it could stand on its own.

Chairman Ribble called for speakers.

Ed Pritchard, attorney for the Girl Scouts, 2200 Clarendon Boulevard, Arlington, Virginia, spoke in opposition to the appeal. He also disputed the contention that the Girl Scouts were a commercial enterprise. Mr. Pritchard stated that access to the site could be worked out between the Planning Commission and the Board of Supervisors. Mr. Beard noted that the appeal was not about an easement to the site, but rested on the definition of a public benefit use.

Lidia Soto-Harman, 13443 Broken Branch Court, Chantilly, Virginia, who identified herself as the paid staff person representing the Girl Scouts, stated her opposition to the appeal.

The following speakers appeared before the Board in support of the appeal:

Kathleen Whitcraft, 10904 Justin Knoll Road, Oakton, Virginia;
Colleen Conlin, 10905 Justin Knolls Road, Oakton, Virginia;
Fran Fischer, 2539 Donns Way, Oakton, Virginia;
Patricia Strat, 3227 Foxvale Drive, Oakton, Virginia;
Joe Whitcraft, 10904 Justin Knoll Road, Oakton, Virginia;
Newton Wood, 10901 Justin Knoll Road, Oakton, Virginia;
Timothy O'Connor, 10908 Justin Knoll Road, Oakton, Virginia;
Barbara Ostrom, 1953 Limb Tree Lane, Vienna;
Emily Jenkins, 124 Mendon Lane, Vienna, Virginia;
Barb Mahan, 7975 Oak Bridge Lane, Fairfax Station, Virginia;
Billy Noel, 10932 Stuart Mill Road, Oakton, Virginia;
Jehanne Arslan, 11000 Carter Cooper Way, Oakton, Virginia;
Heidi Arturo, 10915 Timbermill Court, Oakton, Virginia;
Mary Jo Ricci, 11207 Sorrel Ridge Lane, Oakton, Virginia; and
Jane Sams, 10849 Flowerstone Street, Oakton, Virginia.

In summary, Mr. Williams said the traffic problems raised by the speakers would be addressed at the special exception level. Regarding the easement, he stated that there were two possible access points on Vale Road.

In rebuttal, Mr. Via said there was no question this was a warehouse use.

Chairman Ribble closed the public hearing.

Mr. Hammack stated that the issue was simply whether the proposed use was part of the public benefit use. He felt the proposed use was a warehouse and considered a principal use. Mr. Hammack noted that the property had been used as a campground for numerous years, and a warehouse would not be accessory to it. He said it was a regional use, and would serve approximately 90,000 girl scouts. He said it might be a closer call if it was a small center just intended to service Camp Crowell. Mr. Hammack stated that the Zoning Administrator's arguments were subjective, noting that a public benefit definition was more for a corporation and did not define what could be used by it. He felt the evaluation by the Zoning Administrator ignored Section 2-302, which defined a warehouse use. Mr. Hammack asked if that definition did not apply, then why was it included in the Code. For those reasons, he moved to overturn the determination of the Zoning Administrator.

Mr. Beard seconded the motion.

Mr. Hart said he would not support the motion. Chairman Ribble, Mr. Byers, and Mr. Beard stated their support for the motion.

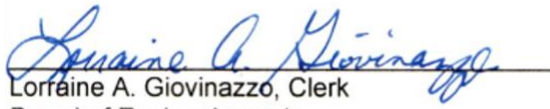
The motion carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Smith was absent from the meeting.


//

As there was no other business to come before the Board, the meeting was adjourned at 2:20 p.m.

Minutes by: Suzanne L. Frazier

Approved on: October 2, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, December 4, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Sharon Theodore; 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. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. WILLIAM WEISS, SP 2013-DR-027 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within a proposed single family dwelling. Located at 9416 Atwood Rd., Vienna, 22182, on approx. 36,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((17)) 23. (In association with PCA 86-D-108) (*Deferred from 10/9/13 at appl. req.*) (*Admin. moved from 11/20/13 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.

Greg Budnik, P.O. Box 1214, Newington, Virginia, agent for the applicant, reaffirmed the affidavit.

Megan Duca, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-DR-027 subject to the proposed development conditions.

Mr. Byers, Mr. Hammack and Ms. Duca discussed the accessory dwelling unit, where it was determined that the Board was only concerned about that issue, and not concerned about proffers or any other issues. It was noted that one letter in opposition stated the applicant had a separate dwelling unit over a garage, and decided the applicant might better be able to address the architectural design for the dwelling. Ms. Duca said the proposed conditions for the special permit specifically stated that it would be for the 1,378 square feet.

Mr. Budnik presented the special permit request as outlined in the statement of justification submitted with the application. He made the following main points. He was the civil engineer for the applicant and the co-owner of the subject property, the applicant's wife, was Cindy Tao. This project enjoyed the support of County zoning staff, public works staff, the County arborist's office, the McClean citizens association, the AARP state director's office, a number of adjacent land owners, including the only downstream land owner, and other local citizens. They also got a recent recommendation for approval from the County Planning Commission on a concurrent PCA application.

The Weiss' wished to honor their parents by building a home for them, completed with an offer to also to take care of them in their elder years. This tradition was ingrained in Ms. Tao's Chinese heritage and culture, and aging in place was echoed in Fairfax County's ongoing efforts and initiatives to address the needs of a County population whose average age was very much on the rise, and whose senior population was estimated to grow disproportionately as compared with those under 50 years of age. Mr. Budnik cited County and nationwide statistics, and talked about senior housing programs.

Mr. Budnik spoke of three key elements, landscaping, drainage and architectural design, which would ensure harmony and consistency with the neighboring subdivision, stating that the house and accessory dwelling unit would appear to all neighboring homes as a conventional, single-family detached home, with a lot coverage consistent to the lots in the subdivision.

William Weiss, 12989 Azalea Woods Way, Herndon, Virginia 20171, came forward to speak. He made the following main points. To address the blighted nature of the house and to remove some trees on the property, they had also filed a PCA application with the County concurrent with the special permit, to build a home which would include an accessory dwelling unit for his wife's father. Their intent was to take care of him through his elder years, which was consistent with the County Comprehensive Plan. Approximately 1,400 square feet of the total dwelling was attributable to the goal of elderly care in the accessory dwelling unit.

Mr. Hammack and Mr. Weiss discussed a letter that was in opposition, which stated it was thought there was a separate dwelling unit over the garage. There was no separate dwelling unit over the garage. They had opened up the attic spaces for use, rather than finish the basement. This space had an additional bedroom and bathroom, and was for his five- and seven-year-olds to do their homework. It also provided a personal office area for Mr. Weiss.

Mr. Hart asked Mr. Budnik questions regarding the drawings, as it seemed to him there were slightly different dates, and they were prepared by different people. Mr. Budnik said that the man who started the project had passed away in the middle of it, so he took the project over for Mr. Weiss as his engineer. This was the reason for a co-seal plan. Mr. Budnik said they inherited the architectural footprint from the previous engineer, and to his knowledge there had been no changes. There may have been some minor modifications to the deck and things of that nature, which were outside of what was subject to review at the meeting.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the development conditions with regard to the accessory dwelling unit and the plat.

Mr. Hart and Mr. Budnik discussed the landscaping, where it was noted that Urban Forester had approved of the species and locations of what was being added.

Chairman Ribble called for speakers in favor of the application.

The following people came forward to speak: Lin Cao, 1440 Carrington Ridge Lane, Vienna, Virginia; Bill Wang, 46162 Westridge Drive, Sterling, Virginia; and Bettina Dee, 9394 Wolf Trap Creek Court, Great Falls, Virginia. They made the following main points. The most important reason for an accessory dwelling unit was for the convenience for the older people, as it was challenging for them not to have their own space. In traditional Chinese culture, the family liked living with the parents together, which not only took care of their children, but also made sure the parents had a good senior life. The applicant's mother-in-law passed away two months prior to the hearing, and his father-in-law was 72 years old.

Chairman Ribble called for speakers in opposition.

John Nelsen, 9461 Deramus Farm Court, Vienna, Virginia, came forward to speak. He was the lot owner adjacent to the lot in question and was also the president of the homeowners association for Ciara Estates. His main points were as follows. They were not against providing an accessory dwelling for family members. There was a provision in their bylaws, which prohibited commercial renting in connection with accessory dwellings with exceptions to family members and other exceptions. What they were concerned about was the footprint of the accessory dwelling and the nature of the accessory dwelling. They thought that it was of such size and design as to make it a duplex. There was a letter presented to the Board that morning signed by Jane and William Bryan. They thought the design was really intended to be a self-contained second dwelling on the lot. The only connection of the accessory dwelling unit to the primary dwelling was through a breezeway, and it had a separate garage. Mr. Nelsen said that Mr. Weiss was a real estate guru, and he specialized in renovating old properties and flipping homes. The association was not convinced that Mr. Weiss' real intent was to live there for any period of time. What the homeowners association was opposed to was not an accessory dwelling, but to the design of that particular accessory dwelling. They submitted a petition the morning of the hearing, which was signed by 29 of 31 homeowners in their association.

Mr. Hart pointed out to Mr. Nelson that the revised development conditions said that if the approval was granted, it would only be to these applicants and not to their purchasers. Also, the floor plan showed that the two pieces were not just connected by a breezeway but also by a room which opened to both.

Cindy Tao, 12989 Azela Woods Way, Herndon, Virginia, came forward to speak in rebuttal. She stated that this was an emotional moment for her, because of her experience growing up during the cultural revolution in China. It was because of the conditions she grew up in, she made a decision that she would take good care of her parents to return the love they had given to her. She believed it would be very hard for her father to survive in senior housing, because he did not speak or write English, and he was physically very slow.

Mr. Smith addressed the concern of renting the accessory dwelling unit, noting that in Development Condition Number 5, it could only be occupied by a person or persons who qualify as elderly, 55 years of age or older, and this was only granted to the applicant. He asked the applicant if they would have any disagreement with a sentence added to the condition which included that the occupants of the accessory

dwelling unit shall be limited to the owners of the property or their immediate family. Mr. Weiss said there was no problem with it.

Mr. Hammack asked Mr. Weiss why they needed the extra one-car garage. Mr. Weiss said his father-in-law still drove. At the time of the drawings before his mother-in-law passed, the idea was to keep his mother-in-law as close to the in-law suite as possible, using the garage rather than walking across the primary residence.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2013-DR-027 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM WEISS, SP 2013-DR-027 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within a proposed single family dwelling. Located at 9416 Atwood Rd., Vienna, 22182, on approx. 36,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 19-3 ((17)) 23. (In association with PCA 86-D-108) (Deferred from 10/9/13 at appl. req.) (Admin. moved from 11/20/13 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 4, 2013; and

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

1. The applicant is the owner of the land.
2. Some of the opposition that has been presented to the Board seems to deal with tree removal and some issues that really are not under the purview of this Board.
3. In any event, most of those issues seem to be resolved or mitigated by the proffer condition amendment.
4. The Board has had some opposition to this application for various reasons, and also some support, including the McLean Citizens Association.
5. The Board has a favorable staff report.
6. One of the concerns the Board had was the accessory dwelling unit, at least according to one letter of opposition, seemed to be in a detached garage. That does not appear to be the case.
7. Under the Standards 8-918, the accessory dwelling unit shall be located within the structure of the single-family detached dwelling unit.
8. External entrances for the accessory dwelling unit shall be located on the side or the rear.
9. Notwithstanding suspicions of some of the neighbors in the area, it seems to comply with the Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This approval is granted to the applicant only, William Weiss and/or Xin Tao, and is not transferable without further action of this Board, and is for the location indicated on the application, 9416 Atwood Road (36,000 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by SDE, Inc. and GJB Engineering, Inc., titled "9416 Atwood Road," dated February 24, 2012 as revised through November 6, 2013, as 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 in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled. In addition the accessory dwelling unit shall be occupied only by immediate family members of the owner of the property.
6. The accessory dwelling unit shall contain a maximum of 1,378 square feet, and the layout shall be generally as depicted on 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 years from the final approval date of the special permit and may be extended for five 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. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (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.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. BASIM M. MANSOUR, SP 2013-MV-043 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 11191 Gunston Rd., Lorton, 22079, on approx. 5.26 ac. of land zoned R-E. Mt. Vernon District. Tax Map 119-1 ((3)) 12. (Deferred from 7/31/13.) (Admin. moved from 9/25/13 at appl. req.)

Chairman Ribble noted that SP 2013-MV-043 had been indefinitely deferred.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. SUBARU KANESAKA, SP 2013-MV-072 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 5902 Mount Eagle Dr, Unit 809, Alexandria, 22303, on approx. 1,120 sq. ft. of land zoned R-30. Mt. Vernon District. Tax Map 83-3 ((31)) (2) 809.

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.

Subaru Kanesaka, 5902 Mount Eagle Drive, Unit 809, Alexandria, Virginia 22303, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Brach, made staff's presentation.

There was discussion between Mr. Hart, Mr. Beard and Ms. Langdon, where it was determined that staff was not aware of any odors from the applicant's chinchilla. The animal shelter had chinchillas for adoption, but staff did not know if people were advised they could not have them without a special permit. Other animals that one would need a special permit for were pot belly pigs, chickens on less than two acres, and little crabs that you get when you go to beach areas. There was a distinction between something that was considered an exotic or wild animal which you could not keep at all, such as a tiger, lion or elephant, and the ones that were not wild or exotic, but were not a commonly-accepted pet, like a dog or a cat. This fell in that category in between. It could be kept in Fairfax County, because it was not considered wild or exotic, but was not a commonly accepted pet. You have to have two acres to keep certain animals like chickens, geese and others.

Mr. Kanesaka presented the special permit request as outlined in the statement of justification submitted with the application. He presented a PowerPoint presentation to address most issues of the special permit, and he also had supplied handouts to the Board members. The presentation showed that chinchillas were from the family of rodents, their size ranged from 10 to 14 inches, with the tail being another 5 to 6 inches, they weighed 1 to 1.5 pounds, with a diet of grass hays, were odor free, and made no animal noise. His pictures showed the chinchilla was in a cage. The Fairfax County Animal Shelter provided a Foster Parent application which listed chinchillas as an option.

