

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 17, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas W. Smith III; 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. As there were no Board Matters to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. SUNITA GHATE, SP 2008-PR-017

Chairman Ribble noted that SP 2008-PR-017 had been withdrawn.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. SABRI ERIKSEN, SP 2008-HM-015 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 roofed deck to remain 10.1 feet from a side lot line and addition to remain 8.8 feet from the other side lot line and to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 20.0 ft. from front lot line. Located at 8816 Skokie La. on approx. 10,859 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((13)) 39. (Decision deferred from 5/13/08)

Deborah Hedrick, Staff Coordinator, stated that the applicant requested a deferral of the decision to July 15, 2008, so he could work with his engineer on a new configuration for the proposed addition. She noted that the staff supported Mr. Eriksen's deferral request.

Ms. Gibb moved to defer decision on SP 2008-HM-015 to July 15, 2008, at 9:00 a.m., at the applicant's request. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. MIRIAM L. TORRES, SP 2008-LE-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 3.0 ft. from side lot line and roofed deck to remain 23.0 ft. from front lot line. Located at 3106 Collard St. on approx. 9,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 5.

Chairman Ribble noted that SP 2008-LE-027 been administratively moved to September 9, 2008, at 9:00 a.m., for ads.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8 and HC. Providence District. Tax Map 49-2 ((1)) 26C.

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.

~ ~ ~ June 17, 2008, MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038, *continued from Page 1*

Frank McDermott, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 2006-PR-038, subject to the revised proposed development conditions.

Mr. McDermott presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said all the work at the site had been completed, and the applicant was requesting a modification to the development conditions to allow additional time to obtain final approval.

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

Mr. Hammack moved to approve SPA 2008-PR-038 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8 and HC. Providence District. Tax Map 49-2 ((1)) 26C. 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 17, 2008; 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 required standards set forth in the Zoning Ordinance.
3. The applicant has done what they were required to do and are just being held up on the issuance of a permit. That justifies a reasonable extension to comply with the development conditions that the Board previously granted.

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

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

~ ~ ~ June 17, 2008, MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038, *continued from Page 2*

- 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 (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, February 25, 2008, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.
3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within one year of final approval or this special permit shall be null and void.

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

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

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. SUZANNE GARBARINO, SP 2008-SU-036

Chairman Ribble noted that SP 2008-SU-036 had been withdrawn.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. RICHARD C. MARTIN AND JULIA S. MARTIN, VC 2008-MV-001 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 6411 Eleventh St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 3. (Deferred from 6/10/08)

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.

~ ~ ~ June 17, 2008, RICHARD C. MARTIN AND JULIA S. MARTIN, VC 2008-MV-001, *continued from*  
*Page 3*

Sara V. Mariska, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, the applicants' agent, reaffirmed the affidavit.

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

Ms. Mariska presented the variance request as outlined in the statement of justification submitted with the application, accompanied by Julia Martin, the applicant, who provided a PowerPoint slide presentation. The applicants' garage had been damaged during Hurricane Isabel, and the variance would allow it to be replaced.

Mr. Smith, Ms. Mariska, and Ms. Martin discussed the garage condemnation, noting that after visiting the site, County officials said the garage was unusable, but no official condemnation was ever made.

Chairman Ribble called for speakers.

Donald Lawrence, 6407 11<sup>th</sup> Street, Alexandria, Virginia; and Priscilla Calhoun, 1214 H Street, Alexandria, Virginia; came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny VC 2008-MV-001 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD C. MARTIN AND JULIA S. MARTIN, VC 2008-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 6411 Eleventh St. on approx. 10,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (39) 3. (Deferred from 6/10/08 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 June 17, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet.
4. There are several criteria from the standpoint of satisfying a variance and, unfortunately, this particular application does not meet all of those criteria, specifically the condition or situation of the subject property or the intended use of the subject property is general and it does recur, and it is reasonably practicable in the formulation of a general regulation that could be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
5. The strict application of this Ordinance would not produce undue hardship.
6. Based on the Cochran decision, the strict application of the Zoning Ordinance does not effectively prohibit or unreasonably restrict all reasonable use of the subject property.
7. The granting of this variance is not going to alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

~ ~ ~ June 17, 2008, RICHARD C. MARTIN AND JULIA S. MARTIN, VC 2008-MV-001, *continued from Page 4*

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

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

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

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

Mr. Hart seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034 Appl. under Sect(s). 8-914 and 9-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.6 ft. from the rear lot line and to permit an accessory dwelling unit. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B.

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.

G. Ray Worley, Sr., 2537 Gallows Road, Dunn Loring, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-034, subject to the proposed development conditions.

~ ~ ~ June 17, 2008, G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034, *continued from Page 5*

Mr. Hart and Mr. Chase discussed the paved area in the front yard, with Mr. Chase stating that the front yard coverage had not been addressed. He said one time the property had been operated as part of a school, and the paving may have existed as part of that use.

Mr. Worley presented the special permit request as outlined in the statement of justification submitted with the application, noting that he filed the special permit application because he had been issued a zoning violation. Mr. Worley stated that he had written statements from his nearest neighbors in support of the application.

In response to a question from Mr. Hammack, Mr. Worley said the paving in the front yard had been there since approximately 1952. After consulting with Mavis Stanfield, Deputy Zoning Administrator for Appeals, Mr. Chase stated that the on-site paving pre-existed the Zoning Ordinance.

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

Mr. Hart moved to approve SP 2008-PR-034 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.6 ft. from the rear lot line and to permit an accessory dwelling unit. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B. 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 17, 2008; 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 accessory dwelling unit, the Board has a favorable staff report and adopts the rationale in the staff report.
3. With the conditions proposed, there will not be significant negative impact on anyone.
4. With respect to the shed, it has been in that location for a number of years and does not seem to be affecting anyone. With the conditions, its approval will not create a negative impact on anyone.
5. With respect to the shed, the applicant has shown compliance with 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 Sect(s). 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

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

~ ~ ~ June 17, 2008, G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034, *continued from Page 6*

- 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 an unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

1. This approval is granted to the applicants only, G. Ray Worley, Sr., and Estella C (H.) Worley, and is not transferable without further action of this Board, and is for the location indicated on the application, 2537 Gallows Road (15,375 square feet), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Lucarelli, Montes and Wells, P.C., dated March 20, 2008 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place in the interior of the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The accessory dwelling unit shall contain a maximum of 833 square feet, including a maximum of two sleeping areas, including one bedroom and a multipurpose room.
6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.

~ ~ ~ June 17, 2008, G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034, *continued from Page 7*

10. Prior to occupancy of the accessory dwelling unit, a breezeway shall be constructed in between the primary dwelling and the accessory dwelling unit in substantial conformance with the architectural renderings and materials included in 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 the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. LAURA LYNN GRAHAM, SP 2008-DR-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 27.8 ft. from front lot line. Located at 326 Walker Rd. on approx. 1.91 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 5A.

Chairman Ribble called the applicant to the podium.

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

John Fitzgerald, 326 Walker Road, Great Falls, Virginia, the applicant's husband, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-DR-035, subject to the proposed development conditions.

Mr. Fitzgerald provided some background information on the property, stating that he and his wife purchased it approximately three years ago with a goal to restore the 1872 historic house to its original grandeur.

Ms. Graham presented the special permit request as outlined in the statement of justification submitted with the application, noting that the house was not inhabitable when they purchased the property, and it had not been lived in for the past ten years. She wished to construct a wraparound porch on the house, but it would encroach on the front yard setback requirement.

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

Ms. Gibb moved to approve SP 2008-DR-036 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LAURA LYNN GRAHAM, SP 2008-DR-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 27.8 ft. from front lot line. Located at 326 Walker Rd. on approx. 1.91 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 5A.  
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:



~ ~ ~ June 17, 2008, LAURA LYNN GRAHAM, SP 2008-DR-035, *continued from Page 8*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 2008; 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. The applicant has met the required 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 (approximately 600 square feet) of the proposed porch (roofed deck) addition as shown on the plat prepared by Laura F. Miller, P.E. dated February 10, 2008 and revised to March 25, 2008 as submitted with this application and is not transferable to other land.
2. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect. 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. Smith and Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:00 A.M. ONE FLINT HILL LIMITED PARTNERSHIP, SP 2008-PR-037 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a temporary sales trailer. Located at 10530 Rosehaven St. on approx. 1.9 ac. of land zoned PDC. Providence District. Tax Map 47-4 ((1)) 1A pt.

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.

Benjamin F. Tompkins, 344084 Riverside Parkway, Suite 300, Leesburg, Virginia, the applicant's agent, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-037, subject to the proposed development conditions.

Mr. Tompkins presented the special permit request as outlined in the statement of justification. He said the two-year permit for the sales trailer had expired, and due to marketing conditions, sales and construction were still ongoing.

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

Mr. Smith moved to approve SP 2008-PR-037 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ONE FLINT HILL LIMITED PARTNERSHIP, SP 2008-PR-037 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a temporary sales trailer. Located at 10530 Rosehaven St. on approx. 1.9 ac. of land zoned PDC. Providence District. Tax Map 47-4 ((1)) 1A pt. 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 17, 2008; 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 PDC.
3. The area of the lot is 1.9 acres.
4. It is a simple request.
5. It is an attractive, well-kept trailer.
6. Recognizing market conditions, it seems like a very reasonable request to continue the sales and leasing activity on the site.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 6-204 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, One Flint Hill Limited Partnership and is not transferable without further action of this Board, and is for the location indicated on the application, 10530 Rosehaven 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 Dewberry and Davis, LLP dated February 28, 2008 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.

~ ~ ~ June 17, 2008, ONE FLINT HILL LIMITED PARTNERSHIP, SP 2008-PR-037, *continued from Page 10*

5. Parking shall be provided as shown on the special permit plat. All parking shall be onsite.
6. The maximum hours of operation for the subdivision sales office shall be 8:00 a.m. to 8:00 p.m. daily.
7. The use of the property as a condominium sales/leasing office shall cease upon completion of sales in the Falls at Flint Hill development or, if used as a leasing office, shall cease upon completion of the rental office in the multi-family building, but no later than June 17, 2009.

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.

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

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~ ~ ~ June 17, 2008, Scheduled case of:

9:30 A.M.        SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an accessory storage structure without a valid building permit and is allowing the use of the property that is not in conformance with the limitations of Special Permit S-189-77 in violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac. of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Admin. moved from 8/7/07 and 11/6/07 at appl. req.) (Decision deferred from 2/26/08)

Jayne Collins, Staff Coordinator, Zoning Administration Division, said the appellant submitted a special permit amendment application the previous week, and it contained some minor problems. She said the applicant's agent indicated that he would be meeting with the Department of Planning and Zoning to take care of the problems. Ms. Collins said staff would support a six-month deferral to December 16, 2008.

Mr. Beard moved to defer decision on A 2007-LE-017 to December 16, 2008, at 9:30 a.m., at the appellant's request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:30 A.M.        CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses (an office, a motor vehicle storage yard, and a storage yard) and the placement of accessory storage structures on property in the I-5 District without site plan or Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 33-2 ((2)) 12.

Doug Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated June 10, 2007. He said the northern half of the property was in a resource protection area and hundred year floodplain due to the proximity of Dead Run Stream. Mr. Hansen noted that the Health Department had recently issued a notice of violation for lack of sewer facilities to certain buildings and structures on the property.

In response to Mr. Hart's question, Chuck Cohenour, Senior Zoning Inspector, stated that the lack of sewer facilities was not included with the current violations being considered. He said they would be handled separately by the Health Department.

Mr. Hart and Mr. Hansen discussed whether the violations could be remedied if the appellant applied for a site plan, non-RUP, and a building permit. Mr. Hansen stated that the appellant had only begun to clean up the property, but had not applied for any permits.

~ ~ ~ June 17, 2008, CRONAN FAMILY, LLC, A 2008-SU-008, *continued from Page 11*

Mr. Hansen stated that the encroachment onto the floodplain had been identified on aerial GIS photos, but noted that without a site plan, the area would have to be surveyed by an engineer to determine exactly where the boundaries were.

J. Charles Curran, Kidwell, Kent & Curran, PC, Woodson Square, 9695 C Main Street, Fairfax, Virginia, the appellant's agent, presented the arguments forming the basis for the appeal. He stated his intention to ask the Board for a deferral of the matter. Mr. Curran also acknowledged some unintentional factual errors in his letter of explanation. Providing some history on the property, he said there was a notice of violation issued in 1991 for lack of a non-RUP. He stated the County closed the case without the non-RUP being granted. Mr. Curran said he felt it was fair to assume that the Cronan family and operators of the businesses thought matters had been taken care of, so this violation came as a shock to them. Nevertheless, they engaged him and an engineer, and undertaken to begin clean-up of the property. He said their goal was to bring the property into compliance with the Zoning Ordinance. Mr. Curran asked for a three-month deferral so the appellants could proceed with engineering and the filing of a site plan. He also mentioned the dairy farm, gas pumps, and sewer and water as unaddressed problems which needed to be worked out.

In response to Chairman Ribble's question, Mr. Hansen stated that the appellant had made progress, but deferred to the Zoning Enforcement Branch. Mr. Cohenour stated that it was the position of the Zoning Enforcement Branch not to support a deferral and asked the Board to find in favor of the Zoning Administrator.

Mr. Beard and Mr. Curran discussed the intent of the appellant in asking for a deferral, with Mr. Curran stating that they would be filing a site plan and apply for a non-RUP.

Responding to Ms. Gibb, Mr. Cohenour stated that the decision not to support the deferral request by the appellant was made at a higher level.

Mr. Hart and Mr. Hansen discussed the circumstances of the 1991 violation. Mr. Hansen said the matter had been closed with a notation by the zoning inspector.

Mr. Hart and Ms. Stanfield discussed proceeding with the hearing, with Ms. Stanfield stating it was because of the severity of the violations.

Chairman Ribble called for speakers.

Mary Cronan, primary owner of the property, and Cynthia Cronan Wood, her daughter, spoke in support of the deferral.

In response to a question from Mr. Beard, Mr. Cohenour stated that the violations had come to the County's attention during the course of surrounding violation investigations. He noted that his supervisor had asked that this property be included in the investigation.

Mr. Byers and Mr. Cohenour discussed recent visits to the property, with Mr. Byers asking for photos of the site following the onsite meeting on June 5<sup>th</sup>.

Ms. Gibbs moved to defer A 2008-SU-008 to December 16, 2008, at 9:30 a.m., with a status report concerning the progress being made in resolving the violations on September 23, 2008. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ June 17, 2008, Scheduled case of:

9:30 A.M.       ADNAN INAD FARAHAN, A 2008-MA-010

Chairman Ribble noted that A 2008-MA-010 been administratively moved to September 9, 2008, at 9:30 a.m., at the appellant's request.

~ ~ ~ June 17, 2008, ADNAN INAD FARAHAN, A 2008-MA-010, *continued from Page 12*

Ms. Stanfield stated that the appellant was in the process of submitting an application for a special permit that would allow him to keep the accessory dwelling unit.

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~ ~ ~ June 17, 2008, After Agenda Item:

Approval of November 1, 2005, and November 8, 2005 Minutes


Mr. Hammack moved to approve the minutes. Mr. Hart seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:27 a.m.

Minutes by: Suzanne L. Frazier

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 Tuesday, July 1, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 8:59 a.m. Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M. LINCOLNIA PARK RECREATIONAL CLUB, INC., SPA 76-S-077

Chairman Ribble noted that SPA 76-S-077 had been indefinitely deferred at the applicant's request.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M. THOMAS H. CHRISTIE III TRUSTEE, SP 2008-DR-040 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 10.1 ft. with eave 8.5 ft. from side lot line. Located at 9054 Jeffery Rd. on approx. 24,627 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-2 ((9)) 3A

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.

Thomas H. Christie, III, 9056 Jeffrey Road, Great Falls, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart, Ms. Hedrick, and Susan C. Langdon, Chief, Special Permit and Variance Branch, discussed the location of the septic field and its proximity to the driveway and porch. Ms. Hedrick stated that Ms. Langdon had scaled the septic field, and it appeared to be eight to nine feet from the concrete pad. She said the applicant had a location frame for the new septic field on the property for construction of the new home. With respect to the driveway, Ms. Hedrick said the applicant intended to remove the driveway, and staff could suggest language for a development condition if the Board desired. Ms. Langdon said the distance from the structure to the septic field was a Health Department requirement, not a Zoning Ordinance requirement. Mr. Hart said that even though it was not a Zoning Ordinance requirement, it was part of the package given to the Board to review.

Mr. Christie presented the special permit request as outlined in the statement of justification submitted with the application. He said he had documentation of Health Department approval for the proposed septic field for a five-bedroom home; he would remove the concrete pad and was willing to put that in writing; the accessory structure exceeded the 10 percent of the measurement involved; and, the noncompliance was done in good faith. He said there were things that did not require a permit, and after three calls to the County, it was clear that he did not need a permit to replace rotten wood and trusses as long as he retained the same footprint and the roof was not taller than 38 feet, which it was not. Mr. Christie said that when he purchased the property in 1975, the structure was essential to the purchase of the property, and the original plot showed the structure as it was today. He referenced the letters submitted from surrounding neighbors and the Great Falls Association that indicated they were in favor of the accessory structure. Mr. Christie said the new structure would be permanent. He referenced a letter from the County dated in 2004 that indicated the lot was buildable with the structure, and the reduction would not result in an increase in density or floor area ratio from that permitted by the zoning district regulations. He stated that it had always been his intention to get the structure inspected during the building phase of the new house. He stated that the water pipes and electric wiring were to be dug up for a new septic field and grading, and he had not disturbed any ground to do any repairs to the structure.

~ ~ ~ July 1, 2008, THOMAS H. CHRISTIE III TRUSTEE, SP 2008-DR-040, *continued from Page 14*

Mr. Christie confirmed for Mr. Hart that the drawing given to the Board showed the septic field in a different location than the one on the special permit plat.

Mr. Hart asked if the plans for the new septic field should be on the plat in lieu of the one in the staff report because it appeared that the new location would be underneath part of the garage. Ms. Langdon said staff understood the plans submitted by the applicant were future plans, not what currently existed. She said staff did not have a timeframe for when it would be done, so the plat that had been submitted reflecting what existed was used for the special permit.

Mr. Hart said it was his opinion that the County was setting the applicant up for trouble if the Board approved the structure on top of where the new septic field would be located. Ms. Langdon stated that the Health Department would inspect the septic field and would determine whether other structures and trees met their requirements. She said that if they told the applicant the septic field could not go in that location or the garage would have to come down, the applicant would have to modify the plans.

In response to a question from Chairman Ribble, Mr. Christie said it was his understanding the new septic field had been approved by the Health Department with the garage in place.

Discussions ensued regarding the drawings and the location for the new septic field.

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

Mr. Hammack moved to approve SP 2008-DR-040 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

THOMAS H. CHRISTIE III TRUSTEE, SP 2008-DR-040 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 10.1 ft. with eave 8.5 ft. from side lot line. Located at 9054 Jeffery Rd. on approx. 24,627 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-2 ((9)) 3A. 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 1, 2008; and

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

1. The applicant is the owner of the land.
2. The applicant has met the criteria specified in Sect. 8-914 to grant the special permit.

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

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

~ ~ ~ July 1, 2008, THOMAS H. CHRISTIE III TRUSTEE, SP 2008-DR-040, *continued from Page 15*

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

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

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

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

1. This special permit is approved for the location of the accessory structure (1 ½ story frame garage/workshop) as shown on the plat prepared by Dominion Surveyors Inc., dated February 22, 2008, as submitted with this application and is not transferable to other land.
2. A building permit and final inspections for the accessory structure shall be diligently pursued and obtained within 120 days of final approval of this application or this special permit shall be null and void.

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

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

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~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M.       JEFFREY M. HOFFMAN, SP 2008-MV-042 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 8709 Triumph Ct. on approx. 11,523 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((19)) 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.

Jeffrey Hoffman, 8709 Triumph Court, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hoffman presented the special permit request as outlined in the statement of justification submitted with the application. He said that when he purchased the property, it had an existing six-foot high fence, and he had no knowledge the fence was in violation or the previous owner had not obtained a permit to erect it. He stated that the fence provided a secure play area for his daughter and kept his dogs in the yard. He stated that vehicles drove in excess of the 25 miles per hour speed limit down Wittington Boulevard, which was the



~ ~ ~ July 1, 2008, JEFFREY M. HOFFMAN, SP 2008-MV-042, *continued from Page 16*

main road through the subdivision. He said if he had to remove or lower the height of the fence, it would cause him undue hardship and expense.

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

Mr. Byers moved to approve SP 2008-MV-042 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JEFFREY M. HOFFMAN, SP 2008-MV-042 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 8709 Triumph Ct. on approx. 11,523 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((19)) 3. 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 1, 2008; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,523 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-923 of the Zoning Ordinance.

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

1. This special permit is approved for the location and maximum height of a fence in the front yard as shown on the plat prepared by Larry N. Scartz, dated November 13, 2007, as submitted with this application and is not transferable to other land.
2. The accessory storage structure (frame shed) and accessory structures (play equipment and dog house) shall be removed or relocated from the front yard to comply with applicable Zoning Ordinance provisions within 90 days 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. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M. FIRST KOREAN UNITED METHODIST CHURCH, SPA 88-C-057-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 previously approved for church with child care center and nursery school to permit change in permittee and hours of operation. Located at 2730 Centreville Rd. on approx. 4.22 ac. of land zoned R-1 and SC. Hunter Mill District. Tax Map 25-1 ((1)) 37

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.

Samina Adnan, the applicant's agent, 2451 Silk Court, Oak Hill, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 88-C-057-04, subject to the proposed development conditions.

Discussions ensued regarding the proposed operator of the child care center, Happy Hearts Children's Center, Inc., not being included as an applicant or listed on the affidavit. Mr. Hart said he wanted to ensure procedurally that if the center was going to be the lessee and operating the school, there was a development condition that stated it was only for the applicant, and he did not believe the paperwork was in order. Susan Langdon, Chief, Special Permit and Variance Branch, stated that sometimes a second user was part of the permittee and sometimes they were not. She said if they were not, then the child care center would be under the auspices of the First Korean United Methodist Church. She noted that Ms. Adnan's name was on the affidavit, which had been reviewed by the County Attorney's Office. Ms. Langdon said the County had a lot of churches that leased out their property for another use, but the special permit ran with the applicant, and they were responsible for ensuring the development conditions were adhered to. Mr. Hart said he was concerned that Happy Hearts would be leasing the space from the church to run the child care facility, but was not listed on the affidavit.

Discussions ensued regarding the conveyance of the property from Sleepy Hollow United Methodist Church to Arlington Korean United Methodist Church and the conveyance from the previous applicant, Floris United Methodist Church, to the First Korean United Methodist Church, the ownership status of the latter, the review of the affidavit done by the County Attorney's Office, and the previous approvals by the Board with respect to amendments for the Floris United Methodist Church. Mr. Hart read from the November 2002 resolution which stated that the Board had made the findings of fact that the applicants were the owners of the land, and he said that if the deed they now had was correct, they were not. He said he thought all of the other approvals had been premised on Floris being the owner, and something was not right with the application.

Chairman Ribble entertained a motion to defer the application until the affidavit could be straightened out and the Board received answers to some of the questions raised. Discussion ensued regarding the length of the deferral.

Mr. Hart moved to continue SPA 88-C-057-04 to July 8, 2008, at 9:00 a.m., to obtain additional information. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M. LUCY PERRON UNCU, SP 2008-PR-038 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 2603 Pioneer La. on approx. 10,983 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((7)) 40

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.

Lucy Perron Uncu, 2603 Pioneer Lane, Falls Church, Virginia, reaffirmed the affidavit.

~ ~ ~ July 1, 2008, LUCY PERRON UNCU, SP 2008-PR-038, *continued from Page 18*

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-038, subject to the proposed development conditions.

Ms. Uncu presented the special permit request as outlined in the statement of justification submitted with the application. She said she wanted to build a family room to increase the size of the living area, explained the changes that were necessary to permit the construction, and indicated that the design was in harmony with the existing house and other houses in the neighborhood.

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

Mr. Smith moved to approve SP 2008-PR-038 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

LUCY PERRON UNCU, SP 2008-PR-038 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.2 ft. from rear lot line. Located at 2603 Pioneer La. on approx. 10,983 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((7)) 40. 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 1, 2008; 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 application has met the requirements as noted in the staff report.
4. Staff has recommended approval.
5. The applicant has indicated that the construction is proposed in the same location as the existing brick patio.
6. There is significant vegetation mitigating the impact on surrounding properties.
7. It seems to be a logical location for the addition providing access to an existing family room.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 366 square feet) of the proposed addition as shown on the plat prepared by William P. Ramsey, P.C., dated November 26, 2007, revised through April 7, 2008, as submitted with this application and is not transferable to other land.

~ ~ ~ July 1, 2008, LUCY PERRON UNCU, SP 2008-PR-038, *continued from Page 19*

3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,925 square feet existing + 2887.5 square feet (150%) = 4,812.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect. 18-407 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 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. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:00 A.M. SUSAN FISCHER, SPA 2002-MA-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2002-MA-019 to permit reduction of certain yard requirements to permit construction of second story addition 17.1 ft. and another addition 27.0 ft. from front lot line. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1

Chairman Ribble called the applicant to the podium.

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

Susan Fischer, 3117 Worthington Circle, Falls Church, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2002-MA-019, subject to the proposed development conditions.

Discussions ensued regarding the locations of a one-foot wide stone wall shown on the plat and fences on the property.

Ms. Fischer presented the special permit request as outlined in the statement of justification submitted with the application. She said the special permit would allow her to add a larger bathroom with safety features to the second story to meet her future needs and enclose a portion of the rear deck on the back side of the house for additional living space, with the design of the addition conforming to the existing architecture of the home. Ms. Fischer said there was one stone wall along one side of the driveway that was approximately three to four feet in height and sloped down to approximately one foot which prevented erosion during rainfalls. She said she had requested a special permit a few years prior to enable her to extend her deck around to the other side of the house, and the six-foot high fence was addressed at that time. She said there was a pool in that location, and the previous owners may have erected the fence because of height requirements. Ms. Fischer said part of the fence was outside of the property, and there was one in the back of the property that was slightly inside the property line, and due to the slope on that side, the fence was

~ ~ ~ July 1, 2008, SUSAN FISCHER, SPA 2002-MA-019, *continued from Page 20*

against the trees. She said the footprint of the home would not be changed because the proposed construction would be at the second level, and she had the approval of her neighbors.

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

Mr. Beard moved to approve SPA 2002-MA-019 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SUSAN FISCHER, SPA 2002-MA-019 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2002-MA-019 to permit reduction of certain yard requirements to permit construction of second story addition 17.1 ft. and another addition 27.0 ft. from front lot line. Located at 3117 Worthington Ci. on approx. 9,465 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((2)) (E) 1. 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 1, 2008; and

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

1. The applicant is the owner of the land.
2. The application meets all of the submission requirements as set forth in Sect. 8-922.
3. It is harmonious with surrounding off-site uses and structures.
4. Staff has recommended approval of this application.
5. The applicant has stated under the oath that the footprint is not to be changed.
6. The applicant has discussed the construction with her neighbors, and there have been no objections brought to the Board.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 429 square feet) of the proposed additions as shown on the plat prepared by B.W. Smith and Associates, dated May 23, 2007, revised through March 31, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,477 square feet existing + 3,670.5 square feet (150%) = 6,117.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of

~ ~ ~ July 1, 2008, SUSAN FISCHER, SPA 2002-MA-019, *continued from Page 21*

a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

Pursuant to Sect.18-407 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 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 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 1, 2008, Scheduled case of:

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

Chairman Ribble called the appellants to the podium.

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

John Dennis Hall, the appellant, stated that he and his wife were present to request a deferral of the hearing because they had not received the last package from staff until June 24, 2008, and after reading it, they realized it was beyond their comprehension and had retained a lawyer. Mr. Hall submitted a letter from the lawyer stating that he could not be present at the meeting.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff was unaware of the appellants' request, and it was staff's position to proceed with the public hearing.

Cynthia Bauso, 3405 Austin Court, Alexandria, Virginia, came forward to speak, stating that her husband had been in the Zoning Administration Division office the prior Wednesday, the morning after they received the packet, to request the case be rescheduled. She said their request was denied, and he had been told to appear at the public hearing to formally request a deferral. She said they had hired William Lawson to represent them; however, Mr. Lawson could not be present, and that was the reason they were requesting the deferral.

Mr. Hammack moved to defer A 2008-LE-011 to August 5, 2008, at 9:30 a.m., at the appellants' request. The motion carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:30 A.M. ROBIN SZUMYK, A 2008-MV-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that grading of the front and side yards to expand the existing driveway is impairing the drainage of storm water on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 6023 Woodmont Rd. on approx. 6,029 sq. ft. of land zoned R-4 and H-C. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 32.

Chairman Ribble noted that A 2008-MV-012 had been withdrawn.

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~ ~ ~ July 1, 2008, Scheduled case of:

9:30 A.M. WASHINGTON D.C. SMSA D/B/A VERIZON WIRELESS, A 2008-MV-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that special exception approval for an existing electric substation would be required in conjunction with special exception approval to install a proposed monopole on property in the R-3 District. Located at 8229 Riverside Rd. on approx. 459 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 18A.

Chairman Ribble noted that A 2008-MV-013 had been administratively withdrawn.

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~ ~ ~ July 1, 2008, After Agenda Item:

Approval of November 29, 2005 Minutes

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

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~ ~ ~ July 1, 2008, After Agenda Item:

Request for Waiver  
Richard C. and Julia S. Martin, VC 2008-MV-001

Sara Mariska, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, the applicants' agent, said the applicants were continuing to discuss the possibility of obtaining a special permit for the breezeway. Since the applicants had been pursuing the County approval process since 2004, she asked if a special permit was a viable option that would allow the applicants to refile as quickly as possible so they could move forward.

Mr. Hammack moved to waive the 12-month waiting period for refileing an application. Mr. Hart seconded the motion.

Subsequent to the motion, Mr. Hart referred to Ms. Mariska's letter dated June 23, 2008, requesting an out-of-turn hearing. He stated that the Board could not grant an out-of-turn hearing until an application was received. He said he suspected that if the structure was by right and shifted out of the minimum yard with the breezeway, the applicants would not have to do anything or pay a filing fee. He suggested that the applicants discuss the matter with staff. He also said that if the applicants were planning to come back with a reduction of something that was attached to the house, he did not think a 12-month waiver was necessary.

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

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~ ~ ~ July 1, 2008, After Agenda Item:

Request for Additional Time  
Trustee for the Congregation Olam Tikvah, SPA 81-P-068-3

Mr. Beard moved to approve six months of additional time. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting. The new expiration date was September 2, 2008.

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Mr. Hammack referenced a recent article in the *Washington Post* concerning swim clubs and the fact that some Springfield citizens were distressed because they were having trouble with membership and operations. He said it appeared that one swim club had leased some of its land to a Wendy's Restaurant and asked if staff was aware of that. He said he did not recall the Board receiving an application requesting that. Susan Langdon, Chief, Special Permit and Variance Branch, said she believed that was a swim club on Little River Turnpike in Annandale, and she thought they had a combined special exception and special permit where they deleted land from the swim club and then applied for a special exception for the restaurant. She said that had taken place a number of years prior.

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As there was no other business to come before the Board, the meeting was adjourned at 10:13 a.m.

Minutes by: Paula A. McFarland/Mary A. Pascoe

Approved on: February 11, 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 Tuesday, July 8, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. ANNA-MARIE TERMINI, SP 2008-PR-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 13.0 ft. from one side lot line and 9.0 ft. from other side lot line. Located at 2730 Oak Valley Dr. on approx. 5,860 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 14.

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.

Kelly M. Atkinson, the applicant's agent, 9401 Centreville Road, Suite 300, Manassas, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Atkinson presented the special permit request as outlined in the statement of justification submitted with the application. The existing house was constructed in 1925 prior to the adoption of the Zoning Ordinance or any zoning districts. When the applicant obtained a permit for roof work in 2007, she was informed that a special permit would be required because floor area was being added over an existing part of the house that was already encroaching into the side yards.

Mr. Beard, Mr. Hammack, and Ms. Atkinson discussed the issue of the building permit and subsequent inspections, with Ms. Atkinson noting that the building permit had been voided within 60 days of issuance when it was determined that a special permit was required.

In response to a question from Ms. Gibb, Susan Langdon, Chief, Special Permit and Variance Branch, stated that a permit was needed to reflect a structural change since the bathroom renovation changed the height of the roof and walls. Mr. Hart said the permit application was for roof framing with no mention of a bathroom renovation indicated on the permit issued in July of 2007.

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

Mr. Hammack moved to approve SP 2008-PR-039 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ANNA-MARIE TERMINI, SP 2008-PR-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to allow a reduction to the minimum yard requirements based on an error in building location to permit a dwelling to remain 13.0 ft. from one side lot line and 9.0 ft. from other side lot line. Located at 2730 Oak Valley Dr. on approx. 5,860 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ July 8, 2008, ANNA-MARIE TERMINI, SP 2008-PR-039, *continued from Page 25*

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 8, 2008; 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 met the standards specified in A through G of Section 8-914.
3. The actual footprint of this building was constructed before the adoption of the Zoning Ordinance. The basic construction of the additions all preceded the Ordinance and was a nonconforming use.
4. It was only when the applicant wanted to make improvements to the bathroom on the second floor that required some changes that it came to the attention of the zoning staff that a special permit was required.

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

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

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

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

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

1. This special permit is approved for the location of the dwelling as shown on the plat prepared by Land Design Consultants, 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 7-0.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. JUSTIN LITTMAN, SP 2008-SP-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit a reduction of certain yard requirements to permit the construction of an addition 10.3 ft. from the side lot line. Located at 12705 Sabastian Dr. on approx. 1.06 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((6)) 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 affirmed that their testimony would be the truth, and the public hearing was opened.

Justin Littman, 12705 Sabastian Drive, Fairfax, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SP-043, subject to the proposed development conditions.

Mr. Littman presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit would allow the replacement of an unsafe deck in poor condition attached to the main living area and kitchen with a covered porch to provide a safe play area for his children and family dining. He said alternative locations had been considered, but the proposed location was the only feasible area due to the location of the air conditioner and underground utilities.

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

Mr. Byers moved to approve SP 2008-SP-043 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JUSTIN LITTMAN, SP 2008-SP-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.3 ft. from side lot line. Located at 12705 Sabastian Dr. on approx. 1.06 ac. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((6)) 8. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 8, 2008; and

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

1. The applicant is the owner of the land.
2. The staff recommends approval 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 Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

~ ~ ~ July 8, 2008, JUSTIN LITTMAN, SP 2008-SP-043, *continued from Page 27*

2. This special permit is approved for the location and size (approximately 240 square feet) of the proposed screened porch addition, as shown on the plat prepared by William E. Ramsey, P.C., dated February 3, 2008, as revised through April 4, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,207 square feet existing + 1,810.5 square feet (150%) = 3,017.5 square feet permitted) regardless of whether such an addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The play set will be moved a minimum of ten (10) feet from the drainfield.

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

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

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

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. MOLLY ROFHEART, SP 2008-PR-050 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in front yard. Located at 2431 Nottingham Dr. on approx. 9,356 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 39-4 ((16)) 12.

Chairman Ribble called the applicant to the podium.

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

Molly Rofheart, 2431 Nottingham Drive, Falls Church, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Following receipt of pictures from a neighbor showing the current fence atop a retaining wall, Susan Langdon, Chief, Special Permit and Variance Branch, and Mr. Hart discussed where the measurement of the fence began and ended. Ms. Langdon noted that an interpretation from the Zoning Administrator stated that the height of a fence on top of a retaining wall is measured from the higher finished grade established by the wall to the top of the fence.

Ms. Rofheart presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the fence was not on top of the retaining wall, but on the patio, set back from the retaining wall.

~ ~ ~ July 8, 2008, MOLLY ROFHEART, SP 2008-PR-050, *continued from Page 28*

Ms. Gibb, Mr. Byers, Mr. Smith, and Ms. Rofheart discussed the fence having existed for one year, the homeowners association's review and denial of the fence, and five or six other homes in the neighborhood having front yard fences.

Richard Ott, 2433 Nottingham Drive, Falls Church, Virginia; and Larry Steinberg, 7800 Wincanton Court, Falls Church, Virginia, came forward to speak in opposition to the application. They voiced concerns regarding the six-foot high fence attached to a three-foot high retaining wall in the front yard giving the appearance of a colonial fort and not being in keeping with the style of the contemporary neighborhood.

In response to a question from Mr. Byers regarding why the homeowners association had not taken action against the other homes in the neighborhood with six foot high fences in front yards, Mr. Ott said the properties were corner lots; the fences were along the functional back and side yards; and, the houses had front doors facing in a different direction than where the fences were located.

In response to a question from Mr. Hammack, Ms. Rofheart stated that a six-foot fence was present when they purchased the house, but only on the portions facing the street. At that time, the house faced the opposite direction, so the front door opened to the side of the house. Ms. Rofheart said she was not opposed to removing the pavers staff had requested be removed.

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

Mr. Hart moved to deny SP 2008-PR-050 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

MOLLY ROFHEART, SP 2008-PR-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. Located at 2431 Nottingham Dr. on approx. 9,356 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 39-4 ((16)) 12. 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 8, 2008; and

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

1. The applicant is the owner of the land.
2. The Board received a number of letters in opposition.
3. There are some difficult issues with respect to the analysis of security for this property.
4. It was concluded that the applicable standards have not been met; specifically Section 8-006, General Standards, Numbers 2 and 3; and Section 8-923, Provisions for Increase in Fence and/or Wall Height in any Front Yard, Numbers 3, 4, and 5.
5. Although there appear to be some homes with fences over six feet in front yards, as illustrated in the photographs in the rebuttal memorandum, most of those fences involve an open deck, and to the extent there are retaining walls visible in those photographs, only one could be seen, and it was perpendicular to the street in a relatively short duration.
6. In the subject application is a retaining wall of approximately 35 or 37 feet facing the street, which is not dimensioned on the plat.
7. Along the side line, there is a retaining wall of a little over 30 feet, creating a raised platform which is 2.8 feet from the side line.
8. The mass and bulk of that combination in that condition, with the retaining wall of that size and length on two sides 2.8 from the side lot line next to a house with an open carport actually quite close to the side on that side, the juxtaposition is too much.

~ ~ ~ July 8, 2008, MOLLY ROFHEART, SP 2008-PR-050, *continued from Page 29*

9. There is too much mass, too much bulk, and too much height too close to the side, too much in a front yard.
10. The Board deals with the Zoning Ordinance and its standards, and the issues about whether the deed restrictions or the covenants apply or not is not within the Board's purview.
11. The Board is sympathetic to the applicant and the issue of security and privacy for a home, and that is one of the reasons architects do not put sliding glass doors facing the street very often. Sliding glass doors are more used for more private outdoor spaces, and putting a sliding glass door and a hot tub in the front yard, to some extent, exposes it to the views of neighbors and creates other conflicts with its context.
12. In this situation, the four foot fence may not be as private as the applicant would like, but in view of the standards which the Board has to conclude are satisfied in a given application, with these standards not being met, the application should not be approved.
13. The condition is unique due to the length and mass of the retaining walls on the two sides.
14. Additional landscaping would not necessarily mitigate the entire impact.
15. The subject application is not consistent with the approvals in the neighborhood.
16. Most of the photographs of other homes appear to involve what would be additions, under staff's current interpretation, rather than fences because they are decks or decks with a piece of lattice underneath making it an addition, and they would be subject to other standards and may have been taken care of in the building permits.

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

Mr. Smith seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M.        DAVID L. BROWN, SP 2008-DR-049 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 1840 Patton Ter. on approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21.

Chairman Ribble stated that the notices were not in order so the hearing could not go forward.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M.        FIRST KOREAN UNITED METHODIST CHURCH, SPA 88-C-057-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 previously approved for church with child care center and nursery school to permit change in permittee and hours of operation. Located at 2730 Centreville Rd. on approx. 4.22 ac. of land zoned R-1 and SC. Hunter Mill District. Tax Map 25-1 ((1)) 37. (Continued from 7/1/08)

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.

Samina Adnan, the applicant's agent, 24541 Silk Court, Oakhill, Virginia, came forward.

Chairman Ribble stated that this case had been deferred from July 1, 2008, so questions about the title of the property and the affidavit could be addressed. Deborah Hedrick, Staff Coordinator, stated that staff was satisfied with the revised affidavit.

Ms. Hedrick made staff's presentation as contained in the staff report. Staff recommended approval of SPA 88-C-057-04, subject to the proposed development conditions.

~ ~ ~ July 8, 2008, FIRST KOREAN UNITED METHODIST CHURCH, SPA 88-C-057-04, *continued from Page 30*

Ms. Adnan presented the special permit request as outlined in the statement of justification submitted with the application. She said the changes were being requested to accommodate the needs of the community.

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

Ms. Gibb moved to approve SPA 88-C-057-04 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

FIRST KOREAN UNITED METHODIST CHURCH, SPA 88-C-057-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 previously approved for a church with a child care center and nursery school to permit a change in permittee and the hours of operation. Located at 2730 Centreville Rd. on approx. 4.22 ac. of land zoned R-1 and SC. Hunter Mill District. Tax Map 25-1 ((1)) 37. 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 8, 2008; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and SC.
3. The Board has a favorable staff report.
4. The applicant is only asking for a name change to the new permittee, First Korean United Methodist Church, and an increase in hours to accommodate the needs of the community.
5. There seems to be no impact on the community.

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

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

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

1. This approval is granted to the applicant only, First Korean United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 2730 Centreville Road (4.22 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 Walter L. Phillips Incorporated dated June 5, 2002, as revised through August 5, 2002, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these development

conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum seating capacity of the sanctuary shall be limited to 270 seats.
6. Upon issuance of a Non-Residential Use Permit (Non-RUP), the maximum daily enrollment for the child care center and nursery school shall be 99.
7. Upon issuance of a Non-RUP, the hours of operation for the child care center and nursery school shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. Upon issuance of a Non-RUP, a maximum of twenty-four (24) children at any one time shall use the outdoor play area.
9. The maximum number of parking spaces shall be 135 in the location shown on the special permit amendment plat. All parking shall be on site.
10. There shall be no church parking on Maverick Lane or in the driveway to the dumpster.
11. Transitional screening and barrier requirements shall be modified in favor of that shown on the Special Permit Amendment Plat.
12. Stormwater management shall be provided in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, as approved by the Director, DPWES.
13. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance. All required plantings within the parking lot and within the transitional screening buffers, as shown on the special permit plat, shall be maintained in good health. All dead vegetation within these areas, either natural or supplemental plantings, shall be replaced with like kind plantings.
14. There shall be no illumination of that portion of the parking lot located along the western property boundary (that portion of the parking lot as approved to be added in conjunction with application SPA 88-C-057). All lighting on the site shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall be a low-intensity design which focuses the light directly onto the subject property.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
15. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

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

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. FRANK J. MCCARTHY AND MAURA C. MCCARTHY, SP 2008-SU-041 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 4500 Hazelnut Ct. on approx. 10,493 sq. ft. of land zoned PDH-2. Sully District. Tax Map 45-3 ((3)) 355.

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.

Patrick Tomlinson, the applicants' agent, 5795-B Burke Centre Parkway, Burke, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SU-041, subject to the proposed development conditions.

Mr. Tomlinson presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit would allow the applicants to build a space large enough for family gatherings.

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

Mr. Smith moved to approve SP 2008-SU-041 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

FRANK J. MCCARTHY AND MAURA C. MCCARTHY, SP 2008-SU-041 Appl. under Sect(s). 8-922 of the Zoning Ordinance to allow the reduction of certain yard requirements to permit construction of an addition 12.5 ft. from the rear lot line. Located at 4500 Hazelnut Ct. on approx. 10,493 sq. ft. of land zoned PDH-2. Sully District. Tax Map 45-3 ((3)) 355. 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 8, 2008; and

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

1. The applicants are the owners of the land.
2. The property is zoned PDH-2.
3. The Board has a favorable staff report and adopts the analysis in the staff report.
4. The property backs up to open space.
5. There will not be a substantial impact on anyone as there is also substantial vegetation.

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 recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

~ ~ ~ July 8, 2008, FRANK J. MCCARTHY AND MAURA C. MCCARTHY, SP 2008-SU-041, *continued from Page 33*

2. This special permit is approved for the location and size (approximately 303 square feet) of the proposed addition as shown on the plat prepared by B.W. Smith and Associates, Inc., dated February 8, 2008, as revised through March 25, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed a dwelling that existed at the time of the first expansion (3,266 square feet existing + 4,899 square feet (150%) = 8,165 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings included Attachment 1 to these conditions.

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

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

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

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH, SP 2007-LE-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance for an existing church to permit addition and site modifications. Located at 5502 Trin St. on approx. 4.31 ac. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 91A and 94A. (Admin. moved from 6/5/07, 8/7/07, and 10/16/07 at appl. req.) (Indefinitely deferred from 1/8/08 at appl. req.) (Reactivated from indefinitely deferred)

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.

Carl L. Sell, Jr., the applicant's agent, 6601 Cottonwood Drive, Franconia, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2007-LE-029, subject to the proposed development conditions.

Ms. Gibb assumed the Chair.

Mr. Hart noted the receipt of two letters prior to the hearing, one from Mr. Plesus and the other from Mr. Dunner, both concerning stormwater drainage problems, and he asked if staff had the opportunity to review the letters. Mr. Chase said staff had reviewed the letters. He said the County required that stormwater runoff could not be worsened or aggravated by site additions or modifications, and the stormwater

~ ~ ~ July 8, 2008, THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH,  
SP 2007-LE-029, *continued from Page 34*

underground retention and other improvements were being proposed to alleviate the problems the neighbors were experiencing.

Chairman Ribble resumed the Chair.

Mr. Sell presented the special permit request as outlined in the statement of justification submitted with the application. He said there were no stormwater management facilities presently onsite, noting that the church was built in the 1960s when the requirements were much less stringent. Mr. Sell stated that the church also experienced stormwater problems from water coming offsite onto the church property, and the application would provide an opportunity to lessen the impact of the water going downstream. He said that doing nothing would just continue the situation the way it was, with no controls in place, but approval of the development would include stringent stormwater management controls on the church property.

In response to a question from Mr. Smith, Mr. Sell said there were no drainage easements on the church property to accommodate the water coming off the property, and he assumed there were none offsite, noting that the plats did not show any easements.

Mr. Smith and Mr. Sell discussed the Church's request for additional parking spaces beyond what was required by the Zoning Ordinance, with Mr. Sell stating that the church wished to accommodate the church membership onsite rather than having attendees park in the community.

Mr. Beard and Mr. Sell discussed the proposed increased in seating, with Mr. Sell noting that the Church could not currently handle the overflow.

Mr. Sell introduced Kerry Skinner, engineer for the church, to address the waterfall area onsite. Mr. Skinner discussed the Church's proposal, specifically offsite easements for storm drainage on the downstream property, both off the church site and adjacent parcels to the east. He said the church's outfall was above the waterfall, but would not add to the water volume since a bed of stone beneath the soil would help distribute the water back into the soil.

In response to a question from Mr. Byers, Mr. Chase stated that the original application proposed to clear the entire treed area going up to the property edge to accommodate a stormwater dry pond. He said that in an effort to safeguard as many trees as possible, the applicant agreed to preserve a 200-by-200-foot area, but he was not sure how many trees that encompassed. Mr. Chase said the compromise was reached to achieve parking goals while still preserving the treed area.

Chairman Ribble called for speakers in support of the application.

The following speakers came forward: Domenick Ricci, 5505 Trin Street, Alexandria, Virginia; Tom Sykes, 5501 Trin Street, Alexandria, Virginia; Bob Herr, 5503 Trin Street, Alexandria, Virginia; and Wayne Lyon, pastor of the church.

In response to a question from Mr. Byers, Mr. Chase stated that the development conditions adequately addressed the need for additional stormwater retention.

Chairman Ribble called for speakers in opposition.

Ann Clessas, 5913 Brookview Drive, Alexandria, Virginia, came forward. She voiced concerns regarding the size of the proposed expansion being excessive for the neighborhood; the resulting increase in the congregation, use of the church, and traffic; the removal of the buffer between the church and the homes on the western side of the church; and flooding issues.

In his rebuttal, Mr. Sell acknowledged the stormwater problems, but stated that the applicant was committed to finding a solution to handle the water runoff and providing adequate water retention.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2007-LE-029 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

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

THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH, SP 2007-LE-029 Appl. under Sect(s). 3-303 of the Zoning Ordinance to allow an existing church to permit building addition and site modifications. Located at 5502 Trin St. on approx. 4.31 ac. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 91A and 94A. (Admin. moved from 6/5/07, 8/7/07, and 10/16/07 at appl. req.) (Indefinitely deferred from 1/8/08 at appl. req.) (Reactivated from indefinitely deferred) 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 8, 2008; 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 property is 4.31 acres.
4. The Board has a favorable staff report.
5. It is in accordance with the Comprehensive Plan.
6. There needs to be great care taken as this is an embedded church within the neighborhood, not on a thoroughfare.
7. Staff has been working with the applicant close to a year and several concessions have been made, namely the saving of forestry. The applicant has stressed that adequate parking is needed to keep folks from parking off-site.
8. The runoff situation that exists now is being addressed. The applicant is certainly aware of the problem, as is staff. Should there be an issue with DPWES, the applicant might have to come back for a special permit amendment.

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

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

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

1. This approval is granted to the applicants only, The Wesleyan Corporation, D/B/A United Wesleyan Church, and is not transferable without further action of this Board, and is for the location, 5502 Trin Street, indicated on the application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Barnes and Johnson, Inc., March 8, 2006 and revised to December 13, 2007 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, 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.

~ ~ ~ July 8, 2008, THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH,  
SP 2007-LE-029, *continued from Page 36*

5. The maximum number of church seats in the main area of worship shall be limited to 413.
6. Parking shall be provided as depicted on the Special Permit Plat. All parking shall be on site.
7. Transitional Screening shall be modified along southern portion of the western property lot line and along the portion of the northern property line, adjacent to the parsonage property line (Lot 1, 94A) and along the Trin Street frontage in favor of the existing natural and supplemental landscaped vegetation as shown Sheets 2 & 3 on the approved special permit plat.
8. Special precaution shall be taken during site preparation and construction to ensure that the approved limits of clearing and grading is well marked on the site to avoid unintended tree removal.
9. All existing landscaping shall be maintained. Dead or dying landscaping shall be replaced as needed with a like kind of plant material. Transitional screening plantings should be identified by species and have accurate canopy sizes shown.
10. Prior to site plan approval, a detailed plant schedule with specifications for all landscape plantings shall be provided to the satisfaction of DPWES. In order to contribute to maintaining water quality and providing native plant material for wildlife, native shrubs and groundcover shall be provided around the buildings and along portions of the parking lot as determined by DPWES.
11. At the time of site plan review additional plantings shall be provided if determined necessary by the Urban Forest Management Branch, DPWES.
12. Transitional screening plantings shall be identified by species and have accurate canopy sizes shown. A condition also provides that a detailed plant schedule with specifications for all landscape plantings be provided and that in order to contribute to maintaining water quality and providing native plant material for wildlife native shrubs and groundcover should be provided around the buildings and along portions of the parking lot.
13. Interior parking lot landscaping shall be provided and maintained in accordance with Article 13.
14. Any new 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.
15. The outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
16. Prior to site plan approval, stormwater management (SWM) and best management practice (BMP) facilities shall be provided in accordance with the Public Facilities Manual (PFM) as determined by DPWES. If the SWM/BMP facilities approved by DPWES are not in substantial conformance with those shown on the SP plat, a Special Permit Amendment shall be required.
17. Prior to site plan approval, it shall be demonstrated to the satisfaction of DPWES that adequate outfall can and shall be provided in accordance with the PFM.
18. The applicant shall dedicate adequate stormwater easements throughout the site to the satisfaction of DPWES prior to site plan approval.
19. The church building construction shall be generally consistent with the architecture presented in the elevations as shown on the Special Permit Plat.
20. A sidewalk connection to the church building to the proposed sidewalks on Trin Street and Old Rolling Road shall be provided to promote walking onto the site.