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

Mr. Byers moved to approve SP 2013-MV-072 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUBARU KANESAKA, SP 2013-MV-072 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 5902 Mount Eagle Dr, Unit 809, Alexandria, 22303, on approx. 1,120 sq. ft. of land zoned R-30. Mt. Vernon District. Tax Map 83-3 ((31)) (2) 809. 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 4, 2013; 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-30.
3. The area of the lot is 1,120 square feet.
4. The chinchilla is locked in a cage all day.
5. When the owners come home at night, it is in a locked apartment.
6. The Board has determined that although a chinchilla is not considered a commonly accepted pet, the County Attorney has made the determination it is neither a wild nor exotic pet.
7. The Board has also determined, at least according to the Fairfax County Animal Shelter, that they can be taken in under foster care.
8. This is delineated by the application or the permits that the Board saw that were put forward by the Fairfax County Animal Shelter.
9. Chinchillas make no noise.
10. The Board is also assuming that they have no odor based on the testimony that was presented before the Board.
11. They are commonly sold in pet stores.

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, Subaru Kanesaka, for the keeping of a chinchilla, and is not transferable without further action of this Board, and is only for the location indicated on the application, 5902 Mount Eagle Drive, #809 (1,120 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection by County Officials during reasonable hours of the day.

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.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. ANA SCHLOSSBERG, SP 2013-MA-074 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 6340 Oak Ridge Dr., Alexandria, 22312, on approx. 18,812 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 106.

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.

Ana Schlossberg, 6340 Oak Ridge Drive, Alexandria, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation. Staff recommended approval of SP 2013-MA-074 subject to the proposed development conditions.

Vice Chairman Hammack assumed the chair and asked if there were any questions of staff.

Mr. Hart, Mr. Hammack and Ms. Langdon discussed the development conditions, and the kitchen mentioned in the basement. Staff was okay with adding the word "all" to the beginning of Development Condition 8. There was another kitchen in the main living area. The basement kitchen was not an accessory dwelling unit, but used for the childcare.

Ms. Schlossberg presented the special permit request as outlined in the statement of justification submitted with the application. She made the following points. She had bought the house in 2004, and had been running the business there since 2005. She had already fulfilled all the regulations and standards for the Department of Human Services, so she had a license for seven. She held a license for twelve for many years, so it was not something new for her, and the neighborhood already knew she had twelve children in the past. Ms. Schlossberg had a letter supporting her application. They had a big area for parking and an area in the backyard. She passed inspection from the Fire Marshall and for the chimney. The Department of Human Services showed her record to be very good with minimal violations for more than twelve years. She wanted approval to go back to her regular capacity.

With questions from Mr. Hart, it was determined that Ms. Schlossberg had read the development conditions in the staff report, and was in agreement with them. She was okay with the modification to Development Condition 8, as the rules for her clients were that they were supposed to park in the driveway. She understood that the Fire Marshall said that the room which said Baby's Room on the drawing could not be a sleeping room. She had already moved the sleeping room to the room where the emergency exit was.

Chairman Hammack called for speakers.

The following people came forward to speak: Karen May, 6324 Oak Ridge Drive, Alexandria, Virginia, and Dennise Fath, 6343 Oak Ridge Drive, Alexandria, Virginia. They had several concerns, which included the following. They were concerned about eventually losing their R-3 zoning. It appeared to some people on Oak Ridge Drive that the house was modified, so that the attic was used as a separate apartment. They did not believe that the owner lived in the home, as they never saw her in the evenings or on the weekends. There was concern about traffic and noise. The parents did not park in the driveway. They did not have any sidewalks, and they were taking children out early in the morning on the street, which was a cut through people used to get to Lincolnia Road quicker. They did an internet search, and said that it appeared there were two daycares being run by the applicant.

Mr. Byers asked staff if they confirmed that the applicant lived in the residence. Ms. Langdon said that Ms. Haley did a site visit, and it appeared that the applicant was living there and was the sole owner of the property.

Ms. Schlossberg came back to the podium and said that she came for a special permit, had met all the requirements, and her personal life was not supposed to be part of getting the special permit. She said all the rest of the neighbors were fine with her daycare. She lived in the house, which was the only address she has had for many years. She said the reason she had another address before was because she got separated, closed her daycare for a few months, and went back to visit her country. When she came back, she again applied for her license, which she got for seven kids, and was now back in the house. She changed the name of her daycare, because she closed her business when she was gone.

Mr. Beard and Mr. Hart asked Ms. Schlossberg some questions to confirm her address at 6340 Oak Ridge Drive, Alexandria. She said people from Fairfax County came and saw that she lived there, and they also took pictures. She said she used the Woodbridge address of a friend to receive her mail while she was out of the country.

With more questions from Mr. Hart, Ms. Schlossberg said there was no apartment in the attic. There were two kitchens in the house, one in the basement for the daycare, and one on the first floor. She understood that if the Board approved her application, she would have to live there, and that she could not have any signs.

Mr. Byers asked Ms. Langdon about Ms. Schlossberg's state license, which had expired. He said he was trying to figure out if the Board would approve the special permit predicated on the fact that she had a state license. Ms. Langdon said no, that the state license was not required for the Board to approve the application.

Mr. Hart asked Ms. Langdon about what the Fire Marshall said Ms. Schlossberg had to do before she expanded to twelve children. Ms. Langdon said that Ms. Schlossberg put the window in already, and had a final inspection, so she was in conformance with what the Fire Marshall wanted.

Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2013-MA-074 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANA SCHLOSSBERG, SP 2013-MA-074 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 6340 Oak Ridge Dr., Alexandria, 22312, on approx. 18,812 sq. ft. of land zoned R-3. Mason District. Tax Map 72-1 ((7)) 106. 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 4, 2013; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. The Board recognizes that there is some opposition, but believes that, to the extent that the approval is limited to what is allowed in the development conditions, they satisfactorily address the impacts on the neighborhood.
5. The Zoning Ordinance contemplates a number of non-residential type uses already within the R-3 District and similar districts.
6. A childcare in a home is one of those uses that is already authorized by the Board of Supervisors, subject to the public hearing process and a vote to approve it.
7. Allowing a special permit for a childcare in the zoning district does not change the zoning. It does not have anything to do with whether the zoning would be changed to commercial or something else. That is a separate process, and the granting of a special permit does not affect that.
8. To the extent that the appearance of the property would have to remain residential, the Board thinks the conditions required in Development Condition 2, that basically what is there now is all that is being approved.
9. Although the Board is requiring that all the pick-up and drop-off take place in the driveway and that there are going to have to be six parking spaces within the areas of existing paving, there is not going to be a change to the front yard with a parking lot or service drive or something like that.
10. Basically the appearance of the improvements there now and what is drawn on the plat, that is all she is getting approval for. That is all that there is.
11. With Development Condition 10, there will not be any signs.
12. It will not look any different than it is now.
13. The house is the same size.
14. The driveway is the same size.
15. There is no sign to it.
16. If there are issues with whether she lives there or not, that would be an issue for enforcement for Development Condition 6. The Board is requiring that she live in it.
17. The Board thinks that they have covered the anticipated impacts, or at least within these parameters.
18. If something else is going on, that is a separate matter. That would be for a zoning enforcer.
19. The Board also thinks that one of the observations that they make on these cases sometimes is that whether the Board approves this or not, the operation can take place with seven children anyway.
20. The question for the Board is really should it be seven children unregulated or twelve children subject to these development conditions requiring that she live there, that the parking all be onsite, that the drop-offs and pickups be in the driveway, that there will not be a sign, and all these other things.
21. For the most part, when the Board looks at these on a case-by-case basis, assuming that the lot is big enough and everything else works, it is usually less impact on the neighbors to have twelve with these limitations on the operation than seven by right unregulated.

22. The Board thinks that this is one of those examples, where the neighbors are better protected with the restrictions on the applicant, even though more children 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, Ana Schlossberg, only and is not transferable without further action of the Board, and is for the location indicated on the application, 6340 Oak Ridge 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 plat entitled, "House Location Survey Lot 106, Section Two, Lincolnia Heights," prepared by L.S. Whitson of A.L.S., dated February 4, 2005, as revised by Ana Schlossberg on September 5, 2013, 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 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.
5. The room identified as "Play Room and Sleep Area" on the floor plan attached to the special permit plat shall be the only room used for sleeping.
6. The dwelling that contains the child care facility shall be the primary residence of the applicant.
7. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
8. All pick-up and drop-off of children shall take place in the driveway.
9. A minimum of six parking spaces shall be provided on the subject parcel within the areas of existing paving.
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, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Theodore seconded the motion, which carried by a vote of 6-0. Chairman Ribble was not present for the vote.

//

Chairman Ribble resumed the Chair.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. ROBERT HUNTER MOORE, SP 2013-MA-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.9 ft. from a front lot line. Located at 6317 Eppard St., Falls Church, 22044, on approx. 17,413 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 13.

Chairman Ribble called the applicant to the podium.

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

William Simon, 312 West Juniper Avenue, Sterling, Virginia, the applicant's agent, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-MA-070 subject to the proposed development conditions.

Mr. Simon presented the special permit request as outlined in the statement of justification submitted with the application. He stated the following. The applicant wanted to take the existing carport and change it into a two-car garage with storage above, since there were no storage buildings on his property. He wanted to get both cars out of a single-car driveway. Then he would not have to move both cars when trying to get one out, and in the winter would not have to brush the snow off, as he was getting up in age, and was by himself. The applicant felt he would have more security, because instead of having an open carport, he would have a closed-in garage, where he could store his belongings without worrying that they would be stolen or taken.

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

Ms. Theodore moved to approve SP 2013-MA-070 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT HUNTER MOORE, SP 2013-MA-070 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.9 ft. from a front lot line. Located at 6317 Eppard St., Falls Church, 22044, on approx. 17,413 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 13. Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 2013; and

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

1. The applicant is the owner of the land.
2. The Board has a favorable staff recommendation.
3. The Board supports those findings.
4. The Board has not heard of any concerns from neighbors or adjacent homeowners.
5. The staff report reflects that the proposal to replace the existing carport with the garage meets the various applicable Zoning Ordinances.
6. The proposed conditions do address tree protection and other 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 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 garage addition (663 square feet), as shown on the plat titled "Special Permit Plat, Lot 13, Section 1, Sleepy Hollow Manor," prepared by Larry N. Scartz, L.S., of Scartz Surveys dated February 7, 2013, as revised through March 20, 2013, 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 (2,122 square feet existing + 3,183 square feet (150%) = 5,305 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. Prior to commencement of, and during the entire construction process, the applicant shall install tree protection fencing at the drip lines of existing small landscape trees and at the drip line of the existing large deciduous tree located southwest of the dwelling in the front yard, to protect these trees from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
5. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
6. The extension of the asphalt driveway to accommodate a new two-car garage shall be generally consistent with the drawing contained in Attachment 2.

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, 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.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. SHAFIQ, MUHAMMAD, SP 2013-MV-071 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 8001 Lynnfield Dr., Alexandria, 22306, on approx. 14,387 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 20. (Concurrent with VC 2013-MV-017).

SHAFIQ, MUHAMMAD, VC 2013-MV-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8001

Lynnfield Dr., Alexandria, 22306, on approx. 14,387 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 20. (Concurrent with SP 2013-MV-071).

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.

Shafiq Muhammad, 8001 Lynnfield Drive, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-MV-071, subject to the proposed development conditions.

Mr. Byers and Ms. Gumkowski discussed removal of 1.5 percent of concrete, so a variance would not be needed.

Mr. Hart and Susan Langdon, Chief, Special Permit and Variance Branch, discussed lot width requirements and whether the property was a substandard lot. Ms. Langdon said she did not believe it was a substandard lot.

Mr. Beard, Ms. Langdon, and the applicant discussed whether permits had been obtained for all improvements. Mr. Muhammad indicated they had been.

Mr. Smith, Mr. Hart, and the applicant discussed the unnecessary hardship component of a variance, the cost to remove a portion of concrete, what the concrete areas were utilized for, and the cost of filing a variance application.

Mr. Hart, Mr. Hammack, and Bruce Miller, Zoning Inspection Branch, discussed the nature of the complaint received, steps which had been taken to resolve some of the violations, and whether approval of the applications would resolve any remaining violations. Mr. Miller said the special permit and variance would resolve all of the outstanding zoning violations, with all other issues having been resolved already.

Mr. Hart and the applicant discussed the wet bar referenced in a 2006 building permit and whether the kitchen in the basement accessory dwelling unit for the applicant's mother was the same as the wet bar. Mr. Muhammad indicated they were not the same.

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

Mr. Smith moved to deny VC 2013-MV-017 for the reasons stated in the Resolution.

Mr. Hart seconded the motion. He said the applicant had been candid with the justification for the variance as being predominantly money. Mr. Hart said the Board could consider that on a mistake in building location, but the Court had told them finances were not a justification for a variance. He said there was no extraordinary condition. It was a rectangular corner lot. The functions of the paved areas in the rear yard were not necessary, as far as going toward the front door to the house, or where they would have to have it to make the house work. There was a walkway which went to a gate in the back, and the slab for the shed was bigger than it needed to be. Mr. Hart said that somewhere in there 1.5 percent could be shaved off. He said that because the application did not meet the standards, particularly for an extraordinary condition, the variance was not something the Board could grant. He thought maybe they could give Mr. Muhammad a little more time on the special permit to ease things.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SHAFIQ, MUHAMMAD, VC 2013-MV-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8001 Lynnfield Dr., Alexandria, 22306, on approx. 14,387 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 20. (Concurrent with SP 2013-MV-071). 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 4, 2013; 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 14,387 square feet.
4. The Board is moving to deny the variance in this case.
5. Thinking through all the different variance applications that have been before the Board, it is very unfortunate that this is such a small infraction here.
6. The Board hopes that the applicant can find a quote that is less than the quote that he has gotten.
7. It seems like a relatively minor change to modify that walkway and that pad to correct this issue without it impacting the concrete slab or the shed in the workshop building.
8. The Board recently had with a swing set in the backyard that looked a little bit like this corner lot, although in that case it was a through lot because of the configuration.
9. Here there is a corner lot that meets the lot requirements in terms of size and width.
10. The Board is having a hard time finding a justification under the Ordinance to grant a variance in this case.
11. Whether it is truly an unnecessary hardship, the Board is very sympathetic to the situation that the applicant referenced being currently unemployed and that there will be some cost to do this, considering the cases where the Board had or had not granted variances and other circumstances that the Board can think of that were even similar to this where permits had been issued where it would truly have been a significant hardship.
12. The Board is recalling a swimming pool in the past that might be so much similar where a variance had been granted.
13. In this case, the Board does not see that same level of hardship to make the correction.