These conditions 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,

~ ~ ~ July 8, 2008, THE WESLEYAN CHURCH CORPORATION, D/B/A UNITED WESLEYAN CHURCH,  
SP 2007-LE-029, *continued from Page 37*

regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Smith seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hammack voted against the motion.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-10 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 210.25 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, 17 pt., 33A, 38 pt., 39 pt., and 64-1 ((4)) 7A.

Chairman Ribble called the applicant to the podium.

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

Chairman Ribble said it was his understanding the applicant wished to defer the public hearing.

William M. Baskin, Jr., the applicant's agent, 301 Park Avenue, Falls Church, Virginia, requested a deferral. He said he was recently given an additional 11 or 12 development conditions that the Fire Marshall proposed which were not contained in the original staff report, which he had sent to his client, but they needed more time to evaluate the proposed conditions.

Susan Langdon, Chief, Special Permit and Variance Branch, said staff had no issue with the deferral and suggested a date of September 16, 2008, for the public hearing, to which Mr. Baskin agreed.

Chairman Ribble called for speakers to address the proposed deferral; there was no response.

Mr. Beard moved to defer SPA 81-S-064-10 to September 16, 2008, at 9:00 a.m., at the applicant's request. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:30 A.M. TOMMY FOSTER LIVING TRUST BY TOMMY L. FOSTER, TRUSTEE, A 2008-LE-014 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop on property in the R-4 District, all in violation of Zoning Ordinance provisions. Located at 3106 Burgundy Rd. on approx. 7,217 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((14)) (B) 11.

Chairman Ribble asked if there was a dismissal request for the appeal.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said there was; however, she noted that the appellant, Mr. Foster, was present to discuss his position.

~ ~ ~ July 8, 2008, TOMMY FOSTER LIVING TRUST BY TOMMY L. FOSTER, TRUSTEE, A 2008-LE-014,  
*continued from Page 38*

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.

Eileen Oviat, Staff Coordinator, Zoning Administration Division, made staff's presentation as contained the staff report. She said that during a follow-up zoning inspection of the subject property conducted on April 24, 2008, Zoning Enforcement staff determined that the violation had been cleared. Following the inspection, Zoning Enforcement staff closed the violation case file. Ms. Oviat stated that because the appellant cleared the violation and the violation case file has been closed, staff considered the appeal to be moot and recommended the BZA dismiss the appeal application.

Mr. Hart asked whether the appellant could appeal the determination that the items in his yard constituted a violation. Ms. Stanfield stated that the public hearing was for the appellant to make his argument on that point.

In response to Mr. Hammack's question, Ms. Stanfield said the notice had not been withdrawn, noting that only the appellant could withdraw the appeal.

Tommy Lee Foster, 3106 Burgundy Road, Alexandria, Virginia, presented the arguments forming the basis for the appeal. He said he objected to the way the matter was handled, noting that the facts alleged were in error. Mr. Foster said he was permitted by right to have a dig-it machine in his yard.

Chairman Ribble called for speakers; there was no response.

In response to Mr. Hart's question, Mr. Foster said he wanted to continue with the appeal since he could not find an appropriate forum to voice his concerns over how the matter was handled. He stated that he sent a letter to the County a few days after he received the violation, but was told that the County would not accept his letter or work with him. Mr. Hart commented that he was not sure the Board was the correct forum since they were limited to determining whether the violation letter was correct or not.

In response to a question from Mr. Beard, Mr. Foster said he purchased the trailer with the insignia on it from a party in Loudon County, and it was not used by him in any commercial activity.

Chairman Ribble closed the public hearing.

Chairman Ribble, Mr. Hammack, Mr. Beard, Mr. Hart, Ms. Stanfield, and Mr. Foster discussed the procedural issues regarding withdrawal or dismissal of the appeal or whether a full hearing was appropriate. Mr. Hart clarified that Mr. Foster was agreeable with a dismissal, but disagreed with staff's reasons. Mr. Foster concurred.

Mr. Hammack moved to dismiss A 2008-LE-014. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ July 8, 2008, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC, A 2006-PR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an establishment for processing of earthen materials, which is not a permitted use in the I-5 District, and operating without site plan, Non-Residential Use and Building Permit approval for storage structure and other structures on property zoned I-5 and H-C in violation of Zoning Ordinance provisions. Located at 2809 Old Lee Hwy. on approx. 1.128 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 65A. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, 10/2/07, and 3/4/08)

~ ~ ~ July 8, 2008, ARMSTRONG, GREEN AND EMBREY, INC, A 2006-PR-040, *continued from Page 39*

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC, A 2006-PR-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has expanded the use of property zoned I-5 and H-C without valid site plan and Non-Residential Use Permit approvals and established outdoor storage that exceeds allowable total area and is located in minimum required front yard in violation of Zoning Ordinance provisions. Located at 8524 & 8524A Lee Hwy. on approx. 1.35 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 67 & 65B. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, 10/2/07, and 3/4/08)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that appellant was not present, but had agreed to a deferral.

Mr. Byers moved to defer A 2006-PR-040 and A 2006-PR-043 to September 9, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding Civil Action No. CL-2007-9460 pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Beard seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 12:04 p.m. and reconvened at 12:18 p.m.


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

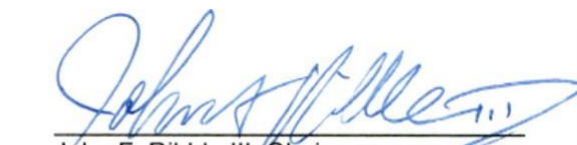
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As there was no other business to come before the Board, the meeting was adjourned at 12:19 p.m.

Minutes by: Suzanne L. Frazier

Approved on: February 11, 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 Tuesday, July 15, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Tom Smith and Paul W. Hammack, Jr., 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.

~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 previously approved for church with child care center, nursery school and private school of general education to permit increase in land area, building addition, site modifications and an increase in enrollment. Located at 3494 Paul St., 3538 Moncure Ave. and 5811 Hoffmans La. on approx. 1.74 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((30)) 22 and 61-4 ((39)) 6 and 61-4 ((1)) 112. (Admin. moved from 7/15/08 for ads.)

Chairman Ribble noted that SPA 90-M-036-2 had been administratively moved to September 23, 2008, at 9:00 a.m., for ads.

Arlene Pripeton, the applicant's agent, 10195 Main Street, Fairfax, Virginia, explained that there was a typographical error on the original application with respect to construction on one of the properties. She stated that they were willing to abide by a deferral, and she had submitted letters of support from the surrounding neighbors.

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~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. SABRI ERIKSEN, SP 2008-HM-015 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 roofed deck to remain 10.1 feet from a side lot line and addition to remain 8.8 feet from the other side lot line and to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 20.0 ft. from front lot line. Located at 8816 Skokie La. on approx. 10,859 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((13)) 39. (Decision deferred from 5/13/08 and 6/17/08)

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.

Sabri Eriksen, 8816 Skokie Lane, Vienna Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, said the Board had deferred decision on the application to allow the applicant time to develop an alternative design for the proposed addition. She said the applicant had since redesigned the proposed addition and was now seeking approval of a special permit for reduction of certain yard requirements to permit the construction of an addition approximately 326 square feet in size. While the revised request still proposed the addition to be located 6.0 feet from a side lot line, the new distance to the front lot line was now 27 feet. The revised proposal differed from the previous request, which proposed a 445-square-foot addition, 20 feet from the front lot line. She said the applicant shortened the encroachment of the garage into the minimum front yard by 7.0 feet and had planned to redesign the interior of the proposed expansion of the kitchen and great room addition. Although staff had recommended denial of the original proposal, staff recommended approval of the new proposal for SP 2008-HM-015, subject to the revised proposed development conditions dated July 8, 2008.

Mr. Eriksen said that since the May 13, 2008 hearing, he had hired a new architect and looked at ways to modify the application and address the concerns raised by staff and the Board. The new plan required less of a reduction to the front yard setback and reduced the overall addition. Mr. Eriksen said ways to reduce the request for the side yard had been explored; however, without a wider garage, the project would not be

~ ~ ~ July 15, 2008, SABRI ERIKSEN, SP 2008-HM-015, *continued from Page 41*

worth undertaking, and he would not seek a special permit. He said the new design would be compatible with the existing home and neighborhood, and he had submitted letters of support from the neighbors.

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

Mr. Byers moved to approve SP 2008-HM-015 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

SABRI ERIKSEN, SP 2008-HM-015 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 roofed deck to remain 10.1 feet from a side lot line and addition to remain 8.8 feet from the other side lot line and to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line and 20.0 ft. (27.0 ft. Approved) from front lot line. Located at 8816 Skokie La. on approx. 10,859 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((13)) 39. (Decision deferred from 5/13/08 and 6/17/08). Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 15, 2008; and

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

1. The applicant is the owner of the land.
2. The application meets all the submission requirements as set forth in 8-922 and 8-914.
3. Staff recommends approval, and the Board concurs with its recommendation.

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

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

~ ~ ~ July 15, 2008, SABRI ERIKSEN, SP 2008-HM-015, *continued from Page 42*

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 326 square feet of an addition, as shown on the plat prepared by Kendall Consulting, Inc., dated June 12, 2007 as revised through June 30, 2008, signed July 1, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,090 square feet existing + 6,135 square feet (150%) = 10,225 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. A row of evergreen trees, a minimum of six (6) to eight (8) feet in height at time of planting, spaced a maximum of twelve (12) feet apart, shall be planted along the length of the western property line adjacent to Lot 38.

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

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

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

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~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. LEONARD MEYERS, SP 2008-DR-044 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 12715 Fantasia Dr. on approx. 8,507 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((4)) 317A.

~ ~ ~ July 15, 2008, LEONARD MEYERS, SP 2008-DR-044, *continued from Page 43*

Chairman Ribble noted that SP 2008-DR-044 had been withdrawn.

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~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. JUAN CARLOS PINTO, SP 2008-BR-045 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 8.0 ft. with eave 6.7 ft. from side lot line. Located at 6214 Duntley Pl. on approx. 13,064 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 485.

Chairman Ribble called the applicant to the podium.

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

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

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. In response to a question from Mr. Hart concerning whether the applicant had applied for or obtained a building permit, Ms. Hedrick said the applicant had not obtained a permit, commenced construction, and been issued a code violation. In response to a question from Mr. Hart regarding how the case had come to the Board, Ms. Hedrick said she did not know how the Department of Public Works and Environmental Services (DPWES) found out about the violation; however, the remedy was to obtain a special permit, and if the special permit was approved, the Circuit Court hearing for the code violation would be dismissed.

Mr. Ahrens presented the special permit request as outlined in the statement of justification submitted with the application. He stated that a code inspector had stopped by the applicant's property and determined that he did not have a building permit. The applicant then went to obtain a permit, and Zoning staff determined the existing carport would not meet the current setback for an enclosed structure. Mr. Ahrens said the applicant was acting in good faith and attempting to obtain a special permit for the structure. He said the applicant did not want to turn the carport into a garage, but rather wanted to enclose it to provide a play area for his children and their toys. He said there was no civic association in the subdivision, and a property across the street was similar in style.

Discussions ensued regarding who had done the work, which was Mr. Pinto and his brother, who were not contractors; the work ceasing after the inspector had been to the property, leaving the side of the structure closest to the property line open; what could have prompted the inspector's visit; no changes having been made to the roof; no plumbing or electrical currently being in the structure and the intent to add electricity once the permit was approved; and other homes in the subdivision having converted carports or garages into living area with parking in the driveways.

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

Mr. Hart moved to approve SP 2008-BR-045 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JUAN CARLOS PINTO, SP 2008-BR-045 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 8.0 ft. with eave 6.7 ft. from side lot line. Located at 6214 Duntley Pl. on approx. 13,064 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 485. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 15, 2008, JUAN CARLOS PINTO, SP 2008-BR-045, *continued from Page 44*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2008; and

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

1. The applicant is the owner of the land.
2. Based on the record before the Board, it is appropriate to conclude that the error was done in good faith.
3. There was no contractor involved, and apparently the individuals doing the work were not construction professionals.
4. The structure itself is not significantly different in terms of massing than the original carport, which had a pretty substantial roof.
5. The addition appears to be compatible with other homes in the neighborhood based on the photographs.
6. There would not be a significant negative impact on anybody if it were allowed to remain.
7. There would be a hardship in having to remove what has been put in place already.
8. With the imposition of the development conditions, including obtaining a building permit and final inspections, any public health and safety issues will be caught.

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

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

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

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

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

~ ~ ~ July 15, 2008, JUAN CARLOS PINTO, SP 2008-BR-045, *continued from Page 45*

1. This special permit is approved for the location of an addition (enclosed carport) as shown on the plat prepared by Larry N. Scartz, dated January 29, 2008, as submitted with this application and is not transferable to other land.
2. A building permit and final inspections for the addition shall be diligently pursued and obtained within 120 days of final approval of this application or this special permit shall be null and void.

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

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

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~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. JOSEPH F. PETROSKY, SP 2008-MA-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.4 ft. with eave 6.4 ft. from side lot line. Located at 6043 Brook Dr. on approx. 12,783 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3)) 65.

Chairman Ribble called the applicant to the podium.

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

Joseph Petrosky, 6043 Brook Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Petrosky presented the special permit request as outlined in the statement of justification submitted with the application. He said protection from the elements became important to him as he got older. He had discussed his intentions with the neighbor, who had no objections, proceeded to work on the carport, and had done the work himself in good faith. He said that when he spoke to a salesman about installing a garage door, he was asked if he had obtained a permit for the work he had already done or wanted the salesman to obtain the permit before hanging the door, at which point he ceased work and contacted Planning and Zoning, resulting in the application for a special permit. Mr. Petrosky referred to photographs contained in the staff report, saying the changes had improved the appearance of the property and the home was compatible with others in the neighborhood. He said he had submitted letters of support from the neighbors.

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

Ms. Gibb moved to approve SP 2008-MA-046 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOSEPH F. PETROSKY, SP 2008-MA-046 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 7.4 ft. with eave 6.4 ft. from side lot line. Located at 6043 Brook Dr. on approx. 12,783 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3)) 65. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ July 15, 2008, JOSEPH F. PETROSKY, SP 2008-MA-046, *continued from Page 46*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 15, 2008; and

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

1. The applicant is the owner of the land.
2. The applicant has met standards A through G.
3. It is convincing, from the applicant's testimony, that the applicant's mistake was made in good faith.
4. When the applicant realized that a special permit was necessary and he realized he had gone a little too far in his building, on his own he contacted staff.
5. From the photographs, the addition certainly does blend in with and is compatible with the house and with the neighboring houses.
6. From the plat, one sees that there is little impact on the house next door.
7. There is a letter from the neighbor who is most impacted saying he is happy to have the garage in the location where it is.

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

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

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

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

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

1. This special permit is approved for the location of a garage addition as shown on the plat prepared by Schiller & Associates, P.C., dated March 3, 2008 as revised through April 16, 2008, as submitted with this application and is not transferable to other land.

~ ~ ~ July 15, 2008, JOSEPH F. PETROSKY, SP 2008-MA-046, *continued from Page 47*

2. A building permit and final inspections for the addition shall be diligently pursued and obtained within 120 days of final approval of this application or this special permit shall be null and void.

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

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

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~ ~ ~ July 15, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08, and 5/13/08 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to September 16, 2008, at 9:00 a.m., at the applicant's request.

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~ ~ ~ July 15, 2008, Scheduled case of:

9:30 A.M. G. RAY WORLEY, SR. AND ESTELLA C. (H.) WORLEY, A 2006-PR-056 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining two dwelling units on a single lot located in the R-3 District in violation of Zoning Ordinance provisions. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B. (Admin. moved from 12/12/06 at appl. req.) (Admin. moved from 1/30/07) (Decision deferred from 3/6/07, 6/5/07, 9/25/07, 12/11/07, and 4/8/08)

Chairman Ribble noted that A 2006-PR-056 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellants had obtained special permit approval to allow the accessory dwelling unit.

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~ ~ ~ July 15, 2008, Scheduled case of:

9:30 A.M. DANILDA E. BASSOLS, A 2008-BR-015

Chairman Ribble noted that A 2008-BR-015 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the violations had been resolved.

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~ ~ ~ July 15, 2008, Scheduled case of:

- 9:30 A.M. ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop, has erected a trailer and accessory storage structures, and is permitting outdoor storage on property in the I-3 District without site plan approval, Building Permit approval, nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13.
- 9:30 A.M. JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and is allowing the operation of contractors offices and shops, the erection of a trailer and accessory storage structures, and outdoor storage on property in the I-3 District without site plan approval, Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62.

Chairman Ribble called the appellants to the podium.

William Arnold, 11350 Random Hills Road, Fairfax, Virginia, agent for James G. Miller, Trustee for James G. Miller Revocable Trust, J. G. Miller, Inc., Atlantic Construction Fabrics; and Joseph Jackson, 8270 Greensboro Drive, McLean, Virginia, agent for Atlantic Construction Fabrics, Inc., came forward.

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

Doug Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated July 8, 2008. The hearing involved two appeals of a notice of violation dated March 11, 2008, of a determination that the appellants were allowing the operation of contractor's offices and shops, the erection of a trailer and accessory storage structures, and outdoor storage on property in the I-3 District without site plan approval, building permit approval, or valid Non-Residential Use Permits (Non-RUPs). The two tenants on the subject property were the appellants, Atlantic Construction Fabrics (ACF), a supplier of material for stormwater management, erosion, and sediment control; and James G. Miller, Inc. (JGM), a site preparation contractor involved in clearing and grading, conduit installation, excavating, installation of water, storm, sewer pipes, and underground utilities. A meeting was held on May 23, 2008, with Department of Planning and Zoning staff and representatives of the appellants to discuss the issues contained in the notice of violation letter, at which the appellants acknowledged that they stored materials on the property and both businesses had offices. Staff explained to the appellants what was and was not permitted in the I-3 District. The property representatives indicated they would bring the uses into compliance by applying for a rezoning, site plan, building permit, and Non-RUP approvals, and they had engaged the services of an engineering firm to assist them. Mr. Hansen said staff had explained that as an alternative to obtaining a rezoning, the appellants could seek site plan approval for uses currently permitted in the I-3 District. Staff had determined after the meeting that an amendment to the Comprehensive Plan would be required to permit a rezoning and suggested that the appellants meet with the Sully District Supervisor's Office to discuss the feasibility of a plan amendment, which they did.

Mr. Hansen said the appellants had been operating illegally from the property for over 20 years, and JGM had been aware of the illegalities for that length of time. JGM had filed a rezoning application in 1986, which they failed to pursue, and it was dismissed in 1991. They also failed to obtain building permits for all structures on the subject property. He said bringing the property into compliance would be a time-consuming process because both a Comprehensive Plan amendment, which would require approximately a year to complete, and a rezoning, which could take another six months, would be required to allow the desired uses of a contractor's offices and shops. A site plan could not be submitted for approval until the property was rezoned; building permits could not be obtained without a valid site plan; and, a Non-RUP could not be issued until the buildings were in compliance with the Zoning Ordinance. Mr. Hansen said that as an alternative the appellants could seek site plan approval, building permits, and Non-RUPs for uses that were permitted in the I-3 District. Staff requested that the Board uphold the Zoning Administrator's determination as set forth in the notice of violation letter dated March 11, 2008, so the property could be brought into full compliance with the Zoning Ordinance.

~ ~ ~ July 15, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 49*

Discussions ensued regarding a building permit not being required if the farmhouse was for agricultural use; the use as an office triggering the need for a building permit; the need for a Non-RUP and site plan; use as an office without the storage materials and equipment on the property being permitted without a rezoning; dumpsters or cargo containers depicted in photographs being located outside the subject property; the appellants having operated on the property for 24 and 28 years; the violations on the subject property having been discovered during the investigation of a complaint regarding the property on which the dumpsters were located and the decision made to address that property, the subject property, and a third property located on Thompson Road heard by the Board at the previous meeting; the results of the meeting with Supervisor Frye being that the entire process of a change to the Comprehensive Plan and rezoning taking as long as five years; staff not taking any further enforcement action as long as the appellants were working through the process; and the timing involved with the filing of an Area Plan Review (APR) nomination.

Mr. Arnold presented the arguments forming the basis for the appeal. He said his client had filed an APR nomination in a timely fashion. The nature of the appeal was to seek compliance, but the problem was whether or not the appellant was operating an office or a contractor's office. He noted that the office use was allowed in the I-3 District with the current zoning; however, the contractor's office would require a rezoning, and because the use was considered illegal, the appellant could not file for a site plan even though they had made an agreement with an engineering firm to pursue that objective. Without a site plan, the appellant could not obtain the necessary building permits for the outdoor storage. Mr. Arnold said the business was valuable to the community, and in looking at the staff report and photographs, the business was not objectionable. He said the property was owned by the J. G. Miller Revocable Living Trust, and there were two uses on the property, one being a site utility contractor.

Mr. Arnold referred to a photograph in Attachment 6 to the staff report showing an old farmhouse and said that insofar as permits go for the house, the appellant had adequately established that it had been built before 1943 when building permits were required. He pointed out the substantial setback, maintenance of the yard, and its orderly and aesthetically pleasing appearance. He said the nature of the appeal pertained to the definition of whether it was an office or a contractor's office, and in making that determination, he asked the Board to consider the location and surrounding uses of the property. He stated that the property was near an airport and affected by noise impact zones, with a current property to the north rezoned to I-5 in 1977. Referring to another photograph, Mr. Arnold said to the east there was a large County facility used as a training ground for the police and fire departments, and to the west the Virginia Department of Transportation had recently built two large silos to store salt and sand for the roads with plans to perform maintenance on their vehicles on the site, making that use compatible with the current use of the appellant's property. He pointed out other nearby properties that had I-5 zoning, one of which had been rezoned in 1987. He stated that many of the roads shown on the tax map had not been built and were shown when the property was subdivided, but they had never been paved.

Mr. Arnold said the appellants had not received any citations since they had been in business for 28 and 24 years. A zoning application had been filed approximately 10 years prior that put the County on notice that the uses were there, and nothing had been done to seek enforcement until now. He said there was no residential use in the area; the appellant's property was an ideal place for such a facility to exist; and, it was a use that was necessary to the County. Mr. Arnold presented photographs and a brochure to the Board that explained the type of materials ACF supplied. He said the appellant sought compliance, but the issue of the use had to be resolved first. He said that JGM used the property as its office with some equipment on the site. ACF was a supplier, not a contractor; and materials were stored on the site and turned over on a regular basis.

Mr. Arnold referred to the definition of a contractor's office as noted on page 2 of the March 11, 2008 notice of violation letter and said neither of the appellants fell into the referenced category. He said the types of materials ACF distributed were used for site development and stormwater control, which did not pertain to landscaping or lawn maintenance, and they did not sell to the general public. The uses on the property were office uses, not contractor's offices and shops, and the fact that JGM was a contractor did not mean it was a contractor's office as defined in the Code. ACF was a supplier, not a contractor, and storing items outside did not make it a contractor's office because it was not an element in the definition of outside storage. Outside storage could be allowed if approved on a site plan, and because it had been determined by staff that there was an illegal use, an approved site plan could not be obtained. Mr. Arnold acknowledged that

~ ~ ~ July 15, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 50*

ACF had a storage yard, construction vehicles parked on the property, and construction material stored; however, he said the storage yard issue was not part of the notice of violation, and he did not think it could be brought up because it was not mentioned in the notice. Mr. Arnold said the appellant sought compliance, and if the appeal was granted, they could apply for a site plan, obtain approval for the outdoor storage, obtain Non-RUPs and building permits, and come into compliance, which was the purpose of the appeal.

Mr. Arnold answered questions from Board members and described various items and structures located on the properties.

Mr. Jackson stated that his client, ACF, had been a tenant on the subject property for almost 25 years and had never been cited for any type of zoning violation. He said he agreed with all of Mr. Arnold's comments.

Mr. Jackson and Jerry Beracker (phonetic), President of J. G. Miller, Inc., answered questions from Mr. Hart and described items on the ACF property.

Mr. Hart and Charles Cohenour, Senior Zoning Inspector, Zoning Enforcement Branch, Zoning Administration Division, discussed the items shown in the photographs contained in the staff report. Mr. Hart said he was attempting to determine whether the items fit into the definition of plumbing or electrical equipment or some other category. Mr. Cohenour said the County considered all contractual and construction work to be a contractor's office and shop. He stated that Article 10 of the Zoning Ordinance defined "such as" as an example, but it was not "limited to." He said staff's reasoning was that because equipment was stored on the premises and materials were used in the operation of the business, staff considered the appellant's office to be a contractor's office.

Mr. Hart, Mr. Cohenour, and Roger Sims, Senior Zoning Inspector, Zoning Enforcement Branch, Zoning Administration Division, discussed the outdoor storage component of the violation.

Discussions ensued regarding the ramifications of determining whether or not the office was a contractor's office; outdoor storage; steps necessary to obtain compliance with Zoning Ordinance requirements; the requirement in the Zoning Ordinance with respect to the I-3 District stating that all operations, activities, and storage shall be conducted with a completely enclosed building; how staff arrived at the determination that it was a contractor's office; the rezoning application filed on November 18, 1986; staff's rationale that the County be afforded some leverage to make certain that cases were carried through in an effective manner; and the adjacent property having obtained a rezoning without a Plan amendment in 1977.

Mr. Hansen stated that staff believed the prudent course was to uphold the Zoning Administrator's position and the appellants file for a Plan amendment and rezoning. He said staff believed the use closely aligned to a contractor's office and shops.

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

Mr. Beard stated that the appellants' businesses had been on the premises in excess of 20 years and had operated in accordance with other businesses within close proximity, including the Virginia Department of Highways facility and other facilities of like nature. He said that even under threats of an appeal to the courts, he felt the need to come down on the side of the citizen businessman. He said the appellants' counsel had stated under oath that they intended to come into compliance. Mr. Beard said it was a tough case because it could be argued quite emphatically either way. He said he understood staff wanting to have leverage, but perhaps it could be done with a carrot and a different approach. Mr. Beard moved to overturn the determination of the Zoning Administrator. The motion failed for lack of a second.

Mr. Hart moved to uphold the Zoning Administrator in part. He said he generally agreed with the Zoning Administrator as to the issues in the March 11, 2008 notice of violation with one exception. He said the Board had a difficult job dealing with Ordinance provisions that may not anticipate every thing someone wanted to do. He said the issue he was troubled by was the definition of contractor's offices and shops in Part 3 of Article 20, which seemed to address two separate and discrete kinds of activities. The second one said establishments for the planting and maintenance of gardens, grounds, and yards, such as landscape contractors and lawn maintenance services. Mr. Hart said he knew what type of use that was, and the

~ ~ ~ July 15, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 51*

appellants' business did not fall into that category. He said establishments for the installation and servicing of such items as air conditioners, electrical equipment, flooring, heating, painting, plumbing, roofing, tiling, and ventilating seemed to be a somewhat different character than the things that were going on at the appellants' site. He said those types of uses were more directly involved in repair or new construction rather than siltation and erosion control supplies and material on the record with photographs that had been supplied by the appellants. Mr. Hart said he did not think that the mix of items on the site fell squarely within that definition. He said everything else in the letter still held in that they did not have the building permit, site plan or Non-RUP, and whatever the use was and whether or not it fit the definition, it was not allowed by right in the I-3 District. He said that there was no site plan or special exception, and if it was outdoor storage, it was over 250 square feet. Mr. Hart said that with the exception of that one reason, the Zoning Administrator was otherwise correct. He stated that the appellants had argued that it was an office, and on the record before the Board, he would not conclude that it was. He stated that the activity which was the subject of the violation notice also was not clearly subordinate to or ordinarily associated with an office use, and he thought it was something else, and even if there was an office use on the site for both of the tenants, that was not the principal use on the property. Mr. Hart said the property was a headquarters for two businesses that seemed to be doing something slightly different from what the definition said, but each was doing something that was not otherwise allowed in the I-3 District, and that was without pre-deciding anything about the Plan amendment, rezoning or whether it was possible to reduce or enclose any of it. Mr. Hart said that with respect to whether the Zoning Administrator was correct in the March 11 letter, the answer was yes, but to the extent that the use was characterized as a contractor's office and shops, it was not; however, regardless of the characterization, the use was not allowed. Ms. Gibb seconded the motion.

Mr. Byers said he would reluctantly support the motion; however, what still concerned him was the information on Page 6 of the staff report that pertained to the 1986 application where the applicant said the proposed use was for a contractor's offices and storage yard. He read from a document as follows: According to their application, their proposed use was for a contractor's offices and storage yard with a statement of justification so as to permit the use of the property for the storage of contractor's materials, equipment, and vehicles. It is the Zoning Administrator's position that JGM has known that the use of the property for contractor's offices and shops and storage yard is not permitted. In addition, the Zoning Ordinance makes no distinction between long versus short-term storage. Mr. Byers said Zoning Administrators make judgments, and he was sure the Zoning Administrator went down the same course that had been discussed today; however, when he looked at the statement and all of the other decisions that had been made, it was impossible to define every instance.

In response to a question from Mr. Beard regarding whether Mr. Hart's motion to uphold the Zoning Administrator in part took care of the issue, Mr. Hart said it did because the Board had upheld the Zoning Administrator in part and overturned in part many times, and his conclusion was that it was still a violation for all the reasons stated except one. Mr. Hart said he did not disagree with Mr. Byers' comments regarding long-term/short-term storage; however, he thought the issues would be better addressed with a Zoning Ordinance amendment. Mr. Hart cited several scenarios concerning plumbing and landscaping and said the appellants' case did not fall within those categories. He said procedurally he agreed that the Board was disposing of the whole matter, and there were a lot of issues in the letter, so both sides could go to court and debate why the Board was wrong in its determination.

Chairman Ribble said that what bothered him was that the notice of violation was not complaint driven as most appeals were. He said it was his opinion that it was a close call, and he did not like to see a businessman suffer because of such things.

Chairman Ribble called for a vote. The motion carried by a vote of 4-1. Mr. Beard voted against the motion. Mr. Hammack and Mr. Smith were absent from the meeting.

**THE BOARD OF ZONING APPEALS APPROVED A REQUEST FOR RECONSIDERATION FOR THE ABOVE REFERENCED APPLICATION ON JULY 29, 2008. A NEW PUBLIC HEARING WAS SCHEDULED FOR SEPTEMBER 30, 2008, AT 9:30 A.M.**

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~ ~ ~ July 15, 2008, Scheduled case of:

9:30 A.M. SOK C. REED, A 2008-MV-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a second dwelling unit on property in the R-4 in violation of Zoning Ordinance provisions. Located at 2500 Belleview Av. on approx. 9,538 sq. ft. of land zoned R-4 and H-C. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 17.

Chairman Ribble noted that A 2008-MV-018 had been administratively moved to October 7, 2008, at 9:30 a.m., at the appellant's request.

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~ ~ ~ July 15, 2008, After Agenda Item:

Request for Additional Time  
Wakefield Chapel Recreation Association, Inc., SPA 76-A-022-2

Mr. Byers moved to approve six months of additional time. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Smith were absent from the meeting. The new expiration date was November 30, 2008.

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~ ~ ~ July 15, 2008, After Agenda Item:

Request for Additional Time  
Sri Venkateswara Lotus Temple of Virginia, SP 2004-SP-052

Mr. Byers asked staff why the applicant needed an additional 24 months. Greg Chase, Senior Staff Coordinator, said the request appeared to be due to delays in site plan and minor site plan revision that resulted in a need for additional time to complete the process.

Mr. Beard moved to approve 24 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Smith were absent from the meeting. The new expiration date was May 29, 2010.

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~ ~ ~ July 15, 2008, After Agenda Item:

Request for Additional Time  
Trustees of Capital Worship Center, SP 02-Y-001

Mr. Hart moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Smith were absent from the meeting. The new expiration date was July 10, 2009.

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~ ~ ~ July 15, 2008, After Agenda Item:

Request for Additional Time  
Sant Nirankari, SP 2003-SU-045

Mr. Hart moved to approve 12 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack and Mr. Smith were absent from the meeting. The new expiration date was June 7, 2009.


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~ ~ ~ July 15, 2008 Meeting, *continued from Page 53*

As there was no other business to come before the Board, the meeting was adjourned at 11:10 a.m.

Minutes by: Paula A. McFarland / Mary A. Pascoe

Approved on: March 11, 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 Tuesday, July 29, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. MITCHELL J. HANNON, SP 2008-SP-052 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 deck to remain 18.0 ft. from side lot line and second deck to remain 12.0 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 5802 Fitzhugh St. on approx. 22,836 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((4)) 22.

Chairman Ribble noted that the applicant wished to defer the public hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant wanted to make some changes to his request. She suggested a new hearing date of October 7, 2008.

Mr. Beard moved to defer the public hearing on SP 2008-SP-052 to October 7, 2008, at 9:00 a.m. Mr. Hammack seconded the motion.

Mr. Hart asked that it be determined, before the October 7<sup>th</sup> hearing, whether the RPA had any affect upon this application.

The motion carried by a vote of 7-0.

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~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. WILLIAM M. MORGAN, SP 2008-BR-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition to remain 15.1 ft. from rear lot line. Located at 10902 Fox Sparrow Ct. on approx. 9,464 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 77-1 ((12)) 257.

Chairman Ribble called the applicant to the podium.

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

William M. Morgan, 10902 Fox Sparrow Court, Fairfax, Virginia, reaffirmed the affidavit.

Suzanne Linn, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2008-BR-054, subject to the proposed development conditions.

Mr. Morgan presented the special permit request as outlined in the statement of justification submitted with the application. He said that the house was built in 1982, and, as far as he could determine, the porch was added shortly after that by the original owner. He also indicated there was an approval by the homeowners association in 1985. He bought the house in 1991, and was seeking the special permit to be in compliance with the County.

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

Mr. Hammack moved to approve SP 2008-BR-054 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA****SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

WILLIAM M. MORGAN, SP 2008-BR-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition to remain 15.1 ft. from rear lot line. Located at 10902 Fox Sparrow Ct. on approx. 9,464 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 77-1 ((12)) 257. 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 29, 2008; and

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

1. The applicant is the owner of the land.
2. The applicant has met the six criteria set forth under the section of the Ordinance that justifies the granting of a special permit.
3. The applicant testified that the addition has been on the property since approximately 1983 and shown on Fairfax County maps.
4. The Board has a favorable staff report.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 232 square feet) of the existing screen porch, as shown on the plat prepared by LS2PC Land Surveying Services, dated March 12, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,080 square feet existing + 3120 square feet (150%) = 5200 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

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

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~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD AND AMERICAN TURKISH FRIENDSHIP ASSOCIATION D/B/A PINNACLE ACADEMY, SPA 99-P-036-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 99-P-036 previously approved for church, private school of general education, and child care center to permit change in permittee. Located at 2854 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 18A.

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.

Amber Scharn, attorney for the applicants, 9200 Church Street, Suite 400, Manassas, Virginia, reaffirmed the affidavit.

William O'Donnell, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 99-P-036-2, subject to the proposed development conditions.

Ms. Scharn had nothing to add to the special permit request as outlined in the statement of justification submitted with the application, but did reiterate that the amendment was only for a change in permittee.

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

Mr. Byers moved to approve SPA 99-P-036-2 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD AND AMERICAN TURKISH FRIENDSHIP ASSOCIATION D/B/A PINNACLE ACADEMY, SPA 99-P-036-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 99-P-036 previously approved for church, private school of general education, and child care center to permit change in permittee. Located at 2854 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 18A. 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 29, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.31 acres.
4. The staff recommends approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 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:

~ ~ ~ July 29, 2008, TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD AND AMERICAN TURKISH FRIENDSHIP ASSOCIATION D/B/A PINNACLE ACADEMY, SPA 99-P-036-2, continued from Page 57

1. This approval is granted to the applicant, Trustees of Unity of Fairfax Church of the Daily Word; American Turkish Friendship Association D/B/A Pinnacle Academy, and is not transferable without further action of this Board, and is for the location indicated on the application, 2854, 2858 and 2864 Hunter Mill Road (5.31 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 (2 sheets) by David H. Steigler, dated November 28, 2001, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved special permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of the Non-RUP, the number of seats in the sanctuary may increase from 250 to a maximum of 400.

6. Upon issuance of a Non-RUP for the multi-purpose administration building, the school and child care center may commence and the total maximum daily enrollment for the private school of general education shall be as shown below. There shall be a maximum staff of 27 employees on the property at any one time. The total maximum daily enrollment for the before and after school child care center shall be 35 students for the first two full years of operation and 70 students thereafter.

	Year	1	2	3	4	5	6+
Students		70	88	104	122	140	176

7. Upon issuance of the Non-RUP, the maximum hours of operation for the private school of general education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday. The before school care shall be limited to 6:00 a.m. to 9:00 a.m. and the after school care shall be limited to 3:30 p.m. to 6:30 p.m. Monday through Friday. Only the students enrolled at the school of general education shall be permitted to attend the before and after school care.
8. The operator of the private school of general education shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods.
9. The applicant shall construct an 8-foot wide sidewalk or trail along the full frontage of the property. The sidewalk/trail shall adjoin existing or proposed sidewalks to the north and south, to the satisfaction of DPWES.
10. The applicant shall construct an extended turn lane across the full frontage of the property, measuring a minimum 35 foot cross section from centerline to face of curb to create a second southbound vehicle travel lane, to the satisfaction of DPWES. With provision of these frontage improvements by the applicant, dedication measuring a minimum of 45 feet of right-of-way shall be permitted if deemed appropriate-by DPWES. If frontage improvements are not provided, a minimum dedication measuring 56 feet from centerline of Hunter Mill Road shall be provided. Right-of-way shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County, or at the time of site plan approval, whichever comes first.
11. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

~ ~ ~ July 29, 2008, TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD AND AMERICAN TURKISH FRIENDSHIP ASSOCIATION D/B/A PINNACLE ACADEMY, SPA 99-P-036-2, *continued from Page 58*

12. All existing and proposed lighting of the parking areas shall be in accordance with the following:
  - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
  - The lights shall focus directly on the subject property and shall be full cutoff lights.
  - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
13. Stormwater management/BMP design satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES.
14. A tree preservation plan and final limits of clearing and grading shall be established in coordination with and subject to approval by the Urban Forestry Division of DPWES in order to preserve individual trees and stands of trees shown to be saved on the special permit plat. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation may be implemented to the satisfaction of the Urban Forester. Activities may include, but are not limited to, increased tree protection measures, crown pruning, root pruning, mulching and fertilization. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures.
15. Transitional screening and barrier requirements shall be modified in favor of that shown on the special permit amendment plat. Supplementation of existing vegetation within all transitional screening areas to achieve effective and viable year-around screening shall be as directed by the Urban Forester. In addition, twenty-three evergreen trees shall be added to those shown on the approved site plan No. 8226-SP-02-2, within the transitional screening area which lies between the play area shown on the SPA Plat and the Hunterbrooke subdivision. Size and species of plantings shall be as determined by the Urban Forester. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary.
16. The proposed six-foot high fence on the western property line shall be field located, in consultation with the Urban Forester, to minimize disturbance to existing trees which are designated on the special permit amendment plat to be preserved.
17. Parking shall be provided as shown on the special permit plat. All parking shall be on site. No additional areas shall be cleared or created to accommodate parking spaces beyond that depicted on the special permit amendment plat.
18. Prior to site plan approval, the applicant shall show proof that the 15 foot outlet road and ingress/egress easement which bisects the application property shall be properly quitclaimed or relocated so as to not legally encumber conditions as proposed with this application, to the satisfaction of DPWES.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval unless a new Non-Residential Use Permit has been approved. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. JAMES J. KARWEL & KATHLEEN L. KARWEL, SP 2008-SP-051 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.5 ft. from rear lot line and to permit construction of roofed stoop such that side yards total 20.8 ft. Located at 7904 Bracksford Ct. on approx. 9,872 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 132.

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.

Soumya M. Ramakrishnaiah, the applicant's agent, 12009 Waples Mill Road, Oakton, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2008-SP-051, subject to the proposed development conditions.

Ms. Ramakrishnaiah presented the special permit request as outlined in the statement of justification submitted with the application. She said the back yard had a deep slope and was unusable. The proposed screened porch would allow the homeowners to extend their living space, giving them the ability to use what would otherwise be unusable space, and would also help accommodate their large family.

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

Mr. Hart moved to approve SP 2008-SP-051 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JAMES J. KARWEL & KATHLEEN L. KARWEL, SP 2008-SP-051 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.5 ft. from rear lot line and to permit construction of roofed stoop such that side yards total 20.8 ft. Located at 7904 Bracksford Ct. on approx. 9,872 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 132. 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 29, 2008; 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 addition to the rear would not have a significant negative impact on anyone.
4. Based on the photographs and the topography, the house is much higher than the common area parcel to the rear. With the change in topography and the woods behind it, no one will be able to see the screened porch.
5. With respect to the addition on the side of the house, this is a very small lot for a house of this size. Based on the drawing of the stoop on the last page of Appendix 1, it is a very modest covering over a doorway with steps leading up to it. In terms of the size of the house, the bulk, and the scale, it will not have a significant impact on anyone.

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

~ ~ ~ July 29, 2008, JAMES J. KARWEL & KATHLEEN L. KARWEL, SP 2008-SP-051, *continued from Page 60*

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for the provisions for reduction of certain yard requirements as contained in Sect. 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (360 square feet) of an addition, covered porch with lattice and a covered stoop, as shown on the plat prepared by Larry N. Scartz, Ltd., dated January 25, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,271 square feet existing + 6,406.5 square feet (150%) = 10,677.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition and covered stoop shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,910 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44A. (Admin. moved from 8/3/04, 7/27/04, 9/28/04, 11/30/04, 2/15/05, and 3/8/05 at appl. req.) (Indefinitely deferred from 4/19/05 at app. req.) (Reactivated on 5/27/08.)

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.

~ ~ ~ July 29, 2008, BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027,  
*continued from Page 61*

Blair Childs, 1885 Virginia Ave, McLean, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation.

Mr. Childs presented the special permit request as outlined in the statement of justification. He said that when the tree house was built in 1999, he did not realize that it was in violation of the Zoning Ordinance. Mr. Childs said that it was barely visible, since it was obscured by trees, and did not infringe on anyone else's property. He noted that he had not received any complaints about the tree house. He reiterated that the error was made in good faith.

Mr. Childs submitted an e-mail letter from his neighbors at 1926 Massachusetts Avenue, which supported retention of the tree house.

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

Ms. Gibb moved to approve SP 2004-DR-027 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 7.7 ft. from side lot line and 1.6 ft. from rear lot line. Located at 1885 Virginia Ave. on approx. 14,910 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 44A. (Admin. moved from 8/3/04, 7/27/04, 9/28/04, 11/30/04, 2/15/05, and 3/8/05 at appl. req.) (Indefinitely deferred from 4/19/05 at app. req.) (Reactivated on 5/27/08.) 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 29, 2008; and

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

1. The applicants are the owners of the land.
2. The applicants' mistake was made in good faith.
3. The treehouse specifically is not detrimental to the use and enjoyment of other property in the immediate vicinity.
4. The treehouse is in the woods and does not have much of an impact.
5. Testimony indicated there was no other place to locate the treehouse.

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

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

~ ~ ~ July 29, 2008, BLAIR G. CHILDS, TRUSTEE, & ERIN SHAFFER, TRUSTEE, SP 2004-DR-027,  
continued from Page 62

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

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

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

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

1. This special permit is approved for the location of the accessory structure (play equipment) as shown on the plat prepared by Dominion Surveyors Inc., dated February 2, 2004 as revised through May 7, 2004, 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 5-2. Mr. Hart and Mr. Hammack voted against the motion.

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~ ~ ~ July 29, 2008, Scheduled case of:

- 9:00 A.M. PARAMVIR S. SONI, SP 2008-DR-053 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 36.0 ft. from front lot line. Located at 10208 Colvin Run Rd. on approx. 41,129 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 33A. (Concurrent with VCA 2008-DR-018)
- 9:00 A.M. PARAMVIR S. SONI, VCA 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-DR-018 to permit modification of development conditions. Located at 10208 Colvin Run Rd. on approx. 41,129 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 33A.

Chairman Ribble called the applicant to the podium.

In response to a question from Chairman Ribble, Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that the special permit portion of the application had been withdrawn.

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.

Kelly M. Atkinson, the applicant's agent, 9401 Centreville Road, Suite 300, Manassas, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation.

~ ~ ~ July 29, 2008, PARAMVIR S. SONI, SP 2008-DR-053 and PARAMVIR S. SONI, VCA 2003-DR-018,  
*continued from Page 63*

In response to a question from Mr. Smith, Ms. Langdon stated that, although the BZA had determined in 2003 that the application met all nine variance conditions, the amendment would also have to meet them.

Answering Mr. Hart's question, Ms. Langdon stated that the applicant would have to keep the existing house under the approved variance, but the applicant could better explain why the house could not be retained. She also said that, based on information from the applicant, the staff was satisfied that the house was not stable, and had been ruined by the passage of time.

Mr. Hart and Ms. Langdon discussed the facade of the original home, with Mr. Hart noting that the proposed home in the staff report did not look like the same house. Ms. Langdon stated that staff was satisfied that what the applicant was showing and what they have committed to, will keep the front facade of the existing house. She acknowledged that the house was expanding considerably to the rear and sides.

In response to a question from Mr. Hart, Ms. Langdon stated that the applicant was approved under the original variance for the house to be a certain distance from the lot line, and that the proposed additions were not coming any closer to the approved distances. Therefore, it had been determined that another variance or a 50 percent reduction was not necessary.

Ms. Langdon stated that when the deteriorating condition of the house was brought to staff's attention, staff went out to the site and contacted the builder to have the windows boarded, along with other precautions taken. However, she said it was her understanding that the amount of water in the basement and foundation had caused the problems.

Ms. Atkinson presented the variance amendment request as outlined in the statement of justification submitted with the application. She noted that prior to the applicant settling on the property in 2005, the electricity was turned off, but the water was connected without notice to the applicant. As a result, the pipes in the house burst causing significant water damage. Ms. Atkinson said the applicant had a structural engineer review it, and the subsequent report in October 2007 stated that the foundation of the house had been severely compromised by water infiltration and erosion. She stated that only after settlement did the applicant learn of the previous development condition precluding removal of the house. Ms. Atkinson stated that in 2007, the Great Falls Citizens Association and Great Falls Heritage determined that the severely damaged portion of the house in the rear was not historically significant, as it was constructed in 1942. However, the older portion of the house, which was the front, constructed in 1900, was not damaged, and should be preserved.

Responding to a question from Mr. Hammack, Ms. Atkinson stated that the applicant was unaware of the variance restriction when he purchased the property, because the previous owner had not recorded the development conditions in the land records.

Chairman Ribble called for speakers.

John Ulfelder, 9151 Old Dominion Drive, McLean, Virginia, representing the Great Falls Citizens Association, came forward and indicated his support of the application.

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

Mr. Smith moved to approve VCA 2003-DR-018 for the reasons stated in the Resolution.

Mr. Hart suggested an amendment to the development conditions, that exterior material and finishes for new construction be compatible with the existing portion being retained, which was accepted.

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~ ~ ~ July 29, 2008, PARAMVIR S. SONI, SP 2008-DR-053 and PARAMVIR S. SONI, VCA 2003-DR-018,  
continued from Page 64

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PARAMVIR S. SONI, VCA 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-DR-018 to permit modification of development conditions. Located at 10208 Colvin Run Rd. on approx. 41,129 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 33A. 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 29, 2008; 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 41,129 square feet.
4. The property was acquired in good faith.
5. A situation occurred that rendered the existing house uninhabitable. The owner was not responsible for that. The pipes bursting were with a prior owner. The owner was the unfortunate recipient of the problem.
6. The owner is proposing what has been described by Mr. Ulfelder of the Great Falls Citizens Association as an acceptable compromise, and the Board concurs.
7. In terms of the historic significance, the applicant has a reasonable proposal to retain the historic portion of the house that is one hundred (100) years old. The portion of the house that was significantly damaged and cannot feasibly be retained is not of any historic significance.
8. The proposed addition meets the setback requirements on the lot.
9. It is a reasonable amendment to the conditions of the variance application.

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

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

~ ~ ~ July 29, 2008, PARAMVIR S. SONI, SP 2008-DR-053 and PARAMVIR S. SONI, VCA 2003-DR-018,  
*continued from Page 65*

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

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

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

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

1. This variance is approved for a variance as shown on the plat prepared by Land Design Consultants, dated April, 2008 as revised through July 7, 2008. All development shall be in conformance with this plat as qualified by these development conditions.
2. Prior to the issuance of a demolition permit and/or land disturbance permit, the applicant shall employ an arborist to prepare a condition analysis for the 65 inch white oak tree. Tree preservation recommendations for this tree provided by the arborist shall be implemented to ensure that the oak tree is adequately protected before, during and after construction, as determined in conjunction with the Forest Conservation Branch, DPWES.
3. Prior to any land disturbing activity, both a grading plan and a tree preservation plan showing the improvements on Lot 33A shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Forest Conservation Branch, DPWES, for review and approval. The plans shall depict preservation of the 65 inch white oak tree located on Lot 33A and other mature trees on site, as determined feasible by the Urban Forester, and the limits of clearing and grading which protect the trees. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on site between the Forest Conservation Branch, DPWES, and representatives of the applicant to include the construction site superintendent responsible for 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. All utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible.

All trees and tree save areas shown to be preserved on the tree preservation plan shall be protected by tree protection fence placed at the drip line. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart shall be erected at the limits of clearing and grading.

The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures. The installation of tree protection fence shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading, or demolition activities, the projects certified arborist shall verify in writing that the tree protection fence has been properly installed. Such tree fencing shall be installed around the 65 inch white oak tree immediately upon approval of the variance application.

4. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as determined by the Department of Public Works and Environmental Services (DPWES).
5. The final location of the proposed garage on Lot 1 shall be determined in consultation with the Urban Forester to ensure the preservation of the 65 inch oak, but shall not be closer than 25 feet from the eastern lot line.

~ ~ ~ July 29, 2008, PARAMVIR S. SONI, SP 2008-DR-053 and PARAMVIR S. SONI, VCA 2003-DR-018,  
continued from Page 66

6. The applicant shall provide a 15 foot public street easement along the Colvin Run Road frontage. The trail may remain within this easement.
7. The addition shall be constructed in substantial conformance with the renderings contained in Attachment 1. The entire front wall of the existing structure shall be retained to maintain the facade of the original structure as outlined in Attachment 1.
8. The exterior materials and finishes for the new construction shall be compatible with the existing portion of the dwelling that is being retained.

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 variance shall not be valid until this has been accomplished.

Pursuant to Sect. 18-401 of the Zoning Ordinance, this variance 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 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. Beard seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hammack voted against the motion.

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~ ~ ~ July 29, 2008, Scheduled case of:

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

Chairman Ribble noted that there was a deferral request for this hearing.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant had requested a deferral of the public hearing to September 30, 2008, at 9:00 a.m.