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

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

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

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

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

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

//

Mr. Smith moved to approve SP 2013-MV-071 for the reasons stated in the Resolution.

Mr. Hart, Mr. Smith, Mr. Hammack, Mr. Byers, and Ms. Langdon discussed the possibility of giving the applicant more time to resolve the yard coverage issue, the time and costs involved, and the means to grant the additional time through the special permit. It was decided the Board would take action on the original motion with no amendments.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHAFIQ, MUHAMMAD, SP 2013-MV-071 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 8001 Lynnfield Dr., Alexandria, 22306, on approx. 14,387 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((33)) 20. (Concurrent with VC 2013-MV-017). 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 4, 2013; 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 14,387 square feet.
4. This is an application to accommodate the applicant's 74-year-old mother.
5. The mother does not have a car, so it will have a modest size impact as far as the dwelling unit is concerned.
6. It meets the requirements of the Zoning Ordinance for accessory dwelling units.
7. It has been inspected by the County staff.
8. The staff has recommended approval.
9. The Board adopts the staff's rationale in this case.
10. The Board has not heard any concerns from neighbors, as well.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded

conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

2. This approval is granted to the applicant only, Muhammad Shafiq and/or Rubina Shafiq, and is not transferable without further action of this Board, and is for the location indicated on the application, 8001 Lynnfield Road (14,387 s.f.) and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat titled "Special Permit Plat, Lot 20, Williamsburg Manor North," prepared by Prem K. Bhandari, of AMA Engineers, LLC., dated June 5, 2013 and revised through October 22, 2013, as 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 in the accessory dwelling unit and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 398 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for kitchen components in the accessory dwelling unit.
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 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.
11. All parking shall be provided on site as shown on the special permit plat.
12. All portions of the wooden fence currently in the front yard along Parkers Lane shall be reduced to a maximum of four feet in height.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six 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 7-0.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. WILMER CARCAMO, SP 2013-LE-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit dwelling to remain 16.4 ft. from rear lot line and such that side yards total 16.3 ft. and accessory storage structure to remain 2.1 ft. from side lot line and 4.9 ft. from rear lot line. Located at 6916 Lodestone Ct., Alexandria, 22306, on approx. 8,874 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((10)) 8083. (*Admin. moved from 11/6/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Wilmer Carcamo, 6916 Lodestone Court, Alexandria, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Jack Blair, from the Department of Code Compliance was there to answer any questions related to the notice of violation.

There were questions and discussion between Board members and staff, where the following was determined. There was an issue about the protrusion on the rear of the house. The addition onto the rear of the structure did not meet the minimum rear yard setback. Because of the enclosure of the carport, the total minimum side yards were no longer met. There was nothing in the street files which showed a record of a building permit request or approval for the addition in the back.

The applicant came forward, and Mr. Beard asked if they could just start with questions. From the questions, the applicant indicated the following. The carport was already enclosed when he went for the building permit. When a neighbor asked him whether he had permits, he realized he had to apply for them. The extension in the back of the house was done three or four years ago, and it was after the carport.

Discussion and questions continued with Board members, staff, staff from the Department of Code Compliance and the applicant. A complaint was received from someone in the neighborhood, saying there was multiple occupancy, which turned out to be unfounded. It was at that time, they discovered the carport, shed, and construction.

The shed was attached to the ground with a foundation. It was made of concrete and four by fours. The applicant had built the shed himself, and it had been there for almost six years. He indicated the shed could be shifted off its location, and there was no electricity or plumbing in it. The applicant was in the construction industry, but did not have a license. He did the work himself for the carport and addition.

The applicant had filled out the building permit application in 2004, and waited for four or five years. He never received a copy that said whether it was denied and needed a variance. He said he thought the next step was to wait for complaints.

The applicant did not know he needed a building permit for the addition. The addition on the back was on a foundation, which was designed by the applicant. The concrete was there already, because there was a porch which had been there when he got the home in 1998. The addition was the same size and in the same place as the porch had been.

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

Mr. Beard moved to approve SP 2013-LE-063, denying the shed, for the reasons stated in the Resolution.

Discussion ensued regarding the development conditions.

Mr. Beard amended the motion to approved-in-part.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILMER CARCAMO, SP 2013-LE-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit dwelling to remain 16.4 ft. from rear lot line and such that side yards total 16.3 ft. and accessory storage structure **(THE BZA DID NOT APPROVE THE SHED.)** to remain 2.1 ft. from side lot line and 4.9 ft. from rear lot line. Located at 6916 Lodestone Ct., Alexandria, 22306, on approx. 8,874 sq. ft. of land zoned R-3 Cluster. Lee District. Tax Map 92-1 ((10)) 8083. (Admin. moved from 11/6/13 for notices.) 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 December 4, 2013; 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 real concern and is torn with these additions and situation.
3. The dilemma of the Board is that it feels these were not done in good faith, as the testimony has indicated.
4. There have been others in the area who have been allowed to do this within the general distance parameters that are found in this case, although the Board certainly does not want to sound like it is establishing any type of precedent here pursuant to people not moving through the process as called for with the County.
5. The Board determines each case on a case-by-case basis.
6. The Board finds it very troubling that once the permit was denied for the enclosure of the carport that the applicant proceeded to build basically an addition onto his house, although that is somewhat mitigated by the fact that he took an existing porch, if you will, and turned it into a room.
7. To the reality, if you will, is if this were to be turned down here, this would be a dramatic impact upon the applicant from the standpoint of what would have to happen to bring this into compliance unless again he took it to court.
8. The Board thinks the reality is that this probably should go on forward, subject, of course, to Development Conditions, subject to all necessary inspections from the County.
9. Once they go out and inspect, as Mr. Hart pointed out, perhaps they will find out there are not footings and the thing might have to be taken down anyway or a drastic modification to it.
10. One of the issues was the moving of the shed, which the Board understands was the crux of the grievance of neighbors, which is now going to be taken care of.

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

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

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This special permit is approved for the location of the addition and carport enclosure as shown on the plat prepared by Joseph W. Bronder, Land Surveyor, of DiGiulian Associates, P.C., dated November 19, 2010, as revised through May 11, 2013.
2. All applicable permits and final inspections shall be obtained for the addition and carport enclosure within 180 days of 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.

Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. ELIZABETH RAMIREZ, SP 2013-LE-073 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 7107 Loisdale Rd., Springfield, 22150, on approx. 8,750 sq. ft. of land zoned R-4. Lee District. Tax Map 90-4 ((6)) 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.

Jaime Ramirez, 7107 Loisdale Road, the applicant's husband, came forward. As he did not take the oath, it was administered to him, and he reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Due to the onsite parking and transportation issues, staff recommended denial of SP 2013-LE-073. Transportation staff was present to answer questions.

There was concern from the Board that students were being dropped off in places other than the driveway. Alan Kessler, Fairfax County Department of Transportation, said the primary pickup and drop-off was in the driveway. and the secondary pickup and drop-off was along northbound Loisdale Road, where there was on-road parking.

On one field visit, Mr. Kessler said, there was an incident where there were two vehicles parked in the driveway, and a third vehicle tried to enter the driveway. When the third vehicle realized that there was no room to enter, it stopped short on northbound Loisdale Road. The car behind them honked their horn, and drove into the center lane where there was a two-way, left-turn lane. At the same time, Mr. Kessler observed that a child from the childcare was behind the second car in the driveway, between that car and the sidewalk. The third car proceeded on Loisdale Road, and parked on the on-street parking, which was where they picked up their students.

Ms. Langdon, Chief, Special Permit and Variance Branch, said staff was concerned, because Loisdale carried such a heavy volume of traffic, being over 10,000 vehicles a day. It was an arterial road, a very small driveway, and there were cars parked up and down the street all day.

In response to questions from the Board, staff gave the following information. There was no sidewalk going from the driveway to the house, so you would walk along the driveway to the house. The only sidewalk went to the front of the house near the road. The driveway was only wide enough for one car. People had to back out into Loisdale Road after drop-off and pickup. The speed limit was thought to be 30 or 35, but vehicles seemed to exceed that limit. Cars backing out of the driveway could have a problem seeing what was happening on Loisdale Road, if there were cars were parked at the curb. They had to look upstream to see if there was an available gap to be able to back out of the driveway safely. There was not enough room to create a turnaround in the front yard, because it would exceed coverage in the front yard. An existing plat from 1989 was being used for this hearing along with pictures.

Mr. Ramirez presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Raimierz said his wife had a state license for 12 children.

Mr. Hammack asked Mr. Ramirez if he would like to have the opportunity to explore other options to address the issues that staff was concerned about before the Board made a decision. Mr. Ramirez said yes.

Chairman Ribble called for speakers in support of the application.

The following people came forward came forward to speak: Susan Conduff [phonetic]; Chris Kingsland, 7594 Ruxton Drive, Springfield, Virginia; and, Stephanie Ramirez, 7107 Loisdale Road, Springfield, Virginia. They made the following main points. They did not have any of the issues which were brought up, as far as pulling in and backing out of the driveway or the level of traffic on Loisdale Road. There were a lot of siblings that went to the child care, so one car might be picking up two children. The applicant was always very concerned with making sure the parents held their children's hands. Sometimes child care staff personally brought children to the vehicles. If there was another parent in the driveway, the applicant would routinely park on the side street parking. The hours for the assistant could be modified to arrive earlier, which would help the parents when they come for drop-off.

In response to questions from Mr. Hart, Ms. Ramirez said the family cars were gone from the driveway no later than 8:30 a.m. and sometimes as early as 7:00 a.m. There were three people who lived in the house. There were two cars for the family and one additional car that was always left in case of an emergency to transport the children. The additional car was parked on the street near the border line with the neighbor on the curb. The employee had a car, and parked on the street.

Chairman Ribble called for speakers in opposition.

Susan Day, 6709 Jerome Street, Springfield, Virginia, came forward to speak. She made the following main points. The Loisdale Estate subdivision had homes that were over 50 years old, and Loisdale Road was one of the busiest roads in the area. Loisdale Road led to the Springfield Mall to the north, which was presently under redevelopment, there were other commercial businesses already developed and active, and there were multiple office parks. She also noted that there would be a car dealership located next to the Aquino family home. This was a heavily-traveled area by privately-owned vehicles, as well as commercial vehicles. The home had signage on it in the window at the front. The streets were designed for single-car driveways and garages, yet in today's world they had multiple cars per household, causing overflow parking on the street.

Responding to questions from Board members, Ms. Day said she lived on the interior in the back of the subdivision, and had to travel on Loisdale Road every day when she left her home. She lived there for four years. She said the sign on the house said "Childcare Facility".

Stephanie Ramirez came back to answer in rebuttal for her mother. She said the sign was taken off approximately two years prior. They had parents who parked further down, and walked their children holding their hands. She did not see why that would be an issue. She said she had also parked her car further down to let the parents come in for drop-off or pickup. Her mom had that daycare for 21 years.

Chairman Ribble closed the public hearing.

Discussion ensued regarding a motion. There were concerns about the traffic, but if the application was denied, the applicant could still have seven children under the Fairfax County Ordinance. It was thought that the applicant might want more time to address the concerns of staff, and perhaps transportation could go out and take another look.

Mr. Hammack moved to defer decision on SP 2013-LE-073 to February 5, 2014, at 9:00 a.m., to reconsider the traffic situation. Mr. Smith seconded the motion which carried by a vote of 4-2. Chairman Ribble and Mr. Beard voted against the motion and Mr. Byers was not present for the vote.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. FUTURE STAR, LLC, SP 2013-PR-051 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 1909 Hull Rd., Vienna, 22182, on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((10)) (3) 3. (Admin. moved from 9/25/13 for ads.) (Admin. moved from 10/30/13 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Jane Kelsey from Jane Kelsey and Associates, Inc., the applicant(s)' agent, 4041 Autumn Court, Fairfax, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-PR-051 subject to the proposed development conditions.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said, the applicant agreed with staff's recommended development conditions, and also agreed with the word "all" included in Condition Number 6. She made the following points. They believed this application met all of the general standards for a special permit, as well as the additional conditions as set forth in the Zoning Ordinance. It fit very well in the community. They never had problems with this use.

There was a letter from nine of the other property owners on Hull Road, saying that they had no problems with the application and supported it.

The daycare had been in operation since 2005, about eight years, with the applicant having been in operation for 20 years. They did not believe there had been any adverse impacts generated by this use, and there were letters of support from all the parents who raved about the superior care. There were no problems with parking. They parked in the driveway, and there was very little traffic on Hull Road. All of the applicant's vehicles and her employees' vehicles were parked in the garages. The childcare center was accessed from the rear of the house.