There was discussion about September 30<sup>th</sup>, being a realistic date. Amber Scharn, agent for the applicant, stated the deferral request was to accommodate requests by the Great Falls Citizens Association.

Ms. Gibb moved to defer SP 2007-DR-085 to September 30, 2008 at 9:00 a.m. Mr. Smith seconded the motion, carried by a vote of 7-0.

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~ ~ ~ July 29, 2008, Scheduled case of:

9:00 A.M. JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 73-S-113 previously approved for a church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A. (Admin. moved from 12/18/07, 2/26/08, 4/1/08, and 5/20/08 at appl. req.)

~ ~ ~ July 29, 2008, JERUSALEM BAPTIST CHURCH, SPA 73-S-113, *continued from Page 67*

Chairman Ribble called the applicant to the podium.

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

Robert A. Lawrence, Esquire, the applicant's agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, reaffirmed the affidavit.

Mr. Hart made a disclosure, that more than a year ago, his law firm used the same engineering firm used by this applicant, where that firm's consultant was used as a witness. He said that matter was concluded many months ago, and was entirely unrelated to this case. He indicated he did not believe his ability to participate in the case would be affected.

Greg Chase, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 73-S-113, subject to the proposed development conditions.

Mr. Smith and Ms. Langdon discussed the phasing of the church development, with Ms. Langdon pointing out that the language in the development conditions allowed the church to phase the development without time restriction.

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

In response to a question from Mr. Beard, Mr. Lawrence said the existing pastor's residence would be demolished during Phase II.

Mr. Hart and Mr. Lawrence discussed the proposed interparcel access. Mr. Lawrence said the issue would be readdressed with VDOT during site plan approval.

Mr. Hammack asked if any effort had been made to identify the unmarked graves. Mr. Lawrence responded that to do so would decimate the cemetery. He then introduced Michael Hubbard, a principal with the church, who stated that there were more unmarked graves than marked graves.

Chairman Ribble called for speakers.

Michael Hubbard, 11102 Fairfax Station Road, Fairfax Station, Virginia, and Jerry Smith, 5424 Ox Road, Fairfax Station, Virginia, both came forth and spoke in support of the application.

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

Mr. Beard moved to approve SPA 73-S-113 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JERUSALEM BAPTIST CHURCH, SPA 73-S-113 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 73-S-113 previously approved for a church to permit the addition of a child care center, building additions, increase in seats and site modifications. Located at 5424 Ox Rd. on approx. 13.35 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 52, 54 and 55A. (Admin. moved from 12/18/07, 2/26/08, 4/1/08, and 5/20/08 at appl. req.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

~ ~ ~ July 29, 2008, JERUSALEM BAPTIST CHURCH, SPA 73-S-113, *continued from Page 68*

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 2008; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the property is 13.35 acres.
4. The Board and the applicant are fairly harmonious with the exception of the VDOT requirements, which will be addressed at site plan approval.
5. The staff has recommended approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Jerusalem Baptist Church and is not transferable without further action of this Board, and is for the location indicated on the application, 5524 Ox 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 Tri-Tek Engineering, dated September 28, 2007, revised through June 16, 2008 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit 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 seating capacity of the main worship hall shall not exceed 250 until the completion of Phase II at which time the seating may increase to a maximum of 836 seats.
6. The Child Care Center may be established in the current church building, utilizing the existing playground shown on Sheet 2 of the SPA plat. The authorized enrollment for this use shall be dependent upon satisfying all State and County requirements including, but not limited to, the recreational area requirements and State Regulations referenced in the Additional Standards for Child Care Centers set forth in Section 8-308 and Section 9-309 of the Zoning Ordinance. However, in no event shall the enrollment for this interim use exceed a maximum of 39 children. Upon completion of Phase II, the Child Care Center may be relocated to the Phase 2 Building with a maximum enrollment of 85 children permitted.
7. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
8. Transitional screening shall be modified along all lot lines to permit existing vegetation to satisfy the requirements, but shall be supplemented as shown on the plat. Variety, size and location of supplemental plantings shall be determined in consultation with the Forest Conservation Branch, DPWES.

9. A tree preservation and landscaping plan shall be submitted to the Forest Conservation Branch, DPWES, for review and approval at the time of site plan review. This plan shall designate, at a minimum, the limits of clearing and grading as delineated on the special permit plat in order to preserve to the greatest extent possible individual trees or tree stands that may be impacted by construction.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing a minimum of four feet in height to be placed at the dripline of the trees to be preserved. Tree protection fencing in the form of a four foot high 14 gauge welded wire fence attached to six foot steel posts driven 18 inches into the ground and placed no further than ten feet apart, shall be erected at the final limits of clearing and grading and shown on the erosion and sediment control sheets. Tree protection fencing shall only be required for tree save areas adjacent to clearing and grading activities. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any construction work being conducted on the Application Property. A certified arborist shall monitor the installation of the tree protection fencing and verify in writing that the tree protection fence has been properly installed. Three days prior to commencement of any clearing and grading, the Forest Conservation Branch, DPWES, shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

The trees designated for replanting on the property will be field located as determined in consultation with the Forest Conservation Branch, DPWES. If the trees fail to survive within one year they will be replaced as determined necessary by the Forest Conservation Branch, DPWES.

10. Foundation plantings and shade trees shall be provided around the church building to soften the visual impact of the structures. The species, size and location shall be determined in consultation with the Forest Conservation Branch, DPWES.
11. The barrier requirements shall be waived along the property boundaries in favor of existing and planned vegetation.
12. Interior and peripheral parking lot landscaping shall be provided, at a minimum, in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be determined in consultation with the Forest Conservation Branch.
13. Stormwater management and Best Management Practices (BMP) facilities designed to protect the Occoquan Watershed shall be provided as shown on the special permit amendment plat. Additional measures such as Low Impact Development (LIDS) methods may be provided as determined by the Department of Public Works and Environmental Services (DPWES). The applicant shall enter into an agreement with DPWES, in such a form as required by DPWES, at the time of site plan approval that sets forth a maintenance schedule and procedure for the underground detention facility.
14. All lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property. Parking lot lighting shall be turned off one-half hour after any event held at the church except for building mounted security lighting which shall be shielded to prevent off-site glare.
15. The maximum number of employees for the child care center shall not exceed twenty (20) at any one time.
16. An outdoor recreation area shall be provided in accordance with Sect. 8-305 and in the location shown on the SPA Plat.
17. No amplified outside speakers or public address systems shall be permitted.
18. With the inclusion of revegetated areas depicted on the SPA Plat, the total amount of undisturbed open space shall not be less than 50% of the total site area.

~ ~ ~ July 29, 2008, JERUSALEM BAPTIST CHURCH, SPA 73-S-113, *continued from Page 70*

19. Right-turn deceleration lane(s) shall be provided as required by the Virginia Department of transportation (VDOT) and DPWES at the time of site plan approval.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Commencement of Phase I shall establish the use as approved pursuant to this special permit 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.

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

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~ ~ ~ July 29, 2008, Scheduled case of:

- 9:30 A.M. NICOLAS J. LAGET, A 2008-BR-020 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an Establishment for Production and a Hotel/Motel on property in the R-2 District in excess of the use limitations of Home Admin. Occupation Permit #HOP 2891 for a home office in violation of Zoning Ordinance provisions. Located at 4204 Pineridge Dr. on approx. 28,327 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-2 ((2)) 27B.

Chairman Ribble noted that A 2008-BR-020 had been administratively moved to December 2, 2008, at 9:30 a.m., at the appellant's request.

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~ ~ ~ July 29, 2008, Scheduled case of:

- 9:30 A.M. HARMAN AND MANFUL, INC., A 2008-MV-021 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without an approved Special Permit or a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hy. and 6117 North Kings Hwy. on approx. 2.85 ac. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Concurrent with A 2008-MV-022)
- 9:30 A.M. RICHMOND HIGHWAY, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, A 2008-MV-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without a valid Non-Residential Use Permit or an approved Special Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hwy. and 6117 North Kings Hwy. on approx. 2.85 ac. of land zoned C-8, HC and CRD. Mt Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Concurrent with A 2008-MV-021)

Chairman Ribble noted that applications A 2008-MV-021 and A 2008-MV-022 had been administratively moved to December 16, 2008, at 9:30 a.m., at the appellants' request.

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~ ~ ~ July 29, 2008, Scheduled case of:

9:30 A.M. EDILBERTO VASQUEZ, A 2008-SP-023 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's offices and shops and a junk yard and a storage yard, has established outdoor storage that is in excess of 100 square feet and is not properly screened from view, is parking prohibited commercial vehicles, and has erected an accessory storage structure without an approved building permit, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 5395 Sasher Ln. on approx. 3.9 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 21.

Chairman Ribble noted that application A 2008-SP-023 had been administratively moved to December 16, 2008, at 9:30 a.m., due to ads.

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~ ~ ~ July 29, 2008, Scheduled case of:

9:30 A.M. HERMILIO MACHICAO, A 2008-LE-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the property has a 30-foot minimum required front yard along its Backlick Road frontage in which the owner of the subject property contends that such determination is barred by Va. Code Ann. § 15.2-2311(C) (Supp. 2007) because it was made more than 60 days after the issuance of a Building Permit for the construction of a single family detached dwelling on the subject property located 13.9 feet from Backlick Road. Located at 5901 Amherst Av. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1.

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.

Donna Pesto with Zoning Administration Division, gave staff's presentation. The issue on appeal related to a Notice of Violation for a single-family, detached dwelling currently under construction at 5901 Amherst Avenue in Springfield. She also gave the following information. The approval of the building permit which showed the 13.9-foot setback along Backlick Road was clearly a non-discretionary error made by a zoning technician. Even though a mistake was made in the approval, it had to be corrected because their office had no authority to allow the 13.9 feet. During the construction of the house, a number of inspections did take place, including a zoning inspection related to the side setback that was adjacent to the residence, and there were also multiple building code-type related inspections. In each of those cases, the inspector compared what was being built on site to the plat that had been approved, which was why the error was not caught earlier. It was not until the Zoning Administrator received the complaint that the error was discovered in the original approval. The applicant could seek the Board of Zoning Appeal's approval for a special permit for an error in building location which would allow the structure to remain in its present location.

Staff recommended the Zoning Administrator's position be upheld.

Beth Teare from the Office of the County Attorney had additional comments to add on behalf of the Zoning Administrator. She wanted to clarify for the record the logistics concerning the so-called deposition that was taken of Scott McGeary, and submitted Mr. Lawson on July 15, 2008. The deposition did not conform to any of the rules of the Supreme Court of Virginia, specifically to the provisions of Rule 4:2 of the Rules of the Supreme Court of Virginia, which allow the taking of a deposition before a lawsuit has been filed only with the permission of the Court through a court order. Such a court order had not been obtained in this case nor had any lawsuit been filed in court. Therefore, Ms. Teare noted her objection to allow this so-called deposition of Mr. McGeary to become part of the record.

With discussion and questions from the Board members, staff and the County attorney the following was determined. The building permit was approved as it was submitted. There had subsequently been a wall check survey, which showed that the footprint of what was submitted on the building plan was somewhat different than what was actually being constructed. There was an issue of a second stop work order issued, because the appellant graded more than 2,500 square feet of the lot, which triggered the need for a grading plan, which was not submitted. Staff did not believe there was fraud on the part of the appellant.



~ ~ ~ July 29, 2008, HERMILIO MACHICAO, A 2008-LE-030, *continued from Page 72*

Discussion ensued by Board members and staff on legal matters, the plat, setbacks, and more. It was also said that it was the appellant's decision to go forward with this appeal.

Barnes Lawson, Jr., came forward to present the appellant's case. They started off by showing a videotape. He addressed some of the questions that came up by Board members. One of the things he addressed was the desposition, which he said the County Attorneys were invited to attend.

Ben Danforth from Mr. Lawrence's office, 6045 Wilson Boulevard, Suite 100, Arlington, Virginia came forward to speak. He said their position was very simple. Staff used discretion when making this determination. The principal section of the Zoning Ordinance they based their argument on had already been discussed. That was the part of the Zoning Ordinance which defined front yard. It was clear that the Zoning Ordinance did not give this direction. He and Mr. Lawrence made several other points with regard to the Ordinance, and how the County also has to follow the law.

With questions by the Board members, it was determined that the appellant was working on a special permit application. He was hoping to have this determination rule in his favor, so he would not have to go forward with a special permit, as he was trying to expend so much more money on this matter.

Chairman Ribble called for speakers.

Mark Renahan, representative of the Springfield Civic Association, residing at 7422 Highland Street, Springfield, Virginia, came forward. He asked a number of the members of the association, who were attending the hearing to please stand so the Board members could see who was there. He asked the County to enforce the setback regulations at 5901 Amherst Avenue.

A fire alarm sounded with a building evacuation announcement. Chairman Ribble called a recess so all could evacuate the building.

The meeting recessed at 12:28 p.m. and reconvened at 12:39 p.m.

Mr. Renahan continued with the concerns of the association, which included that housing in the county continue to be constructed in a regulated and lawful manner.

Chairman Ribble called for more speakers.

The following people came forward: Lauren Hetland, 7405 Bath Street, Springfield, Virginia; Harold Smarr, 6114 Dinwiddie Street, Springfield, Virginia; Francis Miner, 7205 Halifax Place, Springfield, Virginia; Rick Renninger, 6806 Lynbrook Drive, Springfield, Virginia; Sandy Barrick, 5900 Frederick Street, Springfield, Virginia; Michael Aulicino, 7413 Falmouth Street, Springfield, Virginia; and, Julie Tahan, 6914 Floyd Avenue, Springfield, Virginia. Their main concerns were as follows: they believed mistakes were made on both sides and the house should be torn down; that there was time and money being wasted here, when seeking a special permit seemed to be the resolution to this problem; the community contacted their supervisor when construction was first starting on this property, so something should have been done then; the builder for this house was also the builder other homes in the neighborhood with setback issues; this house was a monstrosity; and, at least two of the homes by this builder have received complaints that they were being used as boarding houses.

Discussion ensued with Board members and staff with respect emails received, the number of rooms, and the builder.

Mr. Hammack moved to overturn the determination of the Zoning Administrator, stating the following reasons. This had a lot of uncontested facts. There are a lot of facts that had been put into this hearing, which really did not influence the appeal. Staff had conceded the issue of fill. There was no real disagreement that the stop work order was issued more than 60 days following the issuance of the building permit. Staff conceded that the appellant acted in good faith. When looking at the definition of the corner lot, the definition of the corner lot limits it to two front yards. Notwithstanding that, the analysis of the Zoning Administrator concludes there can be three front yards in a corner lot, although that definition is not in the Ordinance. The Ordinance is silent on more than two front yards in a corner lot, or how staff is supposed to

~ ~ ~ July 29, 2008, HERMILIO MACHICAO, A 2008-LE-030, *continued from Page 73*

handle that. This type of interpretive work is a discretionary function, and staff admits that there is no definition of discretion, what is a discretionary or non-discretionary function in the Code or the Ordinance.

The appellant made arguments that you can get three front yards on this particular corner lot, and staff concedes maybe you can have more than three front yards when the definition in the Ordinance would limit it to two. The Board thinks that is discretionary. There has to be some interpretation in the application of the Ordinance. Staff did not deal with the issue of how you determine, in reverse frontage lots, how you deal with the term "intentionally". This Code provision was passed to allow citizens to rely on the issuance of permits and actions taken by the Zoning Administrator, and in order to reverse the Zoning Administrator, you have to show it is non-discretionary. The Ordinance is not perfect, which is unfortunate. Maybe the Ordinance needs to be cleaned up in some way, but in this particular case, it was clear that the appellant acted on the issuance of the building permits, constructed this building, put a lot of money into it, and was then told over 60 days after the issuance of those permits, that they were issued in error, and they had to stop work

This particular Code section has been a point of contention with the County and developers around here for a long time. There was no law on it that Mr. Hammack knew of for a definitive answer on whether this is discretionary or non-discretionary, but he could not disassociate the last sentence from the entire provision of Section 15.2-2311(C). So for those reasons, he moved the Board of Zoning Appeals overrule the determination of the Zoning Administrator

Mr. Smith seconded the motion. Mr. Hart said he was going to support the motion. The motion carried by a vote of 7-0.

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~ ~ ~ July 29, 2008, After Agenda Item:

Request for Additional Time  
Jerusalem Korean Baptist Church, SP-00-S-045.

Mr. Beard moved to approve 24 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 7-0. The new expiration date was May 28, 2010.

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~ ~ ~ July 29, 2008, After Agenda Item:

Request for Reconsideration  
Appeals A 2008-SU-016 and A 2008-SU-017 Atlantic Construction Fabrics, Inc.; James G. Miller, Trustee for James G. Miller, Revocable Trust, James G. Miller, Inc. and Atlantic Construction Fabrics, Inc., see memorandum dated July 18, 2008, from Eileen M. McLane, Zoning Administrator

Mr. Hart moved to approve the request for reconsideration and authorize another public hearing. Mr. Byers seconded the motion, which carried by a vote of 7-0.

Mr. Hart moved that the new hearing be scheduled for September 30, 2008 at 9:30 a.m. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 1:25 p.m.

Minutes by: Suzanne L. Frazier/Lorraine A. Giovinazzo

Approved on: May 11, 2016

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Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

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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 5, 2008. 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.

Mr. Byers informed the audience that there would be a program from 12:00 to 2:00 p.m. that day at the Government Center regarding National Night Out, sponsored by the Fairfax County Police. Mr. Byers also acknowledged that Greg Chase, Senior Staff Coordinator, was leaving the Special Permit and Variance Branch for a position in another division and said Greg was a good guy whose only drawback was that he was a New Orleans Saints fan.

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

~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. CANDI & MARK WOLFF, SP 2008-DR-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure 7.5 ft. from side lot line. Located at 2105 Virginia Ave. on approx. 14,625 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((15)) (17) 3.

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.

Candida P. and Mark Wolff, 2105 Virginia Avenue, McLean, Virginia, identified themselves as the applicants. Jim Rill, the applicants' agent, 14704 Spring Meadows Drive, Darnestown, Maryland, reaffirmed the affidavit.

Tracy Strunk, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-DR-056, subject to the proposed development conditions.

In response to questions from Mr. Hart, Ms. Strunk said the relocation of the proposed garage to the center of the lot would require a reconfiguration of the driveway and impact established trees.

Mrs. Wolff presented the special permit request as outlined in the statement of justification submitted with the application. She said they wanted to replace the existing, old, detached garage with a more visually appealing garage. Mrs. Wolff said the new garage would be located farther from the property line than the existing non-conforming garage, and in order to expand the garage to two cars, it would be moved back and into the lot, but because of the location of existing mature trees, it could not be moved into the center of the lot. The new location would allow vegetation to be installed along the side of the garage. She said the proposed garage would be in character with the existing on-site development, harmonious with the surrounding off-site uses, would not adversely impact the adjacent property, would be an improvement as it would be moved off the property line where the existing garage was located, and was the minimum amount of reduction necessary to accommodate the structure.

Discussion ensued regarding relocating the garage farther away from the lot line and obstacles preventing that, such as the existing concrete patio not shown on the plat and preserving areas for a future expansion of the house, plantings, and a play area for children.

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

Mr. Hammack moved to approve SP 2008-DR-056 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Mr. Hart said he thought the applicants had presented a reasonable explanation for the proposal, but he read Sect. 9 as mandatory, and based on the record, he did not think that 7.5 feet was necessarily the minimum. He said he thought if the backyard was large enough without any obstruction to allow the garage by right, the Board did not have the flexibility to say it was an old neighborhood or they were tearing down a garage that

was worse than the proposed one. Mr. Hart said the Board must go with Sect. 9 with every case, and he could not support the motion.

Mr. Hammack said if one took the section absolutely literally, the applicants could build the house and fill up the building envelope and then come in and get the relief Mr. Hart opposed. He said he did not think one should have to put up one building first in order to satisfy the section regarding another building. He said the Board approves development phases in many situations, which allows flavors of various requirements. Mr. Hammack said he felt that a reasonable construction of the Ordinance would permit this.

Mr. Smith said he agreed with Mr. Hammack and thought there was a reasonable test that the Board needed to apply to the provision. He said to put the garage further towards the center of the backyard did not seem like a reasonable use of the land, and it would potentially result in more impervious surface. Mr. Smith said specific factors to be considered would include the layout of the existing structure and the availability of alternate locations. He said he did not believe the alternate location was advantageous from a land use perspective, so he would support the motion.

Mr. Beard said he would support the motion.

Chairman Ribble called for a vote. The motion carried by a vote of 4-2. Mr. Byers and Mr. Hart voted against the motion. Ms. Gibb was not present for the vote.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CANDI & MARK WOLFF, SP 2008-DR-056 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit accessory structure 7.5 ft. from side lot line. Located at 2105 Virginia Ave. on approx. 14,625 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((15)) (17) 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 August 5, 2008; and

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

1. The applicants are the owners of the land.
2. The applicants have met the six required standards specifically set forth in the Ordinance.
3. The Board has a favorable staff recommendation.
4. This is an old neighborhood, and these buildings pre-existed a good deal of the Ordinance by many years.
5. The Wolffs' explanation to allow expansion of their house in the future could conflict if the garage were pulled into the center of the backyard and is satisfactory insofar as the applicants actually could rebuild or repair it in the existing location.
6. The applicants have met the spirit and intent of the Ordinance and the application should be approved.

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

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

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

~ ~ ~ August 5, 2008, CANDI & MARK WOLFF, SP 2008-DR-056, *continued from Page 76*

1. This special permit is approved for the location and size (approximately 524 square feet) of the proposed detached garage, as shown on the plat prepared by Dominion Surveyors, Inc., dated February 29, 2008 as revised through June 17, 2008, as submitted with this application and is not transferable to other land.
2. The garage shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

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

Mr. Smith seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Byers voted against the motion. Ms. Gibb was not present for the vote.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. CHARLOTTE HOLZMAN AND HAROLD HOLZMAN, SP 2008-LE-058 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.5 ft. from side lot line and 2.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit roofed deck 28.9 ft. and deck 23.3 ft. from front lot line of a corner lot. Located at 7121 Highland St. on approx. 8,589 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((5)) (15) 513.

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.

Charlotte and Harold Holzman, 7121 Highland Street, Springfield, Virginia, reaffirmed the affidavit.

Chris DeManche, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-LE-058, subject to the proposed development conditions.

Ms. Holzman presented the special permit request as outlined in the statement of justification submitted with the application. She said that while building a second floor addition on the house in 2005, they tried to maintain the colonial look and character of the neighborhood, but when reviewing the design plans, they realized the upstairs portion with siding appeared disconnected to the bottom portion with brick. In coming up with a solution to improve the appearance, they decided on a deck for the front which would allow an area for her son and his friends to congregate and smoke outside, as well as add the finishing architectural element to the house. She said the contractor suggested the upstairs renovation be done separately from the deck, which would be added at a later time, because the supports and foundation for the deck could not be done during the upcoming winter and would delay their moving back in. She noted that the drawings included a sliding glass door and lighting for the deck which would be later added. Although it was not requested by the neighbors, she said a retention wall was added to protect the neighbor's property from drainage. As the attic space planned to use for storage was lost, they purchased a shed after consulting with the County and being told 150 square feet was allowed, but being given no indication of height or location

restrictions. Ms. Holzman said they removed the existing eight-by-eight-foot shed and replaced it with the new shed without realizing there was a problem.

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

Mr. Byers moved to approve SP 2008-LE-058 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CHARLOTTE HOLZMAN AND HAROLD HOLZMAN, SP 2008-LE-058 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.5 ft. from side lot line and 2.2 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 28.9 ft. and deck 23.3 ft. from front lot line of a corner lot. Located at 7121 Highland St. on approx. 8,589 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((5)) (15) 513. 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 5, 2008; and

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

1. The applicants are the owners of the land.
2. The application meets all the submission requirements in Sect(s). 8-914 and 8-922.
3. Staff recommends approval for the construction of the decks themselves.

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

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

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

~ ~ ~ August 5, 2008, CHARLOTTE HOLZMAN AND HAROLD HOLZMAN, SP 2008-LE-058, *continued from Page 78*

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 decks (a total of 276 square feet), and shed (a total of 126 square feet) as shown on the plat prepared by The Engineering Groupe dated March 19, 2007, signed April 22, 2008 as submitted with this application and is not transferable to other land.
2. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

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

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. JAMES W. DECHMAN, SP 2008-SU-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 3189 Mary Etta La. on approx. 1.06 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((20)) 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.

James Dechman 3189 Mary Etta Lane, Herndon, Virginia reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SU-047, subject to the proposed development conditions.

James Dechman presented the special permit request as outlined in the statement of justification submitted with the application. He said other houses in the neighborhood had three to five garage spaces, and they wanted to make their home more comparable. Mr. Dechman said the plans were approved by the homeowners association, and all the neighbors supported the proposal.

~ ~ ~ August 5, 2008, JAMES W. DECHMAN, SP 2008-SU-047, *continued from Page 79*

In response to a question from Mr. Hart, Mr. Dechman said there was a 10-foot drop to the rear which precluded the garage being located farther back.

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

Mr. Hart moved to approve SP 2008-SU-047 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Discussion ensued regarding the width of the existing breezeway with stairs located in the center which required a landing at the bottom and the stone chimney.

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

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## COUNTY OF FAIRFAX, VIRGINIA

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

JAMES W. DECHMAN, SP 2008-SU-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 3189 Mary Etta La. on approx. 1.06 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((20)) 9. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 2008; 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. Based on the record before the Board, there would be significant problems with pushing the garage further back, particularly due to the topography.
4. There is a steep slope going downhill from where the driveway would end, and it would not be possible to shift the garage further back.
5. On the record before the Board, the 10.0 foot to the eave is the minimum for this kind of situation.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 576 square feet) of the proposed garage addition with attached breezeway, as shown on the plat prepared by Dominion Surveyors Inc., dated January 27, 2008 as revised through June 17, 2008, as submitted with this application and is not transferable to other land.