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

Mr. Hart moved to approve SP 2013-PR-051 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FUTURE STAR, LLC, SP 2013-PR-051 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 1909 Hull Rd., Vienna, 22182, on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((10)) (3) 3. (Admin. moved from 9/25/13 for ads.) (Admin. moved from 10/30/13 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 December 4, 2013; 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 recommendation of approval.
3. The Board adopts the rationale in the staff report.
4. This appears to be a nice big lot.
5. There is plenty of room to turn around.
6. There is plenty of room for cars.
7. There is plenty of room for children to play.
8. There doesn't appear to be any opposition to this.
9. The Board has many letters from the parents or the community in support of it.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Future Stars L.L.C., only and is not transferable without further action of the Board, and is for the location indicated on the application, 1909 Hull 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 Dominion Surveyors, Inc., dated June 27, 2005, as revised through August 14, 2013, signed by George M. O'Quinn, Land Surveyor, 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 hours of operation of the home child care facility shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday.
5. The maximum number of children on site at any one time shall be twelve (12), excluding the applicant's own children.
6. All pickup and drop-off of children shall take place in the driveway.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
8. 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, six 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 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. Hammack and Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

//

~ ~ ~ December 4, 2013, Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, A VIRGINIA CORPORATION, SPA 99-Y-065-03 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-065 previously approved for a place of worship and child care center and/or private school of general education to permit increase in students, addition of temporary structures and modifications of development conditions Located at 15450 Lee Hwy., Centreville, 20120, on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Admin. moved from 11/20/13 at appl. req.)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that he lived in the neighborhood to the rear of the site, 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.

Mr. John Rinaldi from Christopher Consultants, Ltd., 9900 Main Street, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 99-Y-065-03, subject to the proposed development conditions.

Mr. Rinaldi presented the special permit request as outlined in the statement of justification submitted with the application. He made the following main points. He thought that they had come to a solution that served everyone's needs, which was to serve the community, and with a school function for their future children. He noted that they had met with the Sully District Council land-use committee on two occasions, and they voted their support and approval for the project. They agreed with everything in the staff report, except for Development Condition 29. He wanted staff to consider eliminating or modifying it, as it had to do with safety. The applicant requested a sidewalk from either entrance on Route 29 on their site connecting into the front of the building. In this case, there was a sidewalk that went around the church building, so if you parked your car you could walk to the church and the school. Mr. Rinaldi thought that putting in the sidewalk link at that time would encourage children and pedestrians to walk to the end of the walk, and then have no other alternative to walk on the side of a busily-traveled roadway. He suggested waiting until there were sidewalks coming in from the other arterial road which their sidewalk could connect to.

In response to questions from Mr. Hart, Mr. Rinaldi said there was a trail that went from the southern portion of the driveway, and people could use that to walk to the church if they wanted to.

In response to Mr. Hart's request to address the rationale for the connection, Alan Kessler, Fairfax County Department of Transportation, said that he was out there on a field visit when someone had parked across the street at the Korean church, and two people walked across Route 29, walked up to the applicant's church, and then went on the trail for a nice walk. He thought that showed the need for a sidewalk connection, and said that Transportation liked to connect sidewalks to sidewalks.

In response to questions from Mr. Hart, Mr. Rinaldi said they met earlier in October with the Urban Forester, and he had brought up concern about plantings. The plantings were subsequently done by the end of October. With respect to the fence along the property line, Mr. Rinaldi said it was brought up at an early meeting with Sully District Council regarding concern about people utilizing the church and the school parking in the neighborhoods behind the church. They worked with the Sully District Council, and it was addressed in Development Condition 30. Mr. Rinaldi said they would remind people that parking offsite would be a violation.

In response to a question from, Mr. Beard, Mr. Rinaldi said that they had a traffic analysis done by Wells & Associates, and according to the analysis, the increase from 120—which they had currently—to 300 should not be an issue. They had a maximum of 25 cars onsite for some of the staff, and there would be three different color-coded, drop-off areas from 7:45 to 8:00 a.m. They also did not have any afterschool activities at the site. Ms. Horner said that the Transportation Division did not identify the parking as an issue.

Mr. Beard wanted to know if there were any police out there on the weekdays like they had on Sundays. Mr. Kessler said no, they were not there during the week. Ms. Langdon said that there was a traffic light at the entrance on Route 29. Mr. Kessler said that there was a traffic light at the main access and a right-turn lane, which served the site with a left-turn lane on Route 29. They also had plenty of storage for vehicles for the site.

Ms. Theodore wanted to make sure that she understood the Department of Transportation's staff position on Development Condition 29, which was that it should remain. Mr. Kessler said yes.

Chairman Ribble wanted to know if the trail was a homeowner's association trail that dead ended into the church driveway. Mr. Rinaldi said that was correct. He suggested for pedestrian connectivity for people walking from the neighborhoods who took that trail down at that corner, was that the church could provide that missing link to the sidewalk. Chariman Ribble asked if they were entering private property to get on the trails, and Mr. Rinaldi confirmed that.

Ms. Horner said that staff's position was that a sidewalk would definitely be needed. It was an identified play area for the children within the easement, and there was no sidewalk to take the children there from the school. Transportation identified a need for the entire portion, but staff noted that there was also a need to get the children from the school to their identified play area.

There was more discussion between the Board, staff and Mr. Rinaldi concerning the request for the change to the development condition. Ms. Langdon thought they disagreed a bit on the safety issue. She agreed that it was legal to walk down the trail to the driveway whether there was a sidewalk or not, and cross Route 29 at the stoplight to go to the Korean church, because the trail was located within an easement.

Mr. Rinaldi said he just wanted to note that across the street, that trail was drawn on the Comprehensive Plan and it ends on both sides. He said you could not go anywhere, so he was not sure how people could walk to the Korean church from the neighborhoods.

Chairman Ribble called for speakers in support of the application.

Beth Baron, 24815 Wind River Drive, Stone Ridge, Virginia in Loudoun County came forward. Her main points were that she was born and raised in Fairfax County, and her daughter went to the school. She was currently president of the parent association at AdFontes Academy. It was their fifth year at the school. They were very excited for this opportunity, as the most important thing for any school was to have all the students, parents and faculty together on one campus. She said, as a parent, she would never want her daughter walking towards Route 29, as it was very busy. In her five years, she had never seen any pedestrians walking across Route 29, and it was not safe. She said the playground area was important, but did not see any reason to carry on the sidewalk to Route 29.

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

Ms. Theodore moved to approve SPA 99-Y-065-03 for the reasons stated in the Resolution.

Discussion ensued regarding the sidewalk and traffic.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE PRESBYTERIAN CHURCH, A VIRGINIA CORPORATION, SPA 99-Y-065-03 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-065 previously approved for a place of worship and child care center and/or private school of general education to permit increase in students, addition of

temporary structures and modifications of development conditions Located at 15450 Lee Hwy., Centreville, 20120, on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Admin. moved from 11/20/13 at appl. req.) Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 4, 2013; and

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

1. The applicant is the owner of the property.
2. The major issue of contention here is there are a number of modifications to the original special permit, which it appears that the applicant agrees to.
3. The Board has talked a lot about the Condition 29.
4. The Board proposes that it maintains that condition.
5. The Board understands the concerns about not wanting to encourage children to go to a busy highway, but there are the broader goals of the County to have linkages.
6. The Board thinks it should maintain that provision and proposes to keep that as a condition of approval.
7. The other issue is with respect to traffic.
8. The applicant did include a traffic analysis.
9. It determined that with the increase of students there is still the left-turn lane and the ingress and egress is adequate to accommodate the addition of students.
10. The traffic increase issues with the addition of students was also supported by the Department of Transportation staff.
11. The Board is only aware of one issue of concern being raised or one letter being sent to staff raising concerns about the amendment and the possible precedent set.
12. The Board would note that, while it does look to pass decisions for guidance, the Board is looking at each of these proposals on a case-by-case basis as the Board is here.

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 Centreville Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 15450 Lee Highway, consisting of 20.38 acres, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William M. Robson, dated September 13, 1999, as revised through November 21, 2013 by Lindsay E Burleigh, Landscape Architect, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats within the main area of worship shall not exceed 400 at the

completion of Phase 1 with 158 parking spaces, 500 at the completion of phase II with 190 parking spaces, 650 at the completion of Phase III with 250 parking spaces, and 1200 seats at the completion of Phase IV with 435 parking spaces, as shown on the special permit plat.

6. The total maximum daily enrollment for the child care center shall be 99 or private school of general education shall be 300. Either use may operate on the site; however they shall not operate concurrently. The school may include grades K through 12.
7. The hours of operation for the child care center or private school of general education shall not exceed 6:30 a.m. to 7:00 p.m., Monday through Friday.
8. The total height of all structures on site, including the steeple, shall not exceed 45 feet.
9. Any outdoor lighting shall be in conformance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property,
 - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, and
 - Up-lighting of buildings or signs shall not be permitted on the site except at the recessed entrances to the building.
 - Lighting for temporary modular buildings shall be limited that which is required for safety only and shall be in conformance with Article 14 of the Zoning Ordinance.
10. At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by Urban Forest Management. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate drip line, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the most current edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space, and to preserve additional trees near these limits where such preservation is determined to be both feasible and desirable by Urban Forest Management. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.
11. Transitional screening shall be as shown on the special permit plat along the northern, eastern and western property boundaries and shall consist of natural vegetation, supplemented with landscaping as shown along the western property boundary, subject to the review and approval of Urban Forest Management of DPWES. A 3 foot high landscaped area 25 feet wide with a berm shall be provided along the southern property boundary and a landscaped area between the eastern parking lot and the TRANSCO easement shall be planted using a combination of deciduous and evergreen trees, and understory plant materials to soften the view of the building. The size, number, and type of plant materials shall be subject to the review and approval of Urban Forestry Management of DPWES. The barrier requirement along all property boundaries shall be waived.
12. To the maximum extent feasible, as determined by DPWES, all stormwater runoff from impervious surfaces shall be conveyed to BMP facilities. If feasible, each stormwater management facility shown on the Special Permit plat shall be designed as a BMP facility, as determined by DPWES. The facility to the south of the parking lot may be provided as a bioretention facility, subject to the approval of DPWES.

13. The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. 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 Urban Forestry Management, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible for that phase as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between the DPWES, including Urban Forest Management, 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, and the erosion and sedimentation control plan to be implemented during construction during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Notwithstanding the limits of clearing and grading shown on the plat, the TRANSCO Pipeline easement shall not be cleared, except for the minimum amount of clearing needed to provide the stormwater management pond access road as qualified by Condition 13.
14. Construction of the church shall be in general conformance with the architectural elevation contained in Attachment A, as determined by DPWES.
15. All signs shall be in conformance with Article 12 of the Zoning Ordinance.
16. The use of loudspeakers shall not be permitted outside the building.
17. Four parking spaces located adjacent to the building containing the child care center shall be reserved for the pick-up and drop-off of children only, during the hours of operation of the child care center or private school of general education.
18. A play area shall be provided which meets the standards set forth by Section 9-310 of the Zoning Ordinance prior to the issuance of a Non-RUP for the child care center or private school of general education. The play area shall be located outside the minimum required front yards, transitional screening areas, and parking. The maximum number using the playground shall not exceed one child per 100 square feet of area of the play area at any one time for the private school of general education. Play equipment shall be provided at the time that grades k-3 are implemented.
19. Areas designated as undisturbed open space shall remain free of structures. Undisturbed open space adjacent the proposed outdoor recreation area shall be posted with signage so that children do no play in undisturbed areas.
20. Parking lot trees which are not in satisfactory condition to be counted toward the ten year canopy credit shall be replaced by the end of the planting season after approval of this permit as determined by Urban Forest Management of DPWES.
21. Areas of barrier and transitional screening shall be maintained to the satisfaction of Urban Forest Management of DPWES.
22. A minimum of 50% of the site, as shown on the plat, shall be maintained as undisturbed open space.
23. The fire pit shall be located outside of undisturbed open space and shall conform to all fire codes. The use of the fire pit is subject to the following restrictions:
 - An adult must be present at all times during the use;
 - There shall be written procedures for the extinguishing of the fire and the procedures shall be present during all use of the fire pit;
 - An emergency liaison for the church shall be established and contact information for that liaison shall be provided to the adjacent neighborhood and listed on the church website;
 - A water extinguisher shall be provided during all use of the fire pit.
24. The temporary modular building is approved for not more than eight years from the date of special permit approval or until commencement of construction of Phase III of the church building, whichever occurs first.

25. The temporary modular building shall be constructed in general conformance with the architectural rendering shown in Attachment A.
26. All HVAC equipment to service the temporary modular building shall be screened and covered to reduce noise from encroaching on adjacent neighbors to the north, or they shall be placed on the southern side of the modular building.
27. The applicant shall install all plant materials shown to be existing on the special permit plat, to the satisfaction of the Urban Forest Management Division, prior to occupancy of the temporary modular building.
28. An additional five feet of right-of-way shall be dedicated along the southern property line from the edge of the western drive entrance to the eastern edge of the property to the satisfaction of the Fairfax County Department of Transportation prior to occupancy of the temporary modular building. The applicant may apply for a trail waiver through the Department of Public Works and Environmental Services and, if approved, the waiver shall satisfy this requirement.
29. A sidewalk shall be provided along one of the drive entrances to the front of the church building to the satisfaction of the Fairfax County Department of Transportation prior to occupancy of the temporary modular building.
30. The church and school shall periodically make announcements and post in their bulletins that all parking for the use shall be on site and that parking, for the purposes of the church or school use (including Boy Scout activities) on Smiths Trace is prohibited and constitutes a violation of this special permit.

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

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. 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 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. Hart seconded the motion, which carried by a vote of 5-0. Mr. Byers and Mr. Smith were not present for the vote.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:35 p.m.

Minutes by: Lorraine A. Giovinazzo

Approved on: September 21, 2016


 Lorraine A. Giovinazzo, Clerk
 Board of Zoning Appeals


 John F. Ribble III, Chairman
 Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, December 11, 2013. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr., V. Max Beard; Sharon Theodore; James R. Hart; Norman P. Byers; and Thomas Smith.

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.

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA, VC 2013-DR-018 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. ft. or less. Located at 1620 Brookside Rd., McLean, 22101, on approx. 28,616 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 30B. (Concurrent with SP 2013-DR-075).

9:00 A.M. STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA, SP 2013-DR-075 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1620 Brookside Rd., McLean, 22101, on approx. 28,616 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 30B. (Concurrent with VC 2013-DR-018).

Chairman Ribble called the applicants to the podium.

Mr. Hart made a disclosure, 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.

Steven Rademaker, 1620 Brookside Road, McLean, Virginia, reaffirmed the affidavit.