~ ~ ~ August 5, 2008, JAMES W. DECHMAN, SP 2008-SU-047, *continued from Page 80*

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 (7,753 square feet existing + 11,629.5 square feet (150%) = 19,382.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. OAKTON SWIM AND RACQUET CLUB, INC., SPA 82-C-067-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-C-067 previously approved for swim and racquet club to permit site modifications, building addition and modifications of development conditions. Located at 11714 Flemish Mill Ct. on approx. 6.75 ac. of land zoned R-1. Sully District. Tax Map 46-2 ((13)) A2.

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.

Sonia Bergh, the applicant's agent, 11708 Flemish Mill Court, Oakton, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 82-C-067-03, subject to the revised proposed development conditions distributed at the meeting.

Ms. Bergh presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the facilities, which had operated for 25 years, were in need of maintenance and necessary updates. Through a survey of its members regarding where to focus the improvements efforts, the overwhelming responses included additional storage facilities, expanded snack bar hours and menu, and improved decking around the pool. A commercial grade kitchen would be needed to prepare the food items. She said the membership would not be expanded or changes made to the club grounds, and the parking lot and traffic would remain the same. Due to a shift in member demographics since the inception of the club, Ms. Bergh said the applicant also requested a masters swim time be allowed in the early morning to accommodate the club's older adult members and working adults. Ms. Bergh said the club recognized its responsibility to comply with any regulations, ordinances, and applicable County standards.

~ ~ ~ August 5, 2008, OAKTON SWIM AND RACQUET CLUB, INC., SPA 82-C-067-03, *continued from Page 81*

Responding to a question from Mr. Hammack, Ms. Bergh acknowledged she had read and agreed with the revised proposed development conditions distributed at the meeting.

In response to a question from Mr. Hammack regarding a limitation of Friday, Saturday, and pre-holiday evenings for after hour parties in Development Condition 8, Susan C. Langdon, Chief, Special Permit and Variance Branch, said the proposed conditions were a carryover of the previous conditions, and the limitation had not been in the previously approved conditions. She said some language had been removed concerning notification to or approval from the Zoning Administrator.

In response to a question from Ms. Gibb, Ms. Langdon said that because structural elements were being added, the applicant would have to go through a minor site plan review, and the Department of Public Works and Environmental Services could require some additional stormwater facilities, and staff was agreeable to the addition of stormwater management, but did not want it in existing or proposed treed areas.

Discussion ensued regarding the club's operating season, the opening and closing dates, and the evenings parties would be held.

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

Ms. Gibb moved to approve SPA 82-C-067-03 for the reasons stated in the Resolution. Mr. Smith seconded the motion.

Discussion ensued regarding adding a limitation to Development Condition 8 stipulating the days on which after hour parties could be held.

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

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## COUNTY OF FAIRFAX, VIRGINIA

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

OAKTON SWIM AND RACQUET CLUB, INC., SPA 82-C-067-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 82-C-067 previously approved for swim and racquet club to permit site modifications, building addition and modifications of development conditions. Located at 11714 Flemish Mill Ct. on approx. 6.75 ac. of land zoned R-1. Sully District. Tax Map 46-2 ((13)) A2. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 2008; 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. Staff recommends approval of this application.
4. This is a modest request, simply to add decking, a masters' class earlier in the morning for adults, and a larger snack bar.
5. The proposal seems to have little impact with little intensification of the use they currently have.

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

~ ~ ~ August 5, 2008, OAKTON SWIM AND RACQUET CLUB, INC., SPA 82-C-067-03, *continued from Page 81*

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, Oakton Swim and Racquet Club, and is not transferable without further action of this Board, and is for the location indicated on the application, 11714 Flemish Mill Court (6.75 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 Paciulli, Simmons & Associates, Ltd., dated April 14, 2008, as revised through June 26, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. There shall be a maximum of 500 family memberships. Residents of the surrounding Waples Mill Estates Subdivision shall be granted priority for membership.
6. There shall be 77 parking spaces provided as shown on the special permit plat. All parking shall be on site.
7. Tennis court lights for the courts shall be on standards which do not exceed 20 feet in height. All tennis court lights shall be equipped with an automatic shut-off mechanism designed to ensure that the lights are only on when the courts are in use during the approved hours of operation. This mechanism shall be tested monthly and adjusted or repaired as necessary to ensure compliance. To further minimize the impact of the lights on adjacent properties, the lights shall be directed downward, and shall be shielded to prevent glare on adjacent properties.
8. The maximum hours of operation for all tennis courts on the site shall be between 7:00 a.m. and 10:00 p.m. The regular hours of operation for the swimming pool shall be 9:00 a.m. to 9:00 p.m., except that competitive teams from the swim club shall be allowed to practice as early as 7:00 a.m. The 7:00 a.m. swim practice shall not involve the use of amplified sound including but not limited to amplified timing systems, pre-recorded music, starters pistols, or public address systems. A masters (adult) swim practice may begin at 6:30 a.m. After hour parties for the swimming pool shall be governed by the following:

Limited to six (6) per season.

Shall not extend beyond 12:00 midnight.

9. During discharge of swimming pool waters, the following operation procedures shall be implemented:

Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. If a public address system is used, its use shall be limited to swim meets, special parties and emergencies and its volume shall be modulated in accordance with the provisions of Chapter 108 of the Code of Fairfax County (the "Noise Ordinance"), which currently sets a maximum sound pressure level of 55 dBA. If the limits in the Noise Ordinance are lowered, the sound level shall conform to the new requirements; however, in no instance shall the sound pressure level exceed 55 dBA.
11. To fulfill the requirements for Transitional Screening, all existing vegetation, including the supplemental evergreen plantings on the western lot line and the row of evergreen trees along the site's boundary with Lots 408, 409, and 305 shall be maintained. Any dead or dying vegetation shall be replaced with like kind a minimum 8 feet in height and have an ultimate height of a least 25 feet as determined feasible by the Urban Forest Management Division, Department of Public Works and Environmental Services (UFMD/DPWES). Existing evergreens may be used to fulfill the requirement for supplemental plantings along Lots 408, 409, and 305 provided the existing trees are determined by the UFMD/DPWES to be of a height and quality which will provide effective screening of the tennis courts and lights. Existing vegetation along the remaining portions of the eastern, northern, and western lot lines shall be reviewed by the UFMD/DPWES and supplemental plantings may be required if necessary to meet the intent of Transitional Screening 1.
12. The Barrier requirement shall be waived.
13. The applicant shall meet Stormwater Management and Best Management Practices (BMP's) as determined by the Department of Public Works and Environmental Services (DPWES). If any structural facilities are required, no existing or proposed vegetation as shown on the special permit amendment plat shall be removed to install the structures.
14. To ensure that any water or runoff which may flow across the site does not adversely impact adjoining property owners, the grading plan for the tennis courts shall be designed and engineered with swales or other methods as determined appropriate by DPWES to ensure that runoff is properly channeled into the existing inlet located southeast of the tennis courts.
15. Sales activity from the tennis hut shall be limited to members of the club.
16. A written copy of all applicable development conditions shall be provided to the individual responsible for any after-hours party or event, to all members, to contractors providing services at the club, and to parties who may rent the club's facilities.
17. Signs shall be in conformance with Article 12 of the Zoning Ordinance.

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

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

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. HUGH A. AND ANN E. HOLLAR, SP 2008-DR-010 (Admin. moved from 4/15/08 at appl. req.)

Chairman Ribble noted that SP 2008-DR-010 had been withdrawn.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. JOHN A. AND MARY L. MCEWAN, VC 2008-MV-002

Chairman Ribble noted that VC 2008-MV-002 had been administratively moved to September 16, 2008, at 9:00 a.m., at the applicants' request.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. HOLMES RUN ACRES RECREATION ASSOCIATION, INC., AND COMMUNITY WIRELESS STRUCTURES, SPA 77-P-091-03 (In association with SE 2008-PR-009)

Chairman Ribble noted that SPA 77-P-091-03 had been administratively moved to October 7, 2008, at 9:00 a.m., at the applicants' request.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 2005-MV-010 previously approved for church with child care center to permit change in permittee, increase in enrollment, building additions, and modification of development conditions. Located at 8905 Ox Rd. on approx. 8.79 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 7.

Chairman Ribble called the applicant to the podium.

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

Sarah E. Hall, Esquire, the applicants' agent, Blankingship & Keith, P.C., 4020 University Drive, Suite 300, Fairfax, Virginia, reaffirmed the affidavit.

Suzanne Linn, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 2005-MV-010, subject to the revised proposed development conditions distributed at the meeting.

Discussion ensued regarding the August 5, 2008 development conditions; the allowed number of children on-site; pickup and drop-off circulation for the students; clarification of Development Conditions 6, 9, and 21; the specifics of the hours of operation; clarification regarding the Non-RUP; the use and restriction of acoustic and electronic music; crafting specific conditions to address any music/noise element and staff's justification for its suggested language; Department of Transportation's analysis of the site's access; and potential vehicular safety issues. Ms. Linn said staff did not agree with deleting Conditions 26 and 27.

Ms. Hall presented the special permit amendment request as outlined in the statement of justification submitted with the application. She referenced a letter from Janet Funk, Principal of the nearby William Halley Elementary School, in which she stated the church was an active contributing member of the community. Ms. Hall discussed the child care operations and the flow plan for dropping off and picking up children to ensure there was no backup onto Route 123. She also noted that there was a limit of not more than 125 children at one time on the site, as the South County Federation had requested. Ms. Hall explained the church's position on Condition 11 regarding a requirement for a seven-foot high fence, saying that it was

~ ~ ~ August 5, 2008, NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010,  
*continued from Page 85*

no longer necessary. She said there was a contract on the neighboring property, and the purchaser was pursuing an amendment to the Comprehensive Plan to recommend an assisted living facility on the parcel as well as pending rezoning and special exception applications to permit the assisted living use. She said the purchaser, Sunrise, did not want a seven-foot high wood fence between the facilities. Ms. Hall said Sunrise's legal counsel informed staff that, in Sunrise's experience, a church with a day care center was an ideal neighbor for a retirement community, and without a barrier, interactions between the two facilities would be encouraged. Ms. Hall said if Sunrise were not to go forward, the church was willing to build the seven-foot high wood fence and had proposed an alternative to staff's development condition that would provide for the fence if it was necessary. If the assisted living center did go forward, a pre-existing chain-link fence would remain and was preferred by both facilities. Ms. Hall recommended the preferred hours of operation in Condition 25, requesting a 9:00 p.m. stop time versus daylight hours. She addressed the matter of amplification and loudspeaker intended usage, adding that Sunrise was aware and had no objections. Regarding traffic generation, she said the applicants had retained Wells and Associates to study the situation, concluding that there would be no problems. She said the church and the Remington Place Subdivision had already made contributions to a traffic light at the intersection on Route 123, and the Sunrise facility would also be required to make its contribution. Mr. Hall said South County Federation strongly supported the application, Crosspointe Civic Association had no objection, staff recommended approval, and she believed the Planning Commission would soon recommend approval of the Plan amendment.

In response to a question from Mr. Hart concerning Condition 6, Ms. Hall said the applicants' position agreed with Hart's suggestion to delete the second sentence because the second paragraph under Condition 17 addressed the matter. She further explained the proposed vehicular circulation in response to questions from Mr. Hart and Mr. Hammack. Ms. Gibb said, based on her personal experience, the pickup plan was a typical system that works well, and she had never seen anyone violate the rules.

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

Mr. Smith moved to approve SPA 2005-MV-010 for the reasons stated in the Resolution. Mr. Beard seconded the motion.

Mr. Hammack said he would like to support the motion, but the issue of amplification should have a condition to better define its use.

Mr. Hammack, Ms. Gibb, Mr. Hart, and Mr. Beard discussed the issue of restricting the amplified music, adherence to the Noise Ordinance, crafting development conditions for clarification, and the need to be consistent. Following the discussion, Mr. Smith said he recognized that this was an outdoor facility, and it was reasonable to define the use. He suggested additional language for Condition 27.

Susan C. Langdon, Chief, Special Permit and Variance Branch, explained the difference between a development condition and a proffer, stating that the former was something staff must agree to support in order to recommend its support for an application; however, the applicant may choose not to accept it. She added that the proposed use was not a use permitted by right in the district, and under special permit or special exception, an applicant must meet certain standards to not have an unreasonable impact on the by-right uses in the district.

Ms. Hall suggested clarifications to the language, which were accepted by Mr. Smith, Mr. Beard, and staff.

Chairman Ribble called for a vote. The motion carried by a vote 7-0.

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## COUNTY OF FAIRFAX, VIRGINIA

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

NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 2005-MV-010 previously approved for church with child care center to permit change in permittee, increase in enrollment, building additions, and modification of development conditions. Located at 8905 Ox Rd. on approx. 8.79 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 7. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ August 5, 2008, NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010,  
*continued from Page 86*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning of the property is R-1.
3. The area of the lot is 8.79 acres.
4. There is a recommendation for approval from staff.
5. All three of the specific conditions of the Department of Transportation, Site Analysis Section, are accommodated in the development conditions presented by the applicant, and agreed to by staff, including the commitment for the pro rata contribution for the signal, the agreement to reconstruct the church entrance and the service drive, at such time the service drive is constructed on Parcel 8.
6. The applicant has presented a reasonable traffic circulation pattern to accommodate the traffic on the site so that it won't back up onto Route 123.
7. Both the elementary school and the Sunrise Senior Living facility support the application.

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

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

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

1. This approval is granted to the applicant only, New Hope Church, Inc. and Silo Center LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, 8905 Ox Road, Lorton, Virginia and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Charles F. Dunlap (Walter L. Phillips, Inc.) dated March 13, 2008, revised through July 10, 2008 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The number of seats in the sanctuary shall not exceed 685.
6. Upon issuance of a new Non-RUP, the total maximum daily enrollment for the child care center shall not exceed 250 children with a maximum of 125 students onsite at any one given time.
7. The child care center's maximum hours of operation shall be 6:30 A.M. and 7:00 P.M., Monday through Friday.
8. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.

~ ~ ~ August 5, 2008, NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010,  
*continued from Page 87*

9. All worship services shall be scheduled to avoid vehicles entering and exiting the site for services at the same time. Therefore, services shall be staggered so that no one service ends within a minimum of one hour of the next service's beginning and no Sunday School classes shall be held between services. The multi-use space (Phase II) shall not be used for services or other activities that coincide with services in the sanctuary other than Sunday School activities.
10. The transitional screening requirements shall be modified along the lot lines as shown on the special permit amendment plat.
11. The barrier requirement shall be waived along all lot lines except the southeast lot line where the existing chain link fence shall remain or be replaced with a fence of similar height and attractive material. In the event a special exception permitting an assisted living facility on TM 106-2 ((11)) 8 has not been granted by the Board of Supervisors by December 31, 2009, however, the Applicant shall remove the chain link fence and construct the seven foot high wood fence shown on the Plat.
12. Additional landscaping, as coordinated with Urban Forest Management, shall be provided along the perimeter of the proposed covered picnic area.
13. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. There shall be no uplighting on site, including any sign or the building, and lights shall be turned off when the site is not in use except as reasonably necessary for security purposes.
14. The limits of clearing and grading shall be at a minimum of that shown on the special permit amendment plat. The proposed conservation easement areas shall remain undisturbed.
15. Stormwater Management/Best Management Practices facilities shall be provided as depicted on the special permit Amendment plat.
16. At such time as Blu Steel Way is extended across the frontage of the property, the applicant shall reconfigure its driveway so that the driveway shall intersect Blu Steel Way at an approximately 90 degree angle.
17. One year after the applicant is granted a Non-Residential Use Permit and every three (3) years thereafter ending 10 years after issuance of Non-Rup, the applicant shall perform and submit to Fairfax County Department of Transportation (FCDOT) a queuing analysis for the southbound left turn lane on Ox Road at the site entrance. In the event that the analysis indicates that the queue exceeds the capacity of the left turn bay, the applicant shall either extend the length of the left turn lane as necessary or commence an appropriate staggering of its Sunday morning services as determined by FCDOT.
18. Prior to issuance of the new Non-RUP, the applicant shall contribute to Fairfax County \$5,000, its pro rata share, of a traffic signal to be installed at the intersection of Ox Road and the joint entrance. The applicant's total pro rata share shall be held in escrow for a period of three years from the time of this contribution. In the event VDOT determines that a traffic signal is not warranted at the end of the three years, the funds may be used by Fairfax County for other transportation improvements.
19. Arrangements for police direction shall be made at the entrance on Sunday morning, if necessary.
20. No structure shall exceed 50 feet in height.
21. The pick up of preschool age children shall be in general conformance with the process depicted in Attachment 1.
22. At such time as a service drive is constructed by others across TM 106-2 ((1)) 8 to connect to TM 106-2 ((1)) 9A, the applicant shall construct a service drive in the existing public ingress/egress easement which runs across the Ox Road frontage of its property. Upon completion of the service drive, maintenance for the portion of the service drive on this property shall be the sole responsibility



~ ~ ~ August 5, 2008, NEW HOPE CHURCH, INC., AND SILO CENTER, LLC, SPA 2005-MV-010,  
continued from Page 88

- of this property owner unless the service drive is accepted by the Virginia Department of Transportation for maintenance or a private maintenance agreement with other parties is executed.
23. At such time that Blu Steel Way is extended across the frontage of the property, vegetation lost during construction shall be replaced with like kind.
  24. The architecture of the covered picnic area shall be generally as depicted in the elevation included in Attachment 2.
  25. The use of the outdoor baptistry, gathering area and covered picnic area shall not extend beyond 9:00 p.m.
  26. There shall be no use of loudspeakers in either the outdoor gathering area with baptistry or the covered picnic area. However, this shall not prohibit church officials from utilizing an individual microphone/lavaliere for purposes of reasonable amplification of church functions in accordance with the limitation of the Fairfax County Noise Ordinance.
  27. Acoustic music shall be allowed in the outdoor gathering area/baptistry and covered picnic area, but music shall not be broadcast using stereo or other electronic equipment.

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.

The special permit amendment may be undertaken in phases, e.g. the day care center enrollment may be increased before such time as Phase II, the outdoor gathering area with baptistry, and/or the covered picnic area are constructed. Pursuant to Section 8-015 of the Zoning Ordinance, this special permit amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless either a new non-RUP for the day care center with expanded enrollment has been issued or construction of the outdoor gathering area with baptistry and/or the covered picnic area has commenced and is being diligently pursued. The Board of Zoning Appeals may grant additional time if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. MARGARET LEIGH BANDUCCI, SP 2008-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 17.3 ft. from rear lot line and 4.1 ft. from side lot line. Located at 1313 Gatesmeadow Way on approx. 7,825 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 114

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.

Margaret Leigh and Patrick K. Banducci, 1313 Gatesmeadow Way, Reston, Virginia, came forward, and Ms. Banducci reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-HM-057, subject to the proposed development conditions.

~ ~ ~ August 5, 2008, MARGARET LEIGH BANDUCCI, SP 2008-HM-057, *continued from Page 89*

In response to a question from Mr. Beard, Mr. Chase said the existing house was located 4.1 feet from the side lot line, but the addition was proposed to be located 5.6 feet from the side lot line.

Discussion ensued regarding whether the applicant would be precluded from obtaining a building permit due to fire code regulations, with Susan C. Langdon, Chief, Special Permit and Variance Branch, stating that fire prevention material would be required if the distance was less than five feet, but would not be required for the addition located 5.6 feet from the lot line.

Mr. Banducci presented the special permit request as outlined in the statement of justification submitted with the application. He said the house was built in 1999 under PDH-2 zoning and was located 4.1 feet from the lot line. He said that although a sunroom or screened porch addition was offered at the time of purchase, he could not afford it. Mr. Banducci said they believed it was in harmony with the Comprehensive Plan, zoning district regulations, and the neighborhood, and his neighbors had no objections. He pointed out that the design was similar to those of some of the neighbors.

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

Mr. Beard moved to approve SP 2008-HM-057 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARGARET LEIGH BANDUCCI, SP 2008-HM-057 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 17.3 ft. from rear lot line and 5.6 ft. from side lot line. Located at 1313 Gatesmeadow Way on approx. 7,825 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 114. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 5, 2008; and

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

1. The applicant is the owner of the land.
2. Staff recommended approval.
3. There are several letters from the neighbors in support of the project.
4. Notwithstanding the proximity of the main house to the property line, the addition is further away from said property line.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.

~ ~ ~ August 5, 2008, MARGARET LEIGH BANDUCCI, SP 2008-HM-057, *continued from Page 90*

2. This special permit is approved for the location and size (approximately 331 square feet) of the proposed addition as shown on the plat prepared by Sam Whitson, L.S./Land Surveying dated February 8, 2008, as revised through March 28, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principal structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,641 square feet existing + 6,961.5 square feet (150%) = 11,602.5 square feet) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. A row of evergreen trees, a minimum of seven (7) to eight (8) feet in height at the time of planting, spaced a maximum of twelve (12) feet apart, shall be planted along the fence parallel to the proposed addition adjacent to Lot 113 to the north and Lot 91 to the east.
5. The addition shall be consistent with the architectural renderings included as Attachment 1 to these conditions.

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

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

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. ILDA COMMUNITY RECREATIONAL ASSOCIATION, SP 2008-BR-055 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 25366 previously approved for community swimming pool to permit building addition and site modifications. Located at 8900 Braeburn Dr. on approx. 6.36 ac. of land zoned R-2. Braddock District. Tax Map 69-2 ((8)) X.

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.

James S. Albertson, the applicant's agent, 8912 Stark Road, Annandale, Virginia, reaffirmed the affidavit.

Greg Chase, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-BR-055, subject to the revised proposed development conditions distributed at the meeting.

Ms. Gibb assumed the Chair.

Mr. Albertson presented the special permit request as outlined in the statement of justification submitted with the application. He said the Board approved the addition of the bathhouse and pool in 1964, and 20 years

~ ~ ~ August 5, 2008, ILDA COMMUNITY RECREATIONAL ASSOCIATION, SP 2008-BR-055, *continued from Page 91*

ago a fabric covered shelter was installed to serve as a place for small gatherings and the snack bar for swim teams and social events. The shelter needed to be replaced, and the applicant proposed to replace it with an open air pavilion which would accommodate large gatherings and inclement weather. Its design would be in harmony with the bathhouse and the neighborhood. He said the applicant also wanted to extend its existing season of May through August to include the spring and fall months, and there were numerous activities the sheltered pavilion would serve. Mr. Albertson gave the applicant's position on several of the revised proposed development conditions. He said they were seeking to extend the hours of operation to be 6:30 a.m. until 9:00 p.m. Pertaining to Condition 6, he requested that the current six yearly after hour parties be increased to ten. Referring to Condition 18, Mr. Albertson requested that the additional vegetation screening requirement be deleted or amended because of security reasons to allow visibility to monitor unauthorized use of the parking lot and school buses when staging drop-offs and pick-ups.

Discussion ensued regarding Condition 11 concerning the use of loudspeakers and conditions for pools and clubhouses regarding parties, with Mr. Albertson saying the applicant would like to have activities after the normal swim season to early fall or winter and also in the spring and saw the addition of the pavilion as a means of bringing the community together for social functions. He said recent attendance at the pool and functions had increased, and they would like to move to more of a community center type atmosphere and be viewed by the community as a place to gather.

Chairman Ribble resumed the Chair.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said staff was unaware of the applicant's intention to encourage the pavilion's use as a community gathering center, had the understanding it would be used from Memorial Day through Labor Day, and had not reviewed that aspect of the request.

Discussion ensued regarding Condition 11 concerning amplified music outdoors and Condition 6 for the dates allowed. Mr. Hart suggested limiting parties to Fridays, Saturdays, pre-holidays, and holidays.

In response to questions from Mr. Hart, Mr. Albertson clarified that school buses were not stored in the parking lot, but did use the lot as a temporary staging area in the mornings and evenings. He said the applicant had no objection to the school buses using the lot.

Discussion ensued regarding the timeframe which comprised the season.

Chairman Ribble called for speakers.

Alicia Summers, 8719 Braeburn Drive, Annandale, Virginia, came forward to speak. She said the membership had been working to raise funds for the pavilion for several years and felt it would be an asset to the community as a whole as well as to the swimming pool in terms of updating the facility and making it more of a multi-functional type of facility rather than just a place to swim. Additionally, she read a letter of support from Stephen Eccles, 8904 Narem Place, Annandale, Virginia, who lived adjacent to the subject property.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-BR-055 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ILDA COMMUNITY RECREATIONAL ASSOCIATION, SP 2008-BR-055 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 25366 previously approved for community swimming pool to permit building addition and site modifications. Located at 8900 Braeburn Dr. on approx. 6.36 ac. of land zoned R-2. Braddock District. Tax Map 69-2 ((8)) X. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ August 5, 2008, ILDA COMMUNITY RECREATIONAL ASSOCIATION, SP 2008-BR-055, *continued from Page 92*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 2008; 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 on 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 only, Ilda Community Recreational Association, and is not transferable without further action of this Board, and is for the location indicated on the application, 8900 Braeburn Drive, and is not transferable to other land.
2. This special permit amendment is granted only for the purpose(s) structure(s) and/or use(s) indicated on the special permit plat prepared by DeLashmutt Associates, dated May 1965, with additional notes and annotations dated April 29, 2008 by J. Albertson, 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 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 regular hours of operation for the swimming pool shall be 9:00 a.m. to 9:00 p.m., except that competitive teams for the swim club shall be allowed to practice as early as 8:00 a.m. The 8:00 a.m. swim practice shall not involve the use of amplified sound including but not limited to amplified timing systems, pre-recorded music, starter pistols, or public address system. A masters (adult) swim practice may begin at 6:30 a.m.
6. After-hour parties for the swimming pool shall be governed by the following:
  - Limited to ten (10) after hours parties per year.
  - Limited to Friday, Saturday, Fourth of July, and pre-holiday evenings.
  - Shall not extend beyond 12:00 midnight.
7. Existing vegetation along all lot lines and the proposed additional plantings as determined by the Urban Forest Management Division (UFMD) at the time of site plan approval and the existing fencing shall be deemed to satisfy the transitional screening and barrier requirements.
8. There shall be a maximum number of 400 family memberships.
9. Parking shall be provided on site as shown on the special permit plat. All parking shall be on site.