Erin Haley, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-DR-075, subject to the proposed development conditions.

Mr. Rademaker presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He was unaware that the swing set he erected on the property was considered to be in a front yard. Mr. Rademaker said dismantling it would cause a great hardship. He presented a petition with over 100 signatures from neighbors who supported retention of the fence and swing set.

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

Mr. Byers moved to approve SP 2013-DR-075 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA, SP 2013-DR-075 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height in front yard of a corner lot. Located at 1620 Brookside Rd., McLean, 22101, on approx. 28,616 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 30B. (Concurrent with VC 2013-DR-018). 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 11, 2013; and

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

1. The owner of the property is the applicant.
2. The zoning is R-2.
3. The area of the lot is 28,616 square feet.
4. This fence is located 0.1 feet, not on the applicants' property. It is on the adjacent property owners' property.
5. The Board received a letter from Blair Marshall, M.D., who is the immediate neighbor, at 5914 Chesterbrook Road.
6. He indicated that there is absolutely no issue with the location of the fence.
7. In fact, it probably would become an eyesore because the fence is within the offset as opposed to being parallel. The Board understood why it was done.
8. Having dealt with surveyors, who are all really good people and do a great job, if another surveyor was obtained and went out, that fence would be on the subject property. 0.1 is so minute that people make mistakes; not intentionally.
9. It is so close you really cannot tell the difference.

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 granted only for the purposes, structures and/or uses indicated on the plat "Variance Plat, Lot 4, Section One, Chesterbrook Woods" prepared by Timothy J. Farrell, Land Surveyor, of B.W. Smith and Associates, Inc., dated January 22, 2013, signed June 4, 2013, and approved with this application, as qualified by these development 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.

Ms. Theodore seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Hart recused himself from the hearing.

//

Mr. Byers then moved to approve VC 2013-DR-018 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA, VC 2013-DR-018 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. ft. or less. Located at 1620 Brookside Rd., McLean, 22101, on approx. 28,616 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 30B. (Concurrent with SP 2013-DR-075). 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 11, 2013; 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 28,616 square feet.
4. This meets the required standards for a variance.
5. The property was acquired in good faith.
6. It does have exceptional topographical conditions.
7. There is an extraordinary situation or condition of the subject property given the fact that it has two front yards.
8. From the standpoint of Number 6, which is always the toughest criteria, the Board felt that strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the subject property.
9. In this case, it would unreasonably restrict the use.
10. The granting of the variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege.
11. It will not be a substantial detriment to the adjacent properties.
12. The zoning district character is not going to change.
13. The variance would be in harmony with the intended spirit and purpose of the Ordinance.
14. There is no objection to the variance itself. There are a significant number of people who are neighbors who have signed a petition in support.
15. Two out of four of the individuals who support this are on the Association board.

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 to permit the accessory structure, a playground set, to remain in the front yard of the property as shown on the plat "Variance Plat, Lot 4, Section One, Chesterbrook Woods" prepared by Timothy J. Farrell, Land Surveyor, of B.W. Smith and Associates, Inc., dated January 22, 2013, signed June 4, 2013, 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 including requirements for building permits.

Ms. Theodore seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Hart recused himself from the hearing.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. WASHINGTON APOSTOLIC CHURCH, INC., SPA 91-S-036 (place of worship to add child care center) (*Admin. moved from 11/6/13 at appl. req.*)

Chairman Ribble noted that SPA 91-S-036 had been administratively moved to January 15, 2014, at 9:00 a.m., at the applicant's request.

Susan Langdon, Chief, Special Permits and Variances Branch, stated that the application had been subsequently moved again, to January 29, 2014.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. BERDIA FOSTER, SP 2013-SU-076 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 rear lot line. Located at 15212 Dumas Ct., Centreville, 20120, on approx. 13,762 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (41) 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 affirmed that their testimony would be the truth, and the public hearing was opened.

Don Jones, the applicant's agent, 6089 Frys Lane, Warrenton, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2013-SU-076, subject to the proposed development conditions.

In response to a question from Mr. Byers, Ms. Horner stated that correct size of the addition was 412 square feet.

Mr. Jones presented the special permit requests as outlined in the statement of justification submitted with the application. Responding to a question from Mr. Hart, Mr. Jones said no trees would be removed.

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

Mr. Hammack moved to approve SP 2013-SU-076 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BERDIA FOSTER, SP 2013-SU-076 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 rear lot line. Located at 15212 Dumas Ct., Centreville, 20120, on approx. 13,762 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (41) 16. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2013; and

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

1. The applicant is the owner of the property.
2. Looking at the plat, the dwelling is on a triangular-shaped lot, truncated at the front, that results in the dwelling being sited well to the rear of the property.
3. It is approximately 62.5 feet from the corner of the lot, leaving a very shallow rear yard.
4. It is in a cluster district.
5. There is a favorable staff recommendation, and the Board adopts its rationale.
6. The applicant satisfied Subsections 1 through 6 set forth under 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 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 addition (412 square feet), as shown on the plat prepared by prepared by George M. O'Quinn, L.S., of Dominion Surveyors Inc., dated April 23, 2013, as revised through August 15, 2013, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,705 square feet existing + 7,057.5 square feet (150%) = 11,762.5 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally 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, 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 7-0.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. GARY L. LYLES, SP 2013-LE-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 accessory storage structure to remain 2.4 ft. from side lot line. Located at 7016 Forest View Dr., Springfield, 22150, on approx. 27,092 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((4)) 16. (Admin. moved from 11/6/13 at appl. req.)

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure, 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.

Gary Lyles, 7016 Forest View Drive, Springfield, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Lyles presented the special permit request as outlined in the statement of justification submitted with the application. He said the shed was present when he purchased the property in 2009, and he only found out that it was a violation when he applied for a carport addition.

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

Ms. Theodore moved to approve SP 2013-LE-064 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GARY L. LYLES, SP 2013-LE-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 accessory storage structure to remain 2.4 ft. from side lot line. Located at 7016 Forest View Dr., Springfield, 22150, on approx. 27,092 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((4)) 16. (Admin. moved from 11/6/13 at appl. req.) Ms. Theodore moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 11, 2013; and

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

1. The applicant is the owner of the property.
2. The storage shed basically meets the subsection Zoning Ordinance requirements.
3. There are no concerns from the adjacent neighbors or homeowners. In fact, they helped to fill in the history of the shed itself being construct.

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

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

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

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

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

- 1. This special permit is approved for the location of the shed as shown on the plat prepared by B.W. Smith and Associates, Inc., dated September 20, 2012 as submitted with this application and is not transferable to other land.
- 2. All applicable permits and final inspections shall be obtained for the shed within 180 days of 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.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. TRUSTEES OF CALVARY CHRISTIAN CHURCH, SPA 76-S-200-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-S-200 previously approved for place of worship to permit site modifications and deletion of land area. Located at 6408 Spring Lake Dr. and 9800 Old Keene Mill Rd., Burke, 22015, on approx. 9.67 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((2)) 8 and 10. (In association with RZ 2013-SP-005) (*Admin. moved from 7/31/13, 9/25/13, and 10/30/13.*)

Chairman Ribble noted that SPA 76-S-200-02 had been administratively moved to January 29, 2014, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. FRANCIS S. RATH, A 2012-DR-024 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-E District without an approved special permit in violation of Zoning Ordinance provisions. Located at 1051 Kelso Rd., Great Falls, 22066 on approx. 6.03 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((2)) A. (*Admin. moved from 1/9/13, 5/8/13, and 9/18/13 at appl. req.*)

Chairman Ribble noted that A 2012-DR-024 had been administratively moved to May 21, 2014, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. SUBWAY, A 2012-LE-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant is operating a Fast Food Restaurant on property in the C-8 and SC Districts without a valid Non-Residential Use Permit or Special Exception approval, in violation of Zoning Ordinance provisions. Located at 6711 Spring Mall Rd., Springfield, VA 22150 on approx. 5.04 ac. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51. (*Admin. moved from 12/12/12, 3/20/13, 4/24/13, and 10/23/13 at appl. req.*)

Chairman Ribble noted that A 2012-LE-016 had been withdrawn.

//

~ ~ ~ December 11, 2013, Scheduled case of:

9:00 A.M. ETAN MINTZ AND TAMAR MINTZ, A 2013-PR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing five or more unrelated persons to reside in a single family dwelling unit on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 3908 Skyview La., Fairfax, 22031 on approx. 22,366 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 38.

St. Clair Williams, Staff Coordinator, said that staff had received a deferral request from the appellants.

In response to a question from Mr. Hammack, Mr. Williams said the appellants' agent could not attend this meeting, but had agreed to a hearing date of January 8, 2014.

Mr. Hammack moved to defer A 2013-PR-015 to January 8, 2014, with the condition that no further deferrals would be granted.

Mr. Smith seconded the motion.

Chairman Ribble called for speakers regarding the deferral.

Thomas Hoffman, 3909 Skyview Lane, Fairfax, Virginia, came forward to speak. Following administration of the oath by the clerk, Mr. Hoffman stated his opposition to the appeal being deferred.

Mr. Hart asked if there were any health or safety violation associated with the house. Mr. Williams stated that several violations had been noted, including the lack of an egress window in the basement and a modified fuse box. Mr. Williams said a building maintenance Notice of Violation had also been issued.

Mr. Byers said he would not support the motion, noting that the safety of the occupants was the County's primary concern. Given the safety issues, Ms. Theodore also said she would not support the deferral.

In response to a question from Mr. Beard, Mavis Stanfield, Assistant Zoning Administrator, said if the Board heard the case today and upheld the Zoning Administrator's determination, the inspectors would prepare a

chronology of the matter and submit it to the County Attorney. Ms. Stanfield commented that according to what she had been told by the inspector, the appellants had no intention of making any changes unless they were forced to.

Laura Gori, Assistant County Attorney, said she was present to address the appeal issues if the Board chose to go forward today.

In response to a question from Mr. Hammack, Mr. Williams said the appellants were not present.


Mr. Hammack then moved to defer the public hearing for one week, to December 18, 2013. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

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

Minutes by: Suzanne L. Frazier

Approved on: October 2, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, December 18, 2013. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Sharon Theodore; 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. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. HEATHER AND STEPHEN WANSER, SP 2013-MV-081 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 5.0 ft. from the side lot line, addition 5.0 ft. from side lot line and 21.8 ft. from rear lot line and chimney 4.5 ft. from side lot line. Located at 6012 Fort Hunt Rd., Alexandria, 22307, on approx. 6,552 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 5.

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.

Heather Wanser, 6012 Fort Hunt Road, Alexandria, Virginia, the applicant, reaffirmed the affidavit.

Mr. Hart made a disclosure that more than two years prior there was a case on the State Contractors Board, where Mr. Hart's client had hired Ms. Kelly, the applicant's architect. Mr. Hart indicated he did not believe his ability to participate in the case would be affected.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-MV-081 subject to the proposed development conditions.

Ms. Wanser presented the special permit request as outlined in the statement of justification submitted with the application. She made the following main points. She and her husband lived in the house since 1987, and loved it. They had always wanted to enclose the porch, and were now were ready to do it. The enclosed space would facilitate a first-floor living arrangement for them in the future. Fort Hunt Road was very busy, and the screened-in porch was not being utilized, as it was not a very pleasant area to be in.

Chairman Ribble called for speakers.

Christine Kelly, 2109 Popkins Lane, Alexandria, Virginia, the architect for the Wansers, came forward to speak. Her main points were as follows. She and the Wansers discussed the existing porch becoming an interior family room to increase the useable space on their first floor. They also choose to expand the footprint slightly, to make more space for a breakfast nook and to better connect them to the back yard. The addition is one-story, and the roof line is lower than the existing house.

There were comments received from the Forest Conservation Branch, and the Wansers planned on following the recommendations of staff to design a pier and grade foundation system, and they will consult with an arborist for the tree preservation plan.

The design met all the requirements for the special permit process, and they received two letters of support from neighbors.

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

Mr. Hammack moved to approve SP 2013-MV-081 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HEATHER AND STEPHEN WANSER, SP 2013-MV-081 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 5.0 ft. from the side lot line, addition 5.0 ft. from side lot line and 21.8 ft. from rear lot line and chimney 4.5 ft. from side lot line. Located at 6012 Fort Hunt Rd., Alexandria, 22307, on approx. 6,552 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The Board generally adopts their reasoning.
4. This applicant was before this Board in 1994 for a similar type of variance, which was approved but never executed.
5. The conditions that existed then exist now.
6. This is an R-4 lot.
7. It only has 6,552 square feet of land, which is fairly small.
8. Whether or not it is substandard, it is smaller than the average, and those conditions exist.
9. The applicant proposes to enclose an existing carport (sic).
10. There would be no closer encroachment to the side lot line and a bump out to the back, which satisfies the requirements.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 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 addition (455 square feet), covered porch and chimney, as shown on the plat titled "Special Permit Plat, Lot 5, Block 1, Section 1, Belle Haven," prepared by Patrick A. Eckert, L.S, of Alterra Surveys, Inc., sealed April 19, 2013, 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 (1,919 square feet existing + 2,879 square feet (150%) = 4,798 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

5. A pier foundation and grade beam system will be utilized in the rear of the proposed addition to preserve tree roots in this area.
6. The applicant shall retain a certified arborist or a registered consulting arborist to determine and implement methods to reduce construction impacts to adjacent off-site trees. Such methods may include the use of a supersonic air tool to locate and avoid large structural roots and properly tying back limbs so materials may be lifted onto the building without damaging the trees.

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, 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 7-0.

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. FLORENCE E. CAMPBELL, SP 2013-MV-079 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 8807 Oak Leaf Dr., Alexandria, 22309, on approx. 21,791 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((3)) 27.

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.

Florence E. Campbell, 8807 Oak Leaf Drive, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, made staff's presentation. Staff recommended approval of SP 2013-MV-079 subject to the proposed development conditions.

Chairman Ribble asked if there were any other daycare operations in the area. Ms. Gumkowski said there were none within the double circle tax map number.