~ ~ ~ August 5, 2008, ILDA COMMUNITY RECREATIONAL ASSOCIATION, SP 2008-BR-055, *continued from Page 93*

10. All lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
11. If a public address system is used, its use shall be limited to swim meets, special parties and emergencies and its volume shall be modulated in accordance with the provisions of Chapter 108 of the Code of Fairfax County (the "Noise Ordinance"), which currently sets a maximum sound pressure level of 55 dBA. If the limits in the Noise Ordinance are lowered, the sound level shall conform to the new requirements; however, in no instance shall the sound pressure level exceed 55 dBA.
12. During discharge of swimming pool waters, the following operational procedures shall be implemented:
  - Sufficient amount of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range from pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.
  - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.
13. Signs shall be in conformance with Article 12 of the Zoning Ordinance, Signs.
14. The applicant shall meet Stormwater Management and Best Management Practices (BMP's) as determined by DPWES. If any structural facilities are required, no existing or proposed vegetation as shown on the special permit amendment plat shall be removed to install the structures.
15. The applicant shall provide screening for the properties across the street the applicant by planting a row of evergreens at the top of the slope, and/or on top of the already built retaining wall as determined necessary by UFM prior to site plan approval.
16. The applicant shall install of a bus stop loading pad (5' x 8') and appropriate pedestrian connections along the site frontage in a location to be determined by Fairfax County Department of Transportation (FCDOT) prior to site plan approval.

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

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

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

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~ ~ ~ August 5, 2008, Scheduled case of:

9:00 A.M. SYED ALI HUIJVERI ISLAMIC CENTER, SP 2007-LE-142 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a place of worship. Located at 3435 Franconia Rd. on approx. 39,480 sq. ft. of land zoned R-2. Lee District. Tax Map 82-2 ((1)) 48. (Admin. moved from 2/12/08, 4/8/08, and 5/13/08 at appl. req.)

Chairman Ribble noted that SP 2007-LE-142 had been indefinitely deferred at the applicant's request.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. moved from 6/3/08 at appl. req.)

Chairman Ribble noted that A 2008-DR-009 had been administratively moved to September 9, 2008, at 9:30 a.m., at the appellants' request.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:30 A.M. LARS KJAER AND BERIT KJAER, A 2008-DR-024 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 at 11530 Brockman Ln. on approx. 6 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((4)) 2.

Chairman Ribble noted that A 2008-DR-024 had been administratively moved to October 28, 2008, at 9:30 a.m., at the appellants' request.

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The meeting recessed at 11:45 and reconvened at 11:52 a.m.

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~ ~ ~ August 5, 2008, Scheduled case of:

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

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said it appeared the appellants were not present. She said their attorney had agreed to a two-month deferral as suggested by staff.

Chairman Ribble called for speakers to address the issue of a deferral. There was no response.

Mr. Byers moved to defer A 2008-LE-011 to October 7, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ August 5, 2008, Scheduled case of:

9:30 A.M. EDILBERTO VASQUEZ, A 2008-SP-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's offices and shops and a junk yard and a storage yard, has established outdoor storage that is in excess of 100 square feet and is not properly screened from view, is parking prohibited commercial vehicles, and has erected an accessory storage structure without an approved building permit, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 5395 Sasher Ln. on approx. 3.9 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((1)) 21. (Admin. moved from 7/29/08 for ads)

Chairman Ribble called the appellant to the podium.

Edilberto Vasquez, 5395 Sasher Lane, Fairfax, Virginia, came forward.

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

Eileen Oviatt, Staff Coordinator, presented staff's position as set forth in the staff report. She said that in response to a complaint, Zoning Enforcement Branch staff conducted an inspection on February 23, 2008, and found landscaping materials and equipment, dump trucks, trailers, storage of other miscellaneous debris, and an accessory storage structure that was erected without a building permit. The appellant was operating a landscape business with employees and storing a number of commercial vehicles on property zoned for residential use and developed with a single-family dwelling unit. A landscape business was defined as a contractor's office and shop, and storage of commercial vehicles and construction equipment were a use not permitted in the R-C District. The storage of miscellaneous debris was defined as a junkyard. Ms. Oviatt said the appellant had a history of zoning violations in Fairfax County on another residentially zoned lot and had not denied the violations on the subject property.

In response to questions from Mr. Hart, Ms. Oviatt said the fence Mr. Hart had viewed when he visited the property was new and had not been included in the notice of violation. It had been seen by staff during a recent visit to the site, and although the fence height had not been measured, staff felt it could be in violation of location regulations. Ms. Oviatt said the fence shielded the storage from view, but it was still in excess of 100 square feet. Regarding other properties in the neighborhood Mr. Hart asked about that appeared to be in violation, Ms. Oviatt said Zoning Enforcement staff was investigating the list of properties submitted by the appellant with the appeal application. Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the information Mr. Hart provided regarding properties in violation would be passed on to the zoning inspector for the subject appeal, Susan M. Epstein, who would follow up.

In response to a question from Chairman Ribble concerning the subject property's owners and proper notification, Ms. Oviatt said all of the property owners had received notices, and Edilberto Vasquez, the appellant, was an owner along with a husband and wife, who had also received a notice.

Discussion ensued regarding notification requirements and procedures and receipt acknowledgement.

In response to questions from Mr. Hammack regarding which items constituted the violation of a junkyard, Ms. Stanfield said it was items that did not appear to be utilized on a regular basis and appeared to be junk items. She referred to Photographs 5, 6, 8, and 17 of Attachment 8 and Photographs 9, 11, 12, and 14 of Attachment 9 and said the items fell into the category of miscellaneous debris and scrap metal.

In response a question from Mr. Byers regarding whether anyone was living on the property, Ms. Oviatt said that during the site visit in July, it did not appear that the house was occupied, and the first floor appeared to be vacant, but after some time, someone came out of the house, so it was uncertain if someone resided in the upstairs portion of the home.

Mr. Vasquez presented the arguments forming the basis for the appeal. He said the house had been built two to three years ago, and the neighborhood had junk all around it. Mr. Vasquez requested a deferral to allow time for him to clean up the property. He said he also wanted to work on the driveway.

Chairman Ribble explained to Mr. Vasquez that the public hearing had been opened and what actions could be taken. He said that even if the ruling was in favor of the Zoning Administrator, there would be some time to clean up the property.

Mr. Byers asked for clarification that the key issue was not whether the property was cleaned up, but whether a business was being operated in a residential district. Ms. Stanfield said Mr. Byers' understanding was correct.

For Mr. Vasquez's clarification, Mr. Hart explained that Mr. Vasquez had established a use, and what was being done on the property was not allowed on the property and needed to be relocated. He explained that with respect to other homes in the neighborhood, some of the situations were more complicated because things were going on prior to the adoption of the Zoning Ordinance, and different rules applied to uses that were established before an ordinance went into effect.

In response to questions from Mr. Hart, Mr. Vasquez indicated the business had been relocated to the property within the past two years, and he was not denying that he was doing what was stated in the notice



~ ~ ~ August 5, 2008, EDILBERTO VASQUEZ, A 2008-SP-023, *continued from Page 96*

of violation, but was asking for permission to do it. He said he could not move to another place in one day. Mr. Vasquez indicated that he had not been told by anyone when purchasing the property that it could be used for a commercial business, but saw that there was a lot of business going on in the neighborhood. Mr. Hart suggested Mr. Vasquez consult with staff regarding where in the County he would be allowed to keep lawn mowers and things like that.

Chairman Ribble called for speakers.

Charles Vannoy, 5404 Sasher Lane, Fairfax, Virginia; and Anthony Davidson, 5438 Ruby Drive, Fairfax, Virginia, came forward to speak. They voiced concerns regarding the trailer traffic, public urination on the side of the road, and businesses being brought into the residential area.

Noel Patrick, no address given, whose father's estate sold the property to Mr. Vasquez, came forward to speak. He spoke about the good condition in which Mr. Vasquez kept the property and said it improved the neighborhood. Mr. Patrick said that at the time of the sale of the property, Mr. Vasquez was not advised that a commercial business was not allowed, and he felt Mr. Vasquez should be allowed to remain. Mr. Patrick informed the Board that the appellant's next-door neighbor, Peter Shultz, was unable to be at the hearing, but wanted the Board to know he had no problem with the appellant.

In staff's closing comments, Ms. Oviatt said the appellant had prior experience with operating a business in a residential area, had been cited, brought his property into compliance, and later moved and again set up the business in a residential district.

In his rebuttal, Mr. Vasquez agreed with Ms. Oviatt's comments and asked for time to purchase a property on which to relocate his business in compliance.

Mr. Beard commented that Mr. Vasquez's prior history had nothing to do with the current application, that he brought that property into compliance, and bringing that up was a disservice to him.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the Zoning Administrator's determination. He said the situation was unfortunate as he thought the appellant made assumptions based upon his inspections of the area and moved the business from the previous residential property where there had been violations to another residential property. Mr. Hart said the Zoning Administrator's conclusion was correct, that commercial activity was not allowable on the property, and based on the photographs, the statements in the April 10 letter were accurate. He said the junkyard was not the primary use, and there were some piles of junk at the edges of the site. Mr. Hart said the appellant had not given the Board anything to show the statements were wrong and was hoping the Board would either allow the use or allow time to relocate the use. However, the Board was charged with either upholding, upholding-in-part or overturning the Zoning Administrator's determination, and based on the record before the Board, there was a contractor's office and shop, a junkyard, a storage yard, storage in excess of 100 square feet, which was not completely screened, commercial vehicles, and the accessory storage structure with no record of the required approval. Mr. Hart said he hoped staff would work with Mr. Vasquez to identify places in the County to relocate his business because the Board did not want to put Mr. Vasquez out of business or his employees out of work.

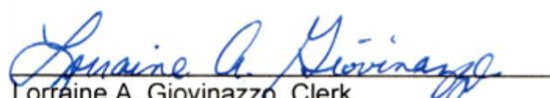
Mr. Beard seconded the motion, which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:35 p.m.

Minutes by: Paula A. McFarland

Approved on: March 18, 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 Tuesday, September 9, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ September 9, 2008, Scheduled case of:

9:00 A.M. RONALD V. DERR, SP 2008-MV-066 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 1.6 ft. from rear lot line and 1.8 ft. from side lot line and addition to remain 4.2 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 5.1 ft. from side lot line. Located at 6714 Swarthmore Dr. on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (3) 30. (Concurrent with VC 2008-MV-004).

9:00 A.M. RONALD V. DERR, VC 2008-MV-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6714 Swarthmore Dr. on approx. 7,200 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (3) 30. (Concurrent with SP 2008-MV-066).

Chairman Ribble noted that SP 2008-MV-066 and VC 2008-MV-004 had been withdrawn.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:00 A.M. MIRIAM L. TORRES, SP 2008-LE-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 3.0 ft. from side lot line and roofed deck to remain 22.5 ft. from front lot line and 10.3 ft. from a side lot line. Located at 3106 Collard St. on approx. 9,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 5. (Admin. moved from 6/17/08 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.

Jose Raul Torres, 9241 Riggs Road, Hyattsville, Maryland, the applicant's agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Torres presented the special request as outlined in the statement of justification submitted with the application. He said the storage shed and roofed porch were done in good faith. Mr. Torres said he was trying to save money, did the work himself, and did not know he needed a permit.

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

Mr. Byers moved to approve SP 2008-LE-027 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MIRIAM L. TORRES, SP 2008-LE-027 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage

~ ~ ~ September 9, 2008, MIRIAM L. TORRES, SP 2008-LE-027, *continued from Page 98*

structure to remain 3.0 ft. from side lot line and roofed deck to remain 22.5 ft. from front lot line and 10.3 ft. from a side lot line. Located at 3106 Collard St. on approx. 9,750 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 5. (Admin. moved from 6/17/08 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 September 9, 2008; and

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

1. The applicant is the owner of the land.

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

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

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

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

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

1. This special permit is approved for the locations of the roofed deck and accessory storage structure as shown on the plat prepared by AS&R Consultants dated December 13, 2007, signed March 18, 2008, as submitted with this application and is not transferable to other land.
2. A building permit and final inspections for the roofed deck and shed shall be diligently pursued and obtained within 120 days of final approval of this application or the special permit approval for the roofed deck and shed shall be null and void.

~ ~ ~ September 9, 2008, MIRIAM L. TORRES, SP 2008-LE-027, *continued from Page 99*

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. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:00 A.M. KATHLEEN AND STEPHEN CSOBAJI, SP 2008-MV-061 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 24.0 ft. from front lot line of a corner lot and 6.0 ft. from side 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 8017 Yorktown Dr. on approx. 12,522 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 502.

Chairman Ribble called the applicants to the podium.

Mr. Hart made a disclosure, 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 affirmed that their testimony would be the truth, and the public hearing was opened.

Kathleen Csobaji, 8017 Yorktown Drive, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SP 2008-MV-061 for the addition.

Ms. Csobaji presented the special permit request as outlined in the statement of justification submitted with the application. She introduced her architect, Christine Leonard, 2109 Hopkins Lane, Alexandria, Virginia. Ms. Leonard noted that the staff report stated that the garage design had met all but one of the general standards, namely that it could be better integrated into the proposed design. She pointed out that the new drawings kept the garage with the same curb cut and retained the backyard. Ms. Leonard discussed the other options that were considered for the garage, but noted that the lot was pie-shaped, and the proposed location was the best available.

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

Mr. Hart moved to approve SP 2008-MV-061 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

KATHLEEN AND STEPHEN CSOBAJI, SP 2008-MV-061 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 24.0 ft. from front lot line of a corner lot and 6.0 ft. from side 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 8017 Yorktown Dr. on approx. 12,522 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((3)) 502. 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 9, 2008; and

~ ~ ~ September 9, 2008, KATHLEEN AND STEPHEN CSOBAJI, SP 2008-MV-061, *continued from Page 100*

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

1. The applicants are the owners of the land.
2. This is a close case. The Board has a staff report recommending denial. The hang-up is General Standard 3, and staff does not believe that it has been met, requiring that the proposed use be harmonious with and not adversely affect the use or development of neighboring properties in accordance with applicable zoning district regulations and the adopted Comprehensive Plan.
3. This is a neighborhood that the Board is familiar with and has had other cases in, one of which subsequently went to the United States Supreme Court within the last year or two.
4. The character of the neighborhood has to be evaluated at the time of a given application, reviewed one at a time, and not necessarily look back to the way the neighborhood was five or ten years ago as establishing what the character of the neighborhood is.
5. The neighborhood is a mix of new and older houses; different scales of buildings, amounts of living space above grade, window configurations, and designs.
6. Because of the economic situation, many large homes have been built in this neighborhood in the last few years.
7. Looking at the proposed elevations, it is two stories using single and double windows. Part of the addition is one story; part of the existing house is one story.
8. The massing and scale of the house as modified is not out of scale or out of keeping with the character of what is around it. Particularly in a neighborhood where new homes are going in, it is hard to conclude that the proposed change would affect the character of the neighborhood in a negative way.
9. If this was the first house like this and what was existing were all 1940 homes, the conclusion might be different, but if the application is to be evaluated in the context of what is there now, having the garage go within six feet of the side line is not going to change anything. The rest of the addition is by right.
10. The neighbor on Lot 503 is in support, which is really the only lot that is significantly affected and contains pretty heavy vegetation in that area.
11. The addition is just one story rather than two or three, which minimizes the juxtaposition with the next-door neighbor, which looks like a three-story house with a very narrow side yard that is towering over what is next to it. This is going to have a one-story garage that is behind some pretty heavy vegetation, which might not be visible.
12. With respect to additional locations for the garage, the configuration of the existing house creates some pretty awkward conflicts with the existing family room. It appears that unless you tore that portion of the house down, you could not fit the garage within the minimum yards.
13. Unlike other cases that the Board has had where there were places to put a garage in the side or the back, in the subject case, given the way the house is now, it is not appropriate to say the garage could be configured within the addition. Because the addition is largely in a narrow area between the house and the street or on the second floor, the addition area in the front is not deep enough for a garage and a garage could not be put on the second floor without some kind of ramp, which would also not be appropriate.
14. Given the location of the driveway, given that it is just the one corner of the garage that is within the six feet, and given the existing conditions around it, the impact is sufficiently mitigated.
15. The character of the neighborhood will not be changed.
16. There will not be a negative impact on anyone.
17. The alternatives are not realistic given the existing conditions.
18. The Board has determined that the application meets all the submission requirements set forth in Sect. 8-922 and the criteria listed in the Sect. 8-922 motion.
19. To the extent the fence is located on the subject property, it seems to have been there for a very long time.
20. The fence does not seem to be bothering anyone.
21. The fence is not a safety hazard.
22. Consistent with other approvals of six-foot fences in technical front yards on corner lots, the subject fence would not be out of line.

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

~ ~ ~ September 9, 2008, KATHLEEN AND STEPHEN CSOBAJI, SP 2008-MV-061, *continued from*  
*Page 101*

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 8-922 and 8-923 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (484 square feet) of an addition, as shown on the plat prepared by Alexandria Surveys, Inc., dated April 17, 1999 as recertified by Christine A. Leonard through July 31, 2008, as submitted with this application and is not transferable to other land.
3. This special permit is approved for the maximum height of a fence in the front yard, as shown on the plat prepared by Alexandria Surveys, Inc., dated April 17, 1999 as recertified by Christine A. Leonard through July 31, 2008, as submitted with this application and is not transferable to other land. The location of the fence shall be in accordance with Section 10-101 of the Zoning Ordinance, which states that accessory uses and structures shall be located on the same lot with a principal use or structure which is permitted within such district.
4. 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 (5,140 square feet existing + 7,710 square feet (150%) = 12,850 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
5. The addition shall be consistent with the architectural renderings 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 5-1. Mr. Byers voted against the motion. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:00 A.M. MARQUIS CUSTOM HOMES, LLC, SP 2008-PR-065 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary subdivision sales office. Located at 8433 Falcone Pointe Way on approx. 11,868 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-1 ((49)) 21.

~ ~ ~ September 9, 2008, MARQUIS CUSTOM HOMES, LLC, SP 2008-PR-065, *continued from Page 102*

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.

Kelly M. Atkinson, 9401 Centreville Road, Manassas, 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 2008-PR-065, subject to the proposed development conditions.

Ms. Atkinson presented the special permit request as outlined in the statement of justification submitted with the application.

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

Ms. Gibb moved to approve SP 2008-PR-065 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MARQUIS CUSTOM HOMES, LLC, SP 2008-PR-065 Appl. under Sect(s). 6-104 of the Zoning Ordinance to permit a temporary subdivision sales office. Located at 8433 Falcone Pointe Way on approx. 11,868 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-1 ((49)) 21. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 9, 2008; and

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

1. The applicant is the owner of the land.
2. The applicant had a special permit for two years for a sales office and simply has not sold all the homes yet.
3. The Board has a favorable staff report.
4. As the applicant indicated in her testimony and the board has photographs to show, the property is being well maintained and is visually attractive.
5. The Board routinely grants such applications when the economy makes it 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 approval is granted to the applicant only, Marquis Custom Homes, LLC, and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.

~ ~ ~ September 9, 2008, MARQUIS CUSTOM HOMES, LLC, SP 2008-PR-065, *continued from Page 103*

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 Design Consultants, dated April, 2008, signed June 8, 2008, 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. Parking for the sales office shall be provided on-site in the driveway and on Falcone Pointe Way adjacent to Lot 21.
6. The maximum hours of operation for the temporary subdivision sales office shall be 10:00 a.m. to 6:00 p.m. daily.
7. The temporary subdivision sales office shall be removed from the model home upon completion of house sales onsite or within 30 months of the BZA approval date, whichever comes first.

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

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

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~ ~ ~ September 9, 2008, Scheduled case of:

- 9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. moved from 6/3/08 and 8/5/08 at appl. req.)
- 9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.

Susan Earman, 1364 Beverley Road, McLean, Virginia, the appellants' attorney, came forward.

Susan C. Langdon, Chief, Special Permit and Variance Branch, presented staff's position as set forth in the staff report. She said an attached garage had been approved as part of the same application depicted on the plat submitted with the variance application. She noted the two citations which had been issued.

Bruce Miller, Property Maintenance/Zoning Enforcement Inspector, gave a history of the violations issued, namely for the location of structures that were not depicted on the approved variance plat. These included the foundation and footing for a detached garage, a freestanding accessory storage structure (shed), an engineered stone parking pad, a fence which exceeded six feet in height, and removal of trees.

Discussion ensued regarding the need for a variance amendment or special exception for any additional structures on the site.



~ ~ ~ September 9, 2008, MARK AND SUSAN STADSKLEV, A 2008-DR-009 and MARK AND SUSAN STADSKLEV, A 2008-DR-026, *continued from Page 104*

Ms. Earman noted an agreement that was made on May 7, 2008, between the appellants and staff in which they discussed attaching the garage to the house with an open breezeway with no foundation, and agreed that it would work. She said the appellants relied on that agreement and changed course, obtaining new engineering and new drawings, and submitted a new plan. Ms. Earman said the appellants were never told that the County Attorney's Office had to review the agreement. She stated that on July 17, 2008, more than 60 days after the agreement, staff changed their mind. Ms. Earman said the Code of Virginia stated that if they relied on that agreement, the County cannot change their mind after 60 days.

Mr. Hart and Ms. Earman discussed the differences between what the plan called for and what was actually on site. Specifically, Mr. Hart took issue with the clearing of trees on the property.

Ms. Earman, Ms. Langdon, and Mr. Hart discussed the e-mails between staff and Ms. Earman regarding a possible resolution of the garage problem. Regina Coyle, Director of Zoning Evaluation Division, stated that an e-mail was not a written determination. She stated that after talking with the County Attorney's Office, it was decided the breezeway/garage would not work.

Mr. Hart, Ms. Langdon, and Ms. Earman discussed a previous case which revolved around an oral response by the Zoning Administrator being a binding agreement.

In response to a question from Mr. Smith, Ms. Earman stated that the appellants had spent approximately \$3800 since the agreement of May 7, 2008.

Mr. Smith, Ms. Earman, and Ms. Coyle discussed the letters and conversations between the appellants, agent, and staff between May 7, 2008, and August 17, 2008.

Chairman Ribble called for speakers.

Adrienne Whyte, 6704 West Falls Way, Falls Church, Virginia, President of McLean Land Conservancy, spoke in opposition to the application. She voiced concerns regarding impacts to the conservation easement and stated that the appellants knew the conditions of the variance did not permit the construction of a detached garage.

After speaking with the appellants, Ms. Earman said they wished to defer the appeal decisions so they could consider whether to apply for a variance amendment.

Chairman Ribble closed the public hearing.

Mr. Smith moved to defer decisions on A 2008-DR-009 and A 2008-DR-026 to October 28, 2008, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:30 A.M. HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall without a Special Permit and has expanded the use limitations and conditions of Non-Residential Use Permit #A-2004-1013 and Special Permit Amendment SPA 95-Y-069-2 in violation of Zoning Ordinance provisions. Located at 14114 Lee Hwy. on approx. 9.32 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C.

Chairman Ribble noted that A 2008-SU-028 had been administratively moved to November 4, 2008, at 9:30 a.m., at the appellant's request.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:30 A.M. ADNAN INAD FARAHAN, A 2008-MA-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit and outdoor storage on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 6345 Dogwood Pl. on approx. 10,085 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((11)) 28.

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.

Chairman Ribble called the appellant to the podium.

Adnan Inad Farahan, 6345 Dogwood Place, Falls Church, Virginia, came forward.

Charles Fitzhugh, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 9, 2008. He said a violation had been issued on February 8, 2008, citing the second dwelling unit on the property and excessive outdoor storage. Mr. Fitzhugh said the appellant either needed to remove the second kitchen, all partitions, and locked doors which created the separate unit or apply for a special permit to allow the second dwelling on the property. He said the appellant had not applied for a special permit and was unresponsive to phone calls and visits to the home. He noted that the storage violation had been cleared.

In response to a question from Mr. Beard, Mr. Fitzhugh stated that he and Zoning Enforcement had not been able to go through the house since they had no access to the home. He said the outside had been cleaned up, and there were no household goods or visible furniture downstairs in the home.

Mr. Farahan stated that he bought the house with the second living quarters in the basement. He said he did not know it was illegal. Mr. Farahan asked that Jean Dawson, 6345 Dogwood Place, Falls Church, Virginia, be allowed to assist him with his presentation due to his limited English.

Ms. Dawson stated that the previous owner had a renter in the basement and told the appellant that he could keep the renters to help pay the mortgage. She said that without the renters, the appellant could not afford the property. It was only when he received the notice of violation that he became aware of its illegality. Ms. Dawson stated that Mr. Farahan had fallen behind in his mortgage, noting that the house was to be sold by the bank on the courthouse steps tomorrow afternoon. She said since the previous owner and his realtor had told the appellant that the renters were legal, the County should impose regulations on realtors so that buyers are aware of what the zoning requirements are for two dwellings in a home.

Chairman Ribble called for speakers.

Matthew Lyle, 3921 Ashwood Place, Falls Church, Virginia, came forward to speak in support of the Zoning Administrator's determination, noting that he had called in violations numerous times.

Chairman Ribble closed the public hearing.

Mr. Beard moved to uphold the determination of the Zoning Administrator. He said it had been well documented and substantiated by testimony from staff that there was indeed a second dwelling unit on the property.

Mr. Hart seconded the motion. He noted that the Board's function was limited to answering the question about whether the Zoning Administrator's determination was correct or not.

The motion carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, and 6/3/08 at appl. req.)

Chairman Ribble noted that the appellant requested deferral of the public hearing until December 9, 2008.