Ms. Campbell had no additional comments to add to the statement of justification submitted with the application, but stated that she was grateful her application had been accepted for consideration.

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

Mr. Byers moved to approve SP 2013-MV-079 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FLORENCE E. CAMPBELL, SP 2013-MV-079 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 8807 Oak Leaf Dr., Alexandria, 22309, on approx. 21,791 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((3)) 27. 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 18, 2013; and

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

1. The applicant is the owner of the land.
2. The zoning is R-2.
3. The area of the lot is 21,791 square feet.
4. The Board has a favorable staff recommendation.
5. Ms. Campbell is an experienced childcare provider.
6. She has a Commonwealth of Virginia license that is effective through August 5, 2015.
7. The Board has two letters of support from the standpoint of this application.

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

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

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

1. This approval is granted to the applicant, Florence E. Campbell, only, and is not transferable without further action of the Board, and is for the location indicated on the application, 8807 Oak Leaf 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 plat entitled, "Plat, House Location Survey, Lot 27, Mary Lea Park," prepared by Wesley N. Ridgeway, C.S., as revised by the homeowner, F. Campbell on November 1, 2013, and as accepted by the Department of Planning and Zoning on November 18, 2013, 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 hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
7. All pick-up and drop-off of children shall take place in the driveway.
8. A minimum of six parking spaces shall be provided on the subject parcel within the areas of existing paving.
9. All vehicles owned by the members of the residence shall be parked on the street during operating hours of the home child care facility.
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, twelve (12) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. RAMESH RAMAN TRUSTEE AND LATHA RAMAN TRUSTEE, SP 2013-PR-084 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit roofed deck to remain 25.4 ft. from front lot line and dwelling to remain 6.4 ft. from side lot line. Located at 2305 Malraux Dr., Vienna, 22182, on approx. 9,430 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 95.

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.

Ramesh Raman, 2305 Malraux Drive, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-PR-084 subject to the proposed development conditions.

The following information was given by staff following questions from Mr. Hart. There was no complaint on this property. The street file was lost. The columns made it a roofed deck, which was the issue, and it was too close to the front lot line. There was discussion about the lost street file, and whether there might be duplicate information somewhere.

Vice Chairman Hammack assumed the Chair.

Mr. Byers asked what the percentage reduction was that was being requested from the standpoint of the front lot line and from the eastern-side lot line. Ms. Horner said that the minimum required front yard setback was 30 feet, and they were reducing it by 4.5 feet or 15 percent. The side yard minimum required setback was 10 feet, and they were asking for 6.4 feet, which was a reduction of 36 percent.

Mr. Raman presented the special permit request as outlined in the statement of justification submitted with the application. He made the following main points. He was not requesting to do this, as it was already built. His justification was what they built was approved, and the drive for such a covering was based on their need for it. His mother, who was 78 years old and had been living with him for the last 30 years, was handicapped and disabled. They redesigned their house for one level for her, and the porch covering was a big component of that. The porch was one way they could help his mother by providing the covering. Prior to applying for the permit, they had multiple interactions with the County, because they wanted to make sure they were building correctly. They had submitted two plans, one with the porch and one without the porch. The approved permit showed the plan with the porch, so that was why they built it.

Chairman Ribble resumed the Chair.

With questions from Mr. Hart, the applicant indicated the following. Both the applicant and his contractor went to the counter and got the building permit. The applicant did not recall what the exact paperwork was that was filled out, but there were payments that were due, and things were penciled into it.

The overhang in the back was part of the eaves that extended toward the back in the corner. They never thought they were out of compliance, because that was what was requested, and that was what they built. It was something new that was not there already, and was part of what was put on the permit.

They asked for a reduction to minimum yard requirements rather than an error in building, because they were advised to do it that way by the Zoning Administrator. They were told if something ever happened to the structures, they could not be rebuilt if they went forward with the error in building.

Mr. Hart asked staff, other than the eave in the back corner and the front porch distance from the street, if everything else was legal and approved. Ms. Horner said yes, they understood it was.

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

Mr. Hart moved to approve SP 2013-PR-084 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RAMESH RAMAN TRUSTEE AND LATHA RAMAN TRUSTEE, SP 2013-PR-084 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit roofed deck to remain 25.4 ft. from front lot line and dwelling to remain 6.4 ft. from side lot line. Located at 2305 Malraux Dr., Vienna, 22182, on approx. 9,430 sq. ft. of land zoned R-4. Providence District. Tax Map 39-3 ((28)) 95. 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 18, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. This is a confusing situation, but it appears on the record before the Board that the applicant applied for this in advance and had a contractor build it.
5. Then it failed the setback certifications.
6. It is very confusing from the paperwork exactly what was approved.
7. This is not a mistake in building location application.
8. The Board did not have a complaint.
9. There is no opposition to it.
10. The reductions that are requested are relatively minor.
11. Had this been applied for in advance, the Board might well have approved this anyway.
12. It does appear that the lot is relatively small.
13. In particular with respect to the back, the corner of the lot is chopped off so that one corner of the house is very close to the property line as it is.
14. The problem appears to be the overhang instead of the wall.
15. From the photographs, it also appears that it is not going to create a significant negative impact on anybody.
16. With respect to the porch in the front, the handicap ramp, as the Board understands it, would be allowable anyway as an accessibility improvement.
17. It is 25.4 feet from the street, which is further away than some other things the Board has approved.
18. The problem with the front porch appears to be not that the ramp is there, but that it has a roof over it, and there are these columns holding it up.
19. The Board does not think that the roof and the columns create a significant negative impact.
20. From the photographs, it appears to be consistent with the structure itself.
21. It is attractive.
22. It does not appear to be a temporary or unfinished thing, whatever it is.
23. It appears that the applicant tried to do everything correctly, getting a building permit in advance.
24. Whatever happened to the paperwork after that is unfortunate, but we play the hand that we are dealt.

25. We do not have the application.
26. We do not know what the plans show.
27. We do not know exactly what was approved.
28. Given the constraints that we have got, and given the structure as it has been built, the Board does not think there is going to be a problem in approving it.
29. The Board has determined that all of the Sect. 8-922 criteria 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:

5. This special permit is approved for the location and size of the dwelling and roofed deck, as shown on the plat prepared by Studio 76, LLC., dated December 1, 2013, submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. ETAN MINTZ AND TAMAR MINTZ, A 2013-PR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing five or more unrelated persons to reside in a single family dwelling unit on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 3908 Skyview La., Fairfax, 22031 on approx. 22,366 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 38. (Continued from 12/11/13 at appl. req.)

Chairman Ribble called the appellants to the podium.

Mr. Hart made a disclosure that approximately three weeks prior, he used Mr. Curran, the appellant's agent, as an expert witness in one of his cases. The case was over, but there could still be an appeal, so Mr. Hart 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

St. Clair Williams, Staff Coordinator, made staff's presentation as set forth in the staff report. The application was an appeal of a determination that the appellants were allowing five or more unrelated persons to reside in a single-family dwelling unit on property in an R-1 district in violation of the Zoning Ordinance.

On August 19, 2013, a complaint was received by the Department of Code Compliance (DCC) alleging that five unrelated people were living in the home. On August 26th, DCC inspectors attempted to inspect the site, and spoke to one of the tenants who was hesitant to let them in. The property was finally inspected on September 4, 2013. The inspection revealed that a total of five unrelated people were living there, based on verbal testimony from the tenants present during the inspection.

There were four bedrooms in the main level of the dwelling and one in the basement. The bedroom in the basement did not have an appropriate egress window. The bedroom was placarded, and the tenant advised that the room could not be used for sleeping. It was also observed that the circuit junction box appeared to be modified illegally.

The DCC staff advised the appellants to reduce the number of occupants, so that all individuals residing at

the property complied with the provisions of Sect. 2-502 of the Zoning Ordinance, to obtain an electrical permit and replace the deteriorating electrical box and properly install all wiring, and to install a properly-sized escape window in the basement or cease use of the room as a bedroom.

There had also been two previous notices of violation issued for the property for the violation of Sect. 2-502. In 2005, following a complaint, it was revealed that six unrelated people were residing there. In 2011, following a complaint, it was revealed that five unrelated people were residing there. Both violations were resolved by reducing the occupancy to bring it into compliance.

The appellants had not denied that there were five unrelated individuals living in the dwelling. The appellants' position was that there was nothing in the record or citation that provided any evidence as to whether the individuals who occupied the premises were not related by blood or marriage. They also claimed that Sect. 2-502 discriminates on the basis of marital and family status.

The appellants' third argument was that Sect. 2-502 was arbitrary and capricious since the limitation to four unrelated individuals bore no relationship to any objective standards, such as bedrooms and bathrooms, and the plain language meaning of single family was eviscerated by the first two provisions which appeared to allow an unlimited number of individuals to occupy a dwelling unit.

The fourth argument of the appellants was that a Zoning Ordinance must be reasonable and authorized based on safety, public health, and public welfare. They asked how this provision prevented overcrowding in a five-bedroom house. They continued to argue that the cited provision lacked any rational basis, and there was no legal history to explain the chosen number of four.

The sixth argument by the appellants was that the Ordinance could be remedied by modifying the limitation based on safety, public health and public welfare, and by tying the limitation to an objective criteria, such as the number of bedrooms and bathrooms.

Finally, the appellants argued that certain terms were not defined in the Zoning Ordinance, including related by blood or marriage.

Laura Gori, from the Office of the County Attorney, addressed the issue of the unauthorized practice that arose. When their office discovered that the appellants' agent, Mr. Haendel, was not a member of the Virginia bar, and because the arguments within the appeal were almost exclusively legal arguments, she said, they had a duty to notify the appellant that it appeared there was unauthorized practice. Mr. Curran, who was a member of the Virginia bar was there, she said, so the appellant may have resolved that issue entirely. Ms. Gori said they did not have any objection to making factual representations, but were concerned about the legal arguments which were being raised.

Ms. Gori said the Board of Zoning Appeals (BZA) lacked jurisdiction to address the appellants' arguments within the appeal, as they were challenging the underlying legislation. The BZA uses the statutes, and it did not have the authority to challenge the underlying Zoning legislation, she said. She thought that the appellants' arguments were not well founded.

Ms. Gori addressed the contention that the notice of violation discriminated on the basis of marital or familial status, giving the following information. The Notice of Violation was issued, because there were five unrelated George Mason students residing in the dwelling. It was not issued for any discriminatory purpose, there were no children living in the dwelling, and unrelated people who lived together in violation of the Zoning Ordinance were not entitled to special protection under the Fair Housing Act or the law. That was made clear in the United States Supreme Court in the case of Village of Belle Terre v. Boraas. In that case there was an issue of six unrelated college students living together, and the locality ordinance defined family as being only two unrelated people. The U.S. Supreme Court upheld that ordinance as being reasonable.

Contrary to the appellants' arguments, Ms. Gori continued, the limitation on the number of unrelated persons need not be tied to any subjective standard, such as square footage or number of bedrooms. The appellants were confusing family composition rules, with Maximum Occupancy Limitations, which were found in the building code. Family composition rules were intended to preserve the family character of single-family and family-residential zoning districts. Maximum occupancy restrictions, which are tied to square footage or bedrooms, apply uniformly, even to family members. These are intended to protect health and safety.

It was the appellants' contention that 2-502 was arbitrary, because it left out some that may have well been included, said Ms. Gori, but it was well established by the Supreme Court that was an exercise of legislation discretion. The Board of Supervisors had exercised that discretion by determining that four was a reasonable number of unrelated persons to live together.

Ms. Gori continued that if family composition rules did not exist, the only limitation would be based on floor space or bedrooms. In that case, there would be no practical difference, she said, between an R-1 zoning district and a multi-family district.

Ms. Gori said that the contention of the appellants' agent was that 2-502 was not clear, because related was not specifically defined in the Zoning Ordinance. Ms. Gori explained that under the law when a term was not expressly defined, it was given its ordinary meaning in the context in which it was used. The common meaning of related or relative was connected or allied by blood or marriage, and that was how the word was used in 2-502. It said not more than four persons not necessarily related by blood or marriage, Ms. Gori said, and under that definition, some of them could be related, but not all of them were related. If not all of them were related, Ms. Gori said, then they were still limited to four persons.

In applying the definition of related, the Zoning Administrator may appropriately consider relevant facts and circumstances that bear on whether tenants are related. In this case, the people living in the dwelling were five unrelated George Mason students, who each signed a lease separately, and all had different last names. They all told the investigator that they were unrelated, and no evidence was presented that they were related.

The appellants were demanding that the Zoning Administrator make a bright-line determination as to the degree of consanguinity necessary to be related under the provision. Ms. Gori continued that this was not necessary here, as there was no evidence that there was any degree of consanguinity among the tenants. In Mr. Haendel's correspondence with the BZA, he asked how he knew whether the tenants were related, and he argued probabilities based on theoretical articles he read on genetics. Ms. Gori said that Mr. Haendel was not a genetic expert, and we were not talking about probabilities and theories, but whether these specific five people were related. Even if two were related genetically, Ms. Gori said, they would still only be allowed to have two roomers and boarders, which was a total of four people. One person would still have to go.

Ms. Gori said for all of these reasons, there were too many people who lived in the dwelling, and the Zoning Administrator's determination and the Notice of Violation should be upheld.

With questioning from Mr. Hammack, Ms. Gori gave the following information. They made an anonymous call to the State Bar office hotline, and were told that this could be considered a tribunal under the rules. Non-lawyers were allowed to represent other people if there were specific statutes or rules allowing for that, but she did not see a specific statute here. Her office's objection was to Mr. Haendel making legal arguments, but not factual representations, which non-lawyers do in front of the BZA.

Discussion ensued regarding lay persons making legal arguments before the BZA.

Ms. Theodore asked about a reference to a Notice of Violation in the staff report on some Virginia Maintenance Code issues, wondering if that violation was still open. John Rumley from the Department of Code Compliance responded that those were in full compliance at that time.

Charles Curran, the appellants' agent, 4118 Leonard Drive, Fairfax, Virginia came forward to speak. He made the following main points. The electrical concerns were resolved. The matter of previous violations were completely unrelated to the hearing, as none of those happened during the time of Mr. and Mrs. Mintz owning the property. He believed the only issue that remained was whether or not there were unrelated persons living at the property. It was his understanding that no one was residing in the basement, as that person had moved to another bedroom at the property.

Mr. Curran referred to a couple of sources, saying that it was well known, particularly in the case of our current President Obama, that some people are related to others you would not expect them to be related to. One relation to the President was Mr. Cheney, former Vice President to George W. Bush. It was reported that the relationship went back several generations, being referred to as ninth or eleventh cousins. This was important, because they were at the hearing in the context of a violation, which specifically said there were more than four unrelated people living at the property. He said the County had the burden of proving that, not the appellant having the burden of disproving it.

Mr. Curran argued that people with different last names could be related. People who are resident in the property may not be aware of their relationship, so any statement they might make is not useful. He could not find any definition in cases or statutes of Virginia that defined what related by blood meant, which was the issue. He referred to Black's Law Dictionary's definition of blood, which said, "relation by descent by a common ancestor". This did not speak to degree, Mr. Curran said. He continued, "A person may be said to be of the blood of another who has any, however small a portion of the blood derived from a common ancestor."

Mr. Curran continued that they were not asking the Board to legislate or to make a ruling concerning the validity of the Ordinance. The simple question was one of fact, and that was whether there was proof brought by the Zoning Administrator that the people living at the property were, in fact, unrelated. In looking at the meaning of unrelated, the County Attorney referred to connected or allied meaning of the terms. There was no better understanding of what the common meaning of related by blood was, than Black's Law Dictionary, as it had been recognized as a law. Mr. Curran said that if there was another definition in Virginia law, cases or code, he was unaware of it. He asked the Board to consider whether the County had proven the unrelated status, rather than just making an assertion.

Mr. Hammack asked Mr. Curran about his statement that the County had not produced any evidence of the students being unrelated. The five of them admitted that they were unrelated, he said, and wanted to know if Mr. Curran wanted the Board to totally disregard that. Mr. Curran said it was his understanding that comment only came from one of the residents and not all five. Mr. Rumley confirmed that it was only one individual they spoke with. Mr. Curran said he was not sure they would even know, and just thought it was hearsay. He thought the rules of law ought to apply here with respect to what evidence was considered and whether it was reliable.

Mr. Hammack wanted to know whether the appellants had any evidence that the students were related to one another, perhaps by a DNA test which showed they were second cousins or something like that. Mr. Curran said they had not, and did not think scientific evidence would be clear past certain degrees of relationship. He also said that was an expensive process. Mr. Hammack said he knew, but the issue was raised by the appellants, so he thought the appellants bore some responsibility to support their position. DNA tests had been used in paternity tests, Mr. Hammack said, although he did not know about more extended relations.

Mr. Hammack wanted to know whether Mr. Curran had any case law which supported the appellants' position. Mr. Curran said he did not, and could not find any cases that had any definition of the term one way or another in the limited time that he had to research the case. He said he thought it was fair to require the County to meet the burden in the case, since they were the ones that issued the Notice.

Mr. Hammack said Mr. Curran had practiced before the Board and was a Virginia lawyer, so he knew the County's position was well established. The rule about four unrelated adults had been followed for years, and was not anything that was new or unusual. He thought that courts in Virginia had upheld it, although they did not have a lot of cases attached to this as in other appeals. He said that the County Attorney cited a Supreme Court case which dealt with two individuals, and wanted to know if Mr. Curran had any federal law that supported the appellants' position. Mr. Curran said he was not able to respond to the other positions, as he did not see the staff report until that morning and was not familiar with the Supreme Court case.

Mr. Byers said that while he appreciated what the attorneys had done, he thought it just confused the situation. The arguments that were made by the appellant, in his judgment, were better suited between attorneys in a circuit court. He said what they were being asked to do was simple, which was determine whether on the date of the Notice of Violation, was the Zoning Administrator correct in her determination. He agreed with the County Attorney that it was not the Board's prerogative to get into a discussion of the underlying legislation, but instead the prerogative of the Board of Supervisors. If they went to court, they could talk about contracts or getting world renowned geneticists, but that was not the Board's job.

Chairman Ribble called for speakers.

The following speakers came forward in opposition: Tom Hoffman, 3909 Skyview Lane, Fairfax, Virginia, and Mr. Xiao Fei Wong, 9120 Okla Drive, Fairfax, Virginia. The Chairman directed the clerk to administer the oath to them, as they had not been sworn in earlier. Their main points were that this was a neighborhood of single-family homes, zoned R-1. The only relationship the George Mason students might have was they

were probably all in the same fraternity. There were multiple cars parked in front of the house, and it was clear five or more people were living there. The house had a history of zoning violations, most incurred during Mr. Haendel's ownership, but some made since then, including this one. The house was not safe for that many people, and it was a nuisance for the neighbors. They did not want to live in a neighborhood made up of students, but rather with families. They chose to live in a family-type neighborhood. Mailboxes had been destroyed more than once over the years, they had just cleaned up glass from 40 ounce bottles of beer that was in the street, and there were other destructive incidents.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said that she wanted to point out this section of the Zoning Ordinance had been in effect since 1978. A computer search revealed that there had only been two challenges in the form of an appeal, both of which were withdrawn, because they simply eliminated one of the roommates. From staff's perspective, the previous violations were relevant, because Mr. Haendel owned the property previously, and is now representing the current owners.

Chairman Ribble closed the public hearing.

Mr. Byers and Mr. Hammack said that Ms. Stanfield wanted the County Attorney to address the Burden of proof before they closed.

Chairman Ribble reopened the public hearing and asked if the County Attorney had something that she wanted to add. Ms. Gori said that on appeal the appellants had some obligation to bring forward at least some sort of evidence of relatedness, which they failed to do.

Chairman Ribble closed the public hearing.

Ms. Theodore moved to uphold the determination of the Zoning Administrator for the following reasons. The appellants were allowing five or more unrelated persons to reside in a single-family dwelling unit on property in the R-1 district in violation of Zoning Ordinance provisions. Specifically, the Zoning Administrator determined occupancy of the dwelling was in violation of Zoning Ordinance Sect. 2-502. As was heard earlier, the provision had been in place for several decades, and they had not had a lot of issues with that provision since its inception. It was staff's position that the violation had been clearly established through the zoning inspection, where at least one tenant present at the time confirmed the appellants' were allowing a total of five unrelated people to live in the dwelling. Photographs from the inspection clearly depicted a total of five rooms being occupied as bedrooms, with three individuals using the three bedrooms on the main level, one utilized the bedroom in the rear of the garage, and one used a bedroom in the basement, which had no egress. They know that had been addressed. As further noted in the staff report and discussed at the hearing, many of the appellants' arguments centered on legal issues related to Sect. 2-502. Staff, therefore, consulted with the Office of the County Attorney in preparing its report, dated December 4, 2013, and staff further advised that the BZA did not have jurisdiction to consider most of the appellants' arguments, as they challenged the validity of Zoning Ordinance 2-502. However, the response included a number of relevant state and federal legal cites to support the Zoning Administrator's position, including U.S. Supreme Court cases.

Mr. Smith seconded the motion.

Discussion ensued regarding the BZA's jurisdiction to hear the case, because it involved legal issues. Mr. Hammack said the Board of Supervisors directs appeals to be made before the BZA, so it would be an overreach to say they could not hear an appeal which involved legal issues. He said the Board did not have the jurisdiction under the Ordinance to consider the legal arguments, but rather was there to uphold, interpret and enforce the Zoning Ordinance. He said he was going to support the motion.

Mr. Beard said he knew the County Attorney's office did not represent the Board, however, since the issue was brought up about whether a lawyer needed to be a member of the Virginia State Bar to appear before the Board for others, he wanted some clarification or further information on that at some point. Ms. Gori said they would be happy to work with the Board's counsel on that matter, and Mr. Beard said they did not have counsel. She then said they would do what they could within the boundary of their authority. Mr. Beard said Ms. Gori was coming before them telling them something that he had to assume was correct with no way to verify it.

Chairman Ribble said that in a sense they did have counsel, and she represented them quite often on questions like this, so he thought Ms. Gori would be in touch with Ms. Whiting.

Mr. Smith said that he would be voting in favor of the motion for the following reasons. There was a Zoning Ordinance that had been tested with case law at the federal level, and an admission that the folks were unrelated by one of the residents. There were five students living there, and testimony from the neighbors about the impact on the neighborhood. You could understand the reason for a provision like this one, as nobody would want to have 20 unrelated students living next to them in a residential area. There was a perfectly justifiable public health and safety welfare issue associated with this, and they heard the reasons for it from the surrounding neighbors. With testimony from one of the residents that they were unrelated, with different last names, and the appellants presented no argument or evidence that they were related, he did not think it was a reasonable expectation for County to do DNA testing in order to enforce an Ordinance. He said, there was ample evidence to support the decision of the Zoning Administrator, with ample opportunity for the appellants to refute that, and he heard nothing in that regard.

The Chairman called for a vote which was carried by 6-0, with the determination of the Zoning Administrator being upheld. Mr. Hart recused himself from the public hearing.

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. KIRSTEN H. LUKAS, SP 2013-BR-077 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit a home child care facility and errors in building locations to permit accessory storage structure to remain 4.8 ft. from side lot line and accessory structures to remain 15.5 ft. with open deck 8.7 ft. and 6.0 ft. with open deck 3.6 ft. from side lot lines. Located at 8704 Norfolk Ave., Annandale, 22003, on approx. 22,195 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 112.

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.

Kirsten H. Lukas, 8704 Norfolk Avenue, Annandale, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-BR-077 subject to the proposed development conditions.

With questions of staff from Mr. Hart the following information was provided. There was a stub road immediately to the left of the application property that was connected to a walking path. The property across and immediately to the left was either owned by the Park Authority or the elementary school, and there would be no more houses at the end of the street.

Ms. Lukas presented the special permit request as outlined in the statement of justification submitted with the application. She provided the following information. They bought the house one and half years ago, and she was thrilled that it was right next door to Wakefield Forest Elementary school. There was plenty of parking, several trees for privacy, and a separate entrance for the daycare. There were only three neighbors that would be directly affected by her daycare, since she was the last house on a dead end street which ended at the elementary school. She had asked all of her neighbors on several occasions if her daycare bothered them in any way. Two of them said they loved it.

During the past year, the applicant's immediate neighbors to the east, the Johnstons, complained only once when they had accidentally left the light on all night, and the Johnstons said it shined in their window. They immediately took measures to remedy the situation. They proactively talked to the Johnsons about adding extra lighting. The Johnstons said that they would love to see the plans, but never said anything to them about additional noise or lighting concerns. They met with the Johnstons about their concerns, and came up with conditions, which were included in the proposed development conditions. According to Ms. Lukas, they actually agreed to the opposite of what was written. There was ample parking, both in her driveway and in the street to accommodate parents parking, so they agreed that the parents would park on the street in the mornings to keep it quieter.

Since they were new to landscaping and the Johnstons were naturalists, the Johnstons offered to assist

them in finding appropriate shrubs or trees to plant to minimize noise pollution to their bedroom. They reviewed a lighting plan with the neighbors that they were in agreement with.

Ms. Lukas said the letter that the Johnstons shared with the Board, was generally fair and accurate, but she wanted to address the part that said there could potentially be more than 24 people entering and 12 exiting in the mornings. Ms. Lukas believed these numbers were deceiving, because the parents were now aware that the Johnston's bedroom was nearby, and the 12 exiting were responsible adults who could leave silently. This was also true for the people entering, as most of the children were being carried in, and they were often asleep or silent.

Ms. Lukas said most of her children were dropped off between 6:30 and 7:00 a.m., and were picked up between 3:30 and 4:00 p.m. As for the speeding, they were the last house on a dead end which was an uphill street, and their street had traffic to the elementary school, sports practices, parents, contractors and students from the neighboring community college. She did not believe that the speeding traffic was from her families.

Ms. Lukas said that she regularly communicated e-mails and newsletters to her parents. In these she stated that she would rather have parents come late than speed through her neighborhood, and to treat the neighborhood as if it were their own. She said her families had been apologetic since discovering that the Johnstons' bedroom window was right next to where they walk in. They had made every effort to be quieter since then.

Chairman Ribble called for speakers.

Gary Johnston, 8700 Norfolk Avenue, Annandale, Virginia came forward. His main points dealt with the fact that they were working with the applicant and her husband to resolve some of the issues, but had not fully resolved the noise level.

Mr. Hart wanted to know if it was correct that he opposed the drop offs taking place in the driveway, because of the headlights. Mr. Johnston said yes, but they worked that out with the applicant. The parents were now parking on the street. Mr. Hart asked if they had to turn around in the driveway if they parked on the street. Mr. Johnston said no, that there was ample room at the end of the street to make a three-point turn.

Mr. Hart asked Ms. Horner if the row of bushes that was being planted was in a different place than in the headlights that Mr. Johnston was complaining about. Ms. Horner said it would probably be in the same area, as it is where the exterior access was to the childcare facility. Mr. Hart asked if the reason staff put that in about the row of bushes was to address the headlight problem or the noise. Ms. Horner said the applicant said they had worked that out with their neighbor, and staff was not opposed to adding it, but it was not something that staff had requested.

Discussion ensued about the headlights, noise and types of proposed vegetation.

Mr. Hart asked Ms. Lukas if there was electricity or plumbing in either of the sheds or the greenhouse, and she said no.

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

Mr. Smith moved to approve SP 2013-BR-077 for the reasons stated in the Resolution.