Mr. Byers moved to defer A 2007-MV-030 to December 9, 2008, at 9:30 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC, A 2006-PR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an establishment for processing of earthen materials, which is not a permitted use in the I-5 District, and operating without site plan, Non-Residential Use and Building Permit approval for storage structure and other structures on property zoned I-5 and H-C in violation of Zoning Ordinance provisions. Located at 2809 Old Lee Hwy. on approx. 1.128 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 65A. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, 10/2/07, 3/4/08, and 7/8/08)

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC, A 2006-PR-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has expanded the use of property zoned I-5 and H-C without valid site plan and Non-Residential Use Permit approvals and established outdoor storage that exceeds allowable total area and is located in minimum required front yard in violation of Zoning Ordinance provisions. Located at 8524 & 8524A Lee Hwy. on approx. 1.35 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 67 & 65B. (Admin. moved from 10/24/06 at appl. req.)

Chairman Ribble noted that the appellant requested the public hearing be continued to November 18, 2008.

Mr. Beard moved to continue A 2006-PR-040 and A 2006-PR-043 to November 18, 2008, at 9:30 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 9, 2008, After Agenda Item:

Request for Additional Time  
Cub Run Baptist Church/Cub Run Primitive Baptist Church, SP 97-Y-029

Mr. Hart moved to approve 24 months of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting. The new expiration date was March 12, 2010.

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~ ~ ~ September 9, 2008, After Agenda Item:

Approval of May 18, 2004 and December 6, 2005 Minutes


Mr. Hart moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 3-0-2. Mr. Smith and Mr. Byers abstained from the vote. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:40 p.m.

Minutes by: Suzanne L. Frazier

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 Tuesday, September 16, 2008. The following Board Members were present: Chairman John F. Ribble III; Tom Smith; V. Max Beard; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr. was absent from the meeting.

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

~ ~ ~ September 16, 2008, Scheduled case of:

9:00 A.M. JOHN A. AND MARY L. MCEWAN, VC 2008-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum lot width of 24.6 ft. Located at 9325 Ludgate Dr. on approx. 2.22 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 5. (Admin. moved from 8/5/08 at appl. req.)

Chairman Ribble called the applicants to the podium.

Mr. Hart made a disclosure, 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.

William B. Lawson, Jr., Esquire, 6045 Wilson Boulevard, Suite 100, Arlington, 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. The applicants were requesting a variance to permit a minimum lot width of 24.6 feet where 100 feet was required. It was determined that the lot, created in 1974, did not meet the current Zoning Ordinance requirements for lot width, did not meet it at the time it was created, or anytime afterward. Therefore, the lot was considered an out-lot under the Subdivision Ordinance. Without approval of either a lot width variance or a special exception, the lot would remain an out-lot.

Ms. Langdon responded to Mr. Hart's questions concerning a building permit on file, the findings of fact of a 1992 resolution, which stated that the property could be developed by right with one house, and the Lot Validation letter, which was issued after the 1992 Resolution, and seemed to overturn the findings of fact from the 1992 resolution. It was noted that the 1992 Staff Report's conclusion was that the lot was buildable for one house, but could not be subdivided, and if any development was allowed, it could only be done with a variance or special exception approval.

In response to Ms. Gibb's questions concerning whether there had once been a house on the lot, Ms. Langdon said at one time there had been a house which, with a demolition permit, was razed; however, the house was not existing at the time it was critical for a validation.

Discussion ensued regarding the past and present County regulations for measuring lot width and staff's determinations with the 1992 case.

Mr. Lawson presented the variance request as outlined in the statement of justification submitted with the application. He said the reason the applicant declined to do a plat evidencing the house's footprint was because of the expense incurred to map the lot's substantial resource Protection Area (RPA). The applicant would prefer to first have the variance approved. Mr. Lawrence assured that they would comply with all laws and codes when the time came. He related the history of the lot and the apparent reasons it seemed to have slipped between the cracks in having once been considered buildable, but not today. He said the landowner would willingly comply with the Ordinance requirements, but felt he should not have to go beyond that.

Addressing Mr. Hart's questions, Mr. Lawson said he did believe this was a buildable lot in 1974. He said this lot was on a dirt road, and it had no frontage. Mr. Lawson believed that when the lots around it got subdivided, access to the lot had to be created, so they created a pipe stem. Mr. Lawson said he was not sure that his clients knew they could have filed an appeal to the determination of the lot in 2006. After speaking with Zoning Administration staff, Mr. Lawson and his clients thought the easiest way to fix the

problem was to get a variance. He didn't not think this lot was a valuable amenity to any other properties, but should stand on its own.

Discussion ensued regarding development conditions, and also recording them in land conditions.

Mr. Lawson requested that Development Condition 3 be deleted, and said that all the other conditions would be fulfilled at the time of the grading permit. In response to Mr. Hart's questions, Ms. Langdon said that asking for Development Condition 3 was consistent with other RPA and other similar applications.

There was further discussion comparing another similar case with this one.

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

My Byers moved to approve VC 2008-MV-002 for the reasons stated in the Resolution.

Discussion ensued between the Board members regarding the application, variances in general, and whether the lot was buildable or not.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN A. AND MARY L. MCEWAN, VC 2008-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum lot width of 24.6 ft. Located at 9325 Ludgate Dr. on approx. 2.22 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 5. (Admin. moved from 8/5/08 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 September 16, 2008; 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 2.22 acres.
4. The application should satisfy the following variance standards.
5. The subject property was acquired in good faith.
6. The subject property does have at least one of the following characteristics, an extraordinary situation or condition.
7. The condition or situation of the subject property or the intended use of the subject property is not of so general or recurring in nature as to make reasonably practical the formulation of the general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
8. A strict application of this Ordinance would produce undue hardship.
9. Such undue hardships are not generally shared by other properties in the same zoning district in the same vicinity.
10. In this particular case, the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.
11. The granting of this variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
12. It will not be of a substantial detriment to the adjacent property.
13. The character of the zoning district will not be changed by the granting of the variance.
14. The variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

~ ~ ~ September 16, 2008, JOHN A. AND MARY L. MCEWAN, VC 2008-MV-002, *continued from Page 110*

15. From the standpoint of having been a buildable lot at one point, reference is made to the addendum to the staff report of 1992, and the decision of the Board of Zoning Appeals.
16. The development conditions dated September 9, 2008, should remain.

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

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

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

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

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

1. This variance is approved for the minimum lot width of 24.6 feet, as shown on the plat prepared by Dominion Surveyors Inc., dated March 2, 2007, revised through December 26, 2007, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded by the applicant among the land records of Fairfax County. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) prior to the approval of any permits and grading plan for this lot.
2. All prospective purchasers of the property shall be notified in writing prior to sale of the property that these conditions have been recorded in the land records of Fairfax County and must be implemented prior to the approval of the grading plan for this lot.
3. Prior to any land disturbing activity, a grading plan which establishes the minimum limits of clearing and grading necessary to construct the improvements and a tree preservation and restoration plan shall be submitted to the Department of Public Works and Environmental Services (DPWES),

including the Urban Forest Management Division (UFMD), for review and approval. The maximum extent of clearing and grading shall also be shown. The tree preservation and restoration plan shall preserve as much of the existing tree canopy as possible as determined by DPWES and shall meet the tree cover requirements of the Zoning Ordinance. Prior to any land disturbing activity for construction, a pre-construction conference shall be held between DPWES, including the Urban Forester and representatives of the applicant to include the construction site superintendent responsible for onsite 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. In no event shall an area of the site be left denuded for a period longer than fourteen (14) days. Any utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible, duly considering the cost and engineering feasibility of their installation.

The grading plan shall require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space". A Conservation Easement subject to UFM may be required in order to ensure the perpetual undisturbed state of the restoration area. The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.

4. Due to the presence of problem soils, if requested by DPWES during grading plan review, the applicants shall have a geotechnical study of the application property prepared by a geotechnical engineer, shall submit a report to DPWES for review and approval, and shall implement the recommendations outlined in the approved study.
5. All construction on site shall comply with the current Chesapeake Bay Ordinance requirements. An exception shall be obtained, if necessary, from the DPWES.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the lot has been recorded in the land records. The Board of Zoning Appeals may grant additional time to record the lot 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. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:00 A.M.        SHERRY BROWN, SP 2008-MV-059 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 11.6 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((11)) 11.

Chairman Ribble noted that SP 2008-MV-059 had been administratively moved to December 2, 2008, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:00 A.M. BILL AND WENDY TURENNE, SP 2008-MV-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 2.1 ft. from rear lot line. Located at 8507 Hitching Post La. on approx. 12,751 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (5) 7. (Concurrent with VC 2008-MV-003).

9:00 A.M. BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8507 Hitching Post La. on approx. 12,751 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (5) 7. (Concurrent with SP 2008-MV-060).

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

Chairman Ribble recused himself from this case.

Secretary Gibb assumed the Chair.

Wendy M. Turenne, 8507 Hitching Post Lane, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that, given the extent of impervious surfaces within the actual minimum required rear yard, the percentage of coverage is well above 35 percent, and was estimated to be closer to 75 percent.

Ms. Caffee responded to Mr. Hart's questions regarding the shed, patio, and coverage. Susan C. Langdon, Chief, Special Permit and Variance Branch, responded to Mr. Hart's question concerning the Building Code restrictions. Ms. Caffee also responded to Mr. Beard's question regarding the coverage measurements, because the subject property was a corner lot.

Ms. Turenne presented the special permit and variance request as outlined in the statement of justification submitted with the application. After the completion of their outdoor fireplace, they learned it was too tall in its current location, and she said they had acted in good faith, not entering into this carelessly when planning the building of outdoor fireplaces. She said researched the County website on outside fireplaces, and there was no mention of building permits or height restrictions. Ms. Turenne said the architect assured them that the plan was drawn to Code. After the fireplace's construction, a major expense, they were informed of their violation. She pointed out that in order to come into compliance, the chimney, currently four feet, must be taken down three feet, and that would destroy its ability to effectively draw the smoke up and away. Ms. Turenne then addressed the issue of the variance request. She said it was only the day before this hearing that they learned their rear yard was considered a second front yard.

Mr. Byers commented that he was not surprised the applicant had difficulty in getting the correct information, as when he made a similar search two weeks previously, he had the same results as she had.

Ms. Turenne responded to Mr. Hart's questions concerning her architect's and contractor's licenses.

Mr. Hart explained the implications of Cochran Case to the applicants' circumstances commenting that the Board had yet to hear why it would interfere with all reasonable beneficial uses of the property, if there was still use of the house.

Discussion ensued regarding pertinent Ordinance language concerning decks, patios, and setbacks, and other ways this property might be brought into compliance. It was also noted that letters in support and opposition were received, with concern from a neighbor about smelling the smoke from the fireplace.

Ms. Turenne and staff responded to Mr. Hart's questions concerning Code requirements, heights, setbacks, necessary permits, and by-right use of an outdoor fireplace.

Secretary Gibb called for speakers.

~ ~ ~ September 16, 2008, BILL AND WENDY TURENNE, SP 2008-MV-060 and BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003, *continued from Page 113*

Brendan O'Hara and Caroline O'Hara, 1909 Bridle Lane, Alexandria, Virginia, came forward to speak in opposition to the application. Their concerns included that they were most adversely impacted by the fireplace as their lot was adjacent and right next to the fireplace location; they never saw any evidence of paperwork, plans, or letters showing professionals had been contracted; the fireplace produced a negative impact on the use and enjoyment of their property; and they did not believe the error in building location was an accident.

Ms. Langdon told the Board that an official of the Fire Marshall Office, who was present at the meeting for another case, informed staff that for a use like this, in the Fire Code only, there is no minimum setback from a lot line there is only a minimum distance of 15 feet between structures, and the fireplace appeared to be 15 feet from the surrounding houses.

In rebuttal, Mr. Turenne said a lot of the information in the letters from the O'Hara's was unfounded, and incorrect assumptions made. He said he did have a conversation with Mr. O'Hara. Mr. Turenne added that unfortunately their architect recently passed away, and there was no explanation as to the plan's design. Mr. Turenne said they regretted the errors that were made, especially considering the research, effort and money they had put into this project.

Mr. Beard said he made a site visit, and, although he found the work magnificent, it was quite prominent. When speaking to the neighbors, they all spoke glowing about the work that the applicants had done.

There being no further questions or comments, Secretary Gibb closed the public hearing.

Mr. Hart moved to deny VC 2008-MM-000 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Mr. Beard expressed his concerns about how this could negatively impact the applicants from a monetary standpoint, and discussion ensued in this regard.

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## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8507 Hitching Post La. on approx. 12,751 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (5) 7. (Concurrent with SP 2008-MV-060). 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 16, 2008; and

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

1. The applicants are the owners of the land.
2. The applicants have not presented testimony showing compliance with the required standards for a variance.
3. With respect to the Cochran decision, the applicant has not shown that the Ordinance interferes with all reasonable beneficial uses of the property taken as a whole.
4. Whether or not there is a variance granted, there still is a substantial house on the property, and that use would remain unaffected.
5. The Board has not been shown anything as to why this would be any exception to that rule.

~ ~ ~ September 16, 2008, BILL AND WENDY TURENNE, SP 2008-MV-060 and BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003, *continued from Page 114*

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

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

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

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

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

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

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Mr. Hart moved to deny SP 2008-MV-060. He believed it was a difficult situation, and thought the Turennes were trying to do the right thing. The motion failed for lack of a second. Secretary Gibb asked for another motion.

Mr. Beard moved to approve SP 2008-MV-002 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

BILL AND WENDY TURENNE, SP 2008-MV-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 2.1 ft. from rear lot line. Located at 8507 Hitching Post La. on approx. 12,751 sq. ft. of

~ ~ ~ September 16, 2008, BILL AND WENDY TURENNE, SP 2008-MV-060 and BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003, *continued from Page 115*

land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (5) 7. (Concurrent with VC 2008-MV-003). 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 16, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,751 square feet.
4. This application is entitled to an SP for the various reasons of the resolution.

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

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

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

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

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

1. This special permit is approved for the location of an existing detached accessory structure (free-standing fireplace) shown on the plat prepared by David L. Mayne, Alexandria Surveys International, LLC, dated August 30, 2007 revised through April 7, 2008 submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits and final inspections for the detached stone fireplace shall be diligently pursued and obtained or the detached stone fireplace shall be removed or brought into compliance with Zoning Ordinance Requirements.

~ ~ ~ September 16, 2008, BILL AND WENDY TURENNE, SP 2008-MV-060 and BILL J. TURENNE JR. AND WENDY M. TURENNE, VC 2008-MV-003, *continued from Page 116*

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 4-1. Mr. Hart voted against the motion. Chairman Ribble recused himself from the hearing. Mr. Hammack was absent from the meeting.

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~~~ September 16, 2008, Scheduled case of:

9:00 A.M.        MAX E. GAGERMEIER, JR. & BONNIE C. GAGERMEIER, SP 2008-MA-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.7 ft. from side lot line and 3.0 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 7.5 ft. from side lot line. Located at 4000 Lake Blvd. on approx. 26,905 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) 8.

Chairman Ribble resumed the chair, and 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.

Max E. Gagermeier Jr. and Bonnie C. Gagermeier, 4000 Lake Boulevard, Annandale, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. With regard to the accessory structure, staff recommended denial for SP 2008-MA-062.

In response to questions from several Board members, Ms. Hedrick said the asphalt driveway was currently in existence. She clarified that staff recommended denial only the accessory structure, and not the shed. Ms. Hedrick said it would be by-right if they shifted the garage by 7.5 feet, would still be facing the driveway, and would only destroy one tree.

Mr. Gagermeier presented the special permit request as outlined in the statement of justification submitted with the application. He explained the lot layout, and gave his reasons why they wanted the garage in its proposed location. The applicants submitted photos backing up their presentation. They pointed out that their neighbors signed a statement supporting the proposal, and that the next-door neighbor most impacted had no windows on that side of his house.

The applicants responded to Mr. Hart's questions concerning a ravine, and told him that there was no electricity in the shed.

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

Ms. Gibb moved to approve in-part SP 2008-MA-062 for the reasons stated in the Resolution.

Discussion ensued regarding the accessory structure.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAX E. GAGERMEIER, JR. & BONNIE C. GAGERMEIER, SP 2008-MA-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.7 ft. from side lot line and 3.0 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 7.5 ft. from side lot line. **(THE BZA APPROVED THE ACCESSORY STORAGE STRUCTURE ONLY)**. Located at 4000 Lake Blvd. on approx. 26,905 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) 8. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 2008; and

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

1. The applicants are the owners of the land.
2. With respect to the shed, it has little impact on the neighborhood or the neighboring property.
3. The shed looks like the house and is very well kept.
4. With respect to the shed, the applicant has presented testimony indicating compliance with the general standards for special permit uses as set forth in Sect. 8-006 and the additional standards as contained in the appropriate sections of the Zoning Ordinance.
5. With respect to the garage, the staff report recommends denial based on the fact that there is a better location, which would not require this special permit, and it is staff's position that fewer trees would have to be taken out.
6. The applicant testified that one reason for proposing the garage in the location was to avoid taking out several trees, and that it does not have an impact on the neighbor, even though it is very close, because the neighbor has no windows facing that side, and because the garage fits better with their driveway than if moved closer to the house, and to avoid exacerbating a ponding issue.
7. It is a close case, but not convincing enough to go contrary to the staff report.
8. The applicant has not presented testimony indicating compliance with the standards for the special permit with respect to the garage.

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

~ ~ ~ September 16, 2008, MAX E. GAGERMEIER, JR. & BONNIE C. GAGERMEIER, SP 2008-MA-062,  
continued from Page 118

- 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 condition:

1. This special permit is approved for the location and size of a shed, as shown on the plat prepared by Dominion Surveyors Inc., dated June 28, 2007, as revised through May 29, 2008, as submitted with this application and is not transferable to other land. **(THE BZA APPROVED THE ACCESSORY STORAGE STRUCTURE ONLY.)**

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 carried by a vote of 4-1. Mr. Hart voted against the motion. Mr. Hammack was absent from the meeting.

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~~~ September 16, 2008, Scheduled case of:

9:00 A.M. MIRELLA AND SETH BERGER, SP 2008-PR-064 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.3 ft. from side lot line. Located at 8508 Quaint La. on approx. 13,236 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((15)) 17.

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.

Tim Mullen, 7910 Roswell Drive, Falls Church, Virginia, the applicant's agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval special permit application SP 2008-PR-064.

Mr. Mullen presented the special permit request as outlined in the statement of justification submitted with the application request as outlined in the statement of justification submitted with the application. Because his clients now had two young children, they sought additional storage space, and proper security for their property. Mr. Mullen said the proposal was in harmony with the neighborhood.

Secretary Gibb assumed the Chair.

Secretary Gibb called for speakers in support of the application.

The applicant, Seth Berger, 8508 Quaint Lane, Vienna, Virginia, came forward to speak. He said the carport was already semi-enclosed. He said the project was a modest renovation.

Chairman Ribble resumed the Chair.

Wilma Bond, 8506 Quaint Lane, Vienna, Virginia, the next-door neighbor, came forward to speak in support of the application.

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

Mr. Smith moved to approve SP 2008-PR-064 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MIRELLA AND SETH BERGER, SP 2008-PR-064 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 8.3 ft. from side lot line. Located at 8508 Quaint La. on approx. 13,236 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((15)) 17. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 2008; and

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

1. The applicants are the owners of the land.
2. The lot size is 13,236 square feet.
3. The application meets all of the applicable requirements in Sect. 8-922.
4. Staff did a good job, and they have recommended approval in this case.
5. For the reasons outlined in the staff report, and as indicated by the applicant, the applicant's agent, and the directly impacted neighbor, this will really not have an adverse impact on the neighborhood.
6. The proposal is merely to enclose a carport and adding storage area to the rear on an existing concrete pad.
7. The proposed construction is compatible with the existing 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 (approximately 524 square feet) of the proposed garage and storage addition, as shown on the plat prepared by Stephen L. Moore Land Surveying, Inc., dated May 26, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the



~ ~ ~ September 16, 2008, MIRELLA AND SETH BERGER, SP 2008-PR-064, *continued from Page 120*

dwelling that existed at the time of the first expansion (3,018 square feet existing + 4,527 square feet (150%) = 7,545 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit.

Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Tree protection fencing shall be installed prior to demolition/construction of the addition to protect trees on Lot 16 and the 26" oak and 8" dogwood on the subject property. The protective fencing shall be located between the addition and the eastern lot line, a minimum of 3 feet from the lot line, and at the drip line of the oak/dogwood trees. The fencing shall remain in place until all construction and final grading is complete.

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

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

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

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~ ~ ~ September 16, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08, 5/13/08, and 7/15/08 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to November 4, 2008, at 9:00 a.m., at the applicant's request.

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The meeting recessed at 11:26 a.m. and reconvened at 11:34 a.m.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:00 A.M. LUCK STONE CORPORATION, SPA 81-S-064-10 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 210.25 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, 17 pt., 33A, 38 pt., 39 pt., and 64-1 ((4)) 7A. (Deferred from 7/8/08 at appl. req.)

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

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.

Bill Baskin, Esquire, 301 Park Avenue, Falls Church, Virginia, the applicant's agent, replied that it was.

Susan C. Langdon, Chief, Special Permit and Variance Application, made staff's presentation as contained in the staff report. The north, south and east, surrounding properties are developed residential with single family homes; the property to the west is zoned I-6 and is a heavy industrial use. The applicant is requesting approval of a special permit amendment for a five-year term renewal as required by the Zoning Ordinance to continue their quarry operations of stone crushing, stone sales, and accessory uses. No changes are proposed to the site or the quarry's operation. Staff concludes that the subject application is in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions. Staff recommended approval.

Mr. Baskin, In response to Mr. Byers' question, said his client agreed with the revised development conditions dated September 16<sup>th</sup> distributed that morning.

Mr. Baskin presented the special permit request as outlined in the statement of justification submitted with the application. He said the quarry had been operating since at least the 1930s, and for the last several decades, had come before the BZA every five years for a special permit to be allowed to continue the operations. Mr. Baskin no changes are being proposed to their operation since last before the Board.

Chairman Ribble called for speakers in support of the application.

Judith Heisinger, President of Bull Run Civic Association, came forward to speak in support, but spoke about what it is like to live near a quarry, voicing some concerns.

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

Mr. Beard moved to approve SPA 81-S-064-10 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

LUCK STONE CORPORATION, SPA 81-S-064-10 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 previously approved for stone quarrying, crushing, sales and ancillary uses to permit renewal. Located at 15717 Lee Hwy. on approx. 210.25 ac. of land zoned R-C, NR and WS. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, 17 pt., 33A, 38 pt., 39 pt., and 64-1 ((4)) 7A. (Deferred from 7/8/08 at appl. req.) Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 16, 2008; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, NR, and WS.
3. The area of the property is 210.25 acres.
4. Staff recommends approval of the special permit amendment.
5. This is a continuing renewal.
6. The function has been operating since the 1930s.

~ ~ ~ September 16, 2008, LUCK STONE CORPORATION, SPA 81-S-064-10, *continued from Page 122*

7. Staff has determined, based on the documentation, that the applicant has continually up-dated the requirements in the development conditions to keep abreast of the changing times pursuant to Fire Department's requirements in so far as blasting, and air quality requirements pursuant to crushing.
8. There was testimony from the president of a local civic association that the applicant is a good neighbor, especially in cleaning the vehicles and keeping mud, and so forth, off the street.
9. The applicant is always available to communicate with its neighbors as it relates to any problems the neighbors may have, as the site abounds a heavy industrial area.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 15717 Lee Highway (210.25 acres), and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the property without a Special Permit amendment, if such uses do not affect this Special Permit use.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust and Associates, dated January 18, 2008, signed January 21, 2008, 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. All landscaping and screening required in previous approvals of this use shall be maintained as follows:
  - a. Landscaping and screening shall be maintained in accordance with the landscape plan approved in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned and used properties and Lee Highway.
  - b. The vegetation between the access road to the asphalt plant and the maintenance building shall be maintained at the level of Transitional Screening 3.
  - c. To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.
  - d. The shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance shall be maintained in a healthy condition and any dead or dying trees shall be replaced as needed as determined by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). The trees shall be a minimum of 6.0 feet in height and shall serve to soften the visual impact of the use. The number and type of any replacement trees shall be determined by the Urban Forestry Division.
  - e. The following screening and landscaping shall be provided on the berm located along the periphery of the expansion area:

- For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided.
  - The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Division, Department of Public Works and Environmental Services (DPWES). To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.
- f. In order to screen the quarry from Lee Highway, all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.
  - g. Any dead, dying and/or hazardous vegetation shall be replaced. Number, size and species shall be as determined by the Urban Forestry Division.
5. Prior to the issuance of a new Non-Residential Use Permit (Non-RUP) for SPA 81-C-093-9, a portion of the screening buffer located on the western corner adjoining the south side of Lee Highway, shall be cleared of all noxious vines, undergrowth and exotic trees. This area, as determined in consultation with the Urban Forestry Division, shall be replanted with Austrian Pines to equal one tree per 10 linear feet and eastern red cedars to equal one tree per five linear feet. These trees plantings shall be a minimum height of six feet at the time of planting.
  6. The existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway shall be designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by DPWES. The agreements reflected in the letter of September 25, 1992, and DPWES approved modifications thereof, may be used to fulfill this requirement as may be acceptable to DPWES.
  7. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.
  8. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.
  9. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway or the design and /or implementation of public improvements on adjoining property to the west, the requirement for right-of-way dedication may be increased as may be shown to be necessary by the Department of Transportation in an amount not to exceed 158 feet.
  10. There shall be no access to the northern section of the quarry from Route 289. All access for excavation and/or parking of vehicles for on-site and/or off-site vehicles shall be by the tunnel under Route 29, Lee Highway.
  11. The applicant shall screen the recyclable concrete coming to the site from mud, dirt, trash and other construction debris. No leads shall be accepted if found to be contaminated with the aforementioned material.
  12. Stockpiling and recycling of concrete on this site shall be approved for spent concrete obtained only