Discussion ensued regarding further changes to the development conditions between Ms. Langdon and Mr. Smith, with some clarification provided by Ms. Lukas. These changes were incorporated into the final resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIRSTEN H. LUKAS, SP 2013-BR-077 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit a home child care facility and reduction in minimum yard requirements based on errors in building

locations to permit accessory storage structure to remain 4.8 ft. from side lot line and accessory structures to remain 15.5 ft. with open deck 8.7 ft. and 6.0 ft. with open deck 3.6 ft. from side lot lines. Located at 8704 Norfolk Ave., Annandale, 22003, on approx. 22,195 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 112. 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 18, 2013; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,195 square feet recorded, 22,911 square feet computed.
4. In this case with respect to the greenhouse and open deck, a trellis and a shed, the Board believes that these were noncompliance issues that were done in good faith.
5. The Board does not think that the reduction impairs the purpose or intent of the Ordinance.
6. The Board does not think that it is detrimental to the use and enjoyment of other property in the vicinity.
7. It does not create an unsafe condition with respect to the property or public streets.
8. The Board thinks that forcing compliance with the minimum yard requirements would cause an unreasonable hardship in this case.
9. There is no opposition to those setbacks right now.
10. The one on the west side clearly has no impact.
11. There is open space there.
12. It is not occupied.
13. The one on the east side, the Board has had Mr. Johnson here who has not had any opposition to that either.
14. The Board does not think it is going to have any impact.
15. The Board thinks that those are acceptable.
16. With respect to the home childcare facility, the Board would note that there is a recommendation in the staff report for approval.
17. In some ways this is a very nice location for a home childcare facility, given that it is at the end of the street.
18. The Board does not have some of the issues that it has had in the past with cul-de-sacs and parking issues that impact a lot of the neighbors, because of the nature of the stub here.
19. It is nice that it allows you to turn around there.
20. The proximity to the school and the open space, again, on the west is good.
21. The primary issue that the Board has is the Johnsons, and that is the immediate neighbors to the north and to the east.
22. It is nice to see applicants come in who have worked together with the neighbors to identify problems and identify solutions.
23. You can have seven children here by right.
24. So in this case, in some ways, by increasing it to twelve, the Board has a better result, because it is addressing issues that already exist and putting development conditions in place to ensure that the Board is able to address them.
25. The Board feels like the conditions are reasonable that have been proposed and agreed to.
26. Certainly it is going to take continued cooperation and diligence on the applicant's part to make sure that the parents who are coming in with their children understand the importance of this being a residential area, and they need to make sure that they are quiet.
27. That is something that the applicant can certainly impose and be diligent on communicating.

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

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the

result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

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

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

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

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

- 1. This approval is granted to the applicant, Kirsten Lukas, only and is not transferable without further action of the Board, and is for the location indicated on the application, 8704 Norfolk Ave., 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 Dominion Surveyors, Inc., dated August 22, 2013, as revised through October 28, 2013, signed by George M. O'Quinn, Land Surveyor, 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 hours of operation of the home child care facility shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday.
- 5. The maximum number of children on site at any one time shall be 12, excluding the applicant's own children.
- 6. All drop-off of children shall take place utilizing on-street parking. Pick-up may occur within the driveway or the on-street parking.
- 7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
- 8. There shall be no signage associated with the home child care facility.
- 9. The applicant shall install a new gate, to eliminate noise when used, for parents to access the home child care facility.
- 10. The applicant shall install evergreen shrubs to create a hedgerow along the fence line abutting the adjacent residential properties to the east within six months of approval of this special permit.

11. The applicant shall install foot-lighting, as well as timers on the existing wall lights, along the eastern side of the dwelling along the path for parents to drop-off and pick-up children.

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, six (6) 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 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.

//

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

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. FAKHRI ELMOHTASEB AND MAY ABDO ELMOHTASEB, VC 2013-SP-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yard. Located at 5969 Colchester Road, Fairfax, 22030, on approx. 1.25 ac. of land zoned R-C. Springfield District. Tax Map 66-4 ((6)) 2B. (Admin. moved from 7/24/13 and 11/6/13 at appl. req.) (Converted from SP 2013-SP-036.)

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.

The applicants' agent, Sam W. Burgan, 5673 Columbia Pike, Suite 201, Falls Church, Virginia, reaffirmed the affidavit.

Erin M. Haley, Staff Coordinator, made staff's presentation.

Staff responded to questions from Board members regarding the fence height, pillars and size. It was determined that you could have a Special Permit or Variance for greater dimensions, and there was no limit.

Staff responded to questions from Mr. Hart regarding the Virginia Department of Transportation (VDOT) and the pillars and lamps. VDOT determined that the placement of the gate prevented a car from resting safely out of the roadway while the gate was closed. There was not enough room between the gate and the right of way. If the applicant had applied for a special permit to go to six feet, then the fence would be within that. The lamps on top of the pillars were too tall, as the maximum height for a lamp on top of a pillar was nine inches. The pillars were too big around in size, which was why they could not apply for a special permit. The pillars were six and a half feet in height. They could only be six feet with a special permit, but then the lamps could go another nine inches under the Ordinance.

Responding to questions about a building permit to build the pillars, Charles Fitzhugh, Department of Code Compliance, said that typically anything six feet or less did not require a building permit. He said the pillars were slightly over six feet, but the applicant had come in and gotten a permit for the light fixtures on top of the pillars.

Mr. Hammack wanted to know how they could get a permit that would be in violation. Mr. Fitzhugh said he had some questions regarding that also, but they did come in and get a permit for the electrical portion of the fencing. Mr. Hammack wanted to know if there were any drawings which showed the height of the fixtures. Mr. Fitzhugh said no.

Mr. Hart asked if we had the paperwork for the electrical permit. Mr. Fitzhugh said he had a copy of just the permit itself. Mr. Hart said the application was what he was looking for, and asked if the permit referred to any height, dimensions or locations. Mr. Fitzhugh said no. Mr. Hart asked if that might be in the street file, and if it was at the hearing. Mr. Fitzhugh said it could be in the street file, and Ms. Langdon said that they did not have it with them at the hearing.

Mr. Burgan presented the variance request as outlined in the statement of justification submitted with the application. He made the following points. His client hired a contractor, Union Fence, LLC, who was licensed, bonded, insured, and advertised themselves as having expertise in building fences throughout Fairfax County. These fence experts told the applicant this would be in complete compliance with Fairfax County ordinances and requirements. Based upon that, the contractor was hired, and the applicant paid between \$20,000 to \$25,000 to have the fence, posts and lamps built. The applicants had no clue that they were in any violation, until they got a Notice of Violation. At one point they were told to apply for a special permit, and then they were told they needed a variance.

The applicant had the support of about 12 of his neighbors.

They had an estimate from a contractor, and the cost of razing it and putting in a new one would be about \$35,000, which would be a hardship on the applicants. They believed the current fence looked fine, you could see through it, and it was not a hazard on the highway. One of the reasons for putting up the fence, was for the safety of the children of the applicants.

Discussion ensued about how they might reach the level for a variance or get the applicant in compliance, and compared the issues to a similar case a couple of years ago.

Mr. Hammack asked if they had the authority to grant relief under a special permit, and Ms. Langdon said not in this case.

Mr. Hart said he was also struggling with this. They had to find that there was some extraordinary condition, and he said he thought the extraordinary condition that had been articulated was topography. He said that was pretty typical, and wanted to know if there was some other extraordinary condition of the lot other than the ditch. Mr. Burgan said no.

Mr. Hart asked staff if there was a way they could defer the variance and turn it into a special permit. Ms. Langdon said they could defer decision, and if the applicant chose, they could ask to convert to a special permit. She said the applicant would have to show on the plat what was proposed, so staff could make sure it would be in conformance with what the Board could approve under a special permit.

Mr. Beard wanted to know if anyone from staff went out there. Mr. Fitzhugh said he did. Mr. Beard asked if the gate opened in or out, and Mr. Burgan said it opened in. Mr. Beard asked if the fence encompassed the entire property or just across the front. Mr. Burgan said it was just in front, and Mr. Fitzhugh confirmed that.

Discussion ensued about what might bring the fence into compliance for a special permit.

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

Mr. Beard moved to defer decision on VC 2013-SP-020 to March 19, 2014, at 9:00 a.m.

Mr. Smith seconded the motion, which carried by a vote of 6.0. Ms. Theodore was not present for the vote.

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. JOHN HANDRAHAN, KAROLYN HARDRAHAN, AIMEE MESSINA, SP 2013-SP-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from rear lot line. Located at 5924 Hall St., Springfield, 22152, on approx. 9,058 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 79-3 ((16)) 61.

Chairman Ribble called the applicants to the podium.

Mr. Hart made a disclosure that his law firm currently had a case where the adverse party was Michael Nash Custom Kitchens, which is listed as the agent for the applicant on the affidavit, 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Aimee Messina, one of the applicants, 5924 Hall Street, Springfield, Virginia, reaffirmed the affidavit.

Erin M. Haley, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-SP-082 subject to the proposed development conditions.

Ms. Messina presented the special permit request as outlined in the statement of justification submitted with the application. She made the following points. They asked for the addition for the changing needs of their family, and they had moved there in 2009. Her parents, John and Karolyn Handrahan, also lived with them during the week, and her mother helped take care of her children. They had a very small kitchen without a breakfast area, and the sunroom would provide an extra space that her parents would like to have as a retreat during the week.

In regard to the special permit for the rear yard reduction and setback, they backed up to a wooded area, with their nearest neighbor being over 300 feet away. They discussed this with the homeowners association and their surrounding neighbors, and everybody was very supportive of their application.

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

Mr. Hammack moved to approve SP 2013-SP-082 for the reasons stated in the Resolution.

Mr. Byers questioned whether it would require a setback certification, and Ms. Haley said it would.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN HANDRAHAN, KAROLYN HANDRAHAN, AIMEE MESSINA, SP 2013-SP-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.0 ft. from rear lot line. Located at 5924 Hall St., Springfield, 22152, on approx. 9,058 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 79-3 ((16)) 61. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2013; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The Board generally adopts their rationale.
4. The Board would note that the addition will be really over an existing patio and deck, both of which are to be removed.
5. It is slightly different in size, minimally different.
6. It backs up to some sort of a common area, so the impact on neighbors is nonexistent.
7. The Board has determined that the applicants satisfied the six specific criteria set forth under Sect. 8-922.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the 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 addition (814 square feet), as shown on the plat prepared by William E. Ramsey, P.C., Land Surveyor dated March 15, 2013, as revised on August 15, 2013, 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 (2,746 square feet existing + 4,119 square feet (150%) = 6,865 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. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally 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, 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. Hart recused himself from the hearing. Ms. Theodore was not present for the vote.

//

9:00 A.M. THOMAS J. KELLY, SR., SP 2013-SP-083 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals. Located at 6226 Capella Ave, Burke, 22015, on approx. 9,700 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 226.

Chairman Ribble noted that SP 2013-SP-083 had been administratively moved to February 5, 2013 (sic) at the applicant's request.

//

9:00 A.M. CESAR C. AQUINO, A 2013-LE-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established four dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 7415 Loisdale Rd., Springfield, 22150 on approx. 16,236 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 288. (Admin. moved from 10/9/13 at appl. req.) (Decision deferred from 11/20/13.) (Admin. moved from 12/11/13.)

Chairman Ribble noted that A 2013-LE-019 had been withdrawn.

//

~ ~ ~ December 18, 2013, Scheduled case of:

9:00 A.M. FRANCES A. MILLS, SP 2013-LE-080 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 3426 Beechcraft Dr., Alexandria, 22306, on approx. 19,210 sq. ft. of land zoned R-4. Lee District. Tax Map 92-4 ((3)) (9) 30.

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.

Frances A. Mills, 3426 Beechcraft Dr., Alexandria, 22306, reaffirmed the affidavit.

Erin M. Haley, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2013-LE-080 subject to the proposed development conditions.

Mr. Hart asked if there was a shed or something. Ms. Haley said there were two sheds located on the property, and there was also play equipment for the children. Mr. Hart wondered if that was a shed in the front yard that said accessory structure. Ms. Langdon said it might be, but because this was a home childcare application, the Zoning Administrator agreed that staff would not pursue other issues on the property unless they related to health and safety. Mr. Hart questioned whether they were not approving that, but just dealing with the childcare, and Ms. Langdon said that was correct.

Chairman Ribble commented that the plan noted Hybla Valley and Thomas J. Stockton Parkway. He did not think that Thomas J. Stockton was anywhere near there. Ms. Langdon said that it was not, but at one point she thought it was proposed to go through part of the edge of the park. She thought that had since been taken off the transportation plan.

Ms. Mills had nothing to add to the special permit request as outlined in the statement of justification submitted with the application. She thanked the Board for consideration of her application.

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

Mr. Byers moved to approve SP 2013-LE-080 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANCES A. MILLS, SP 2013-LE-080 Appl. under Sect(s). 8-301 of the Zoning Ordinance to permit a home child care facility. Located at 3426 Beechcraft Dr., Alexandria, 22306, on approx. 19,210 sq. ft. of land zoned R-4. Lee District. Tax Map 92-4 ((3)) (9) 30. 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 18, 2013; 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 19,210 square feet.
4. The Board notes that the applicant has owned the property for the past 25 years.
5. She also has 25 years of childcare experience as is noted by the staff.

6. She has a current state license that is valid through January 23, 2015.
7. The Board also notes that the staff recommends approval of this specific application.

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

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

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

1. This approval is granted to the applicant, Frances A. Mills, only and is not transferable without further action of the Board, and is for the location indicated on the application, 3426 Beechcraft 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 plat entitled, "House Location Survey Lot 30, Block 9, Section 3, Hybla Valley, Also Vacated Portion of Thomas J. Stockton Parkway," prepared by James H. Guynn, Certified Land Surveyor., dated June 3, 1989, as revised by Frances Mills on September 18, 2013, 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 hours of operation of the home child care facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The room identified as "Recreation Room" on the floor plan included as Attachment 1 to these conditions shall be the only room used for sleeping in the basement
6. The room identified as "Bedroom #2" on the floor plan included as Attachment 1 to these conditions shall be the only bedroom on the upper level used for sleeping by the child care facility.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.
8. The maximum number of children on site at any one time shall be twelve, excluding the applicant's own children.
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, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.


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


//

As there was no other business to come before the Board, the meeting was adjourned at 12:33 p.m.

Minutes by: Lorraine A. Giovinazzo

Approved on: October 5, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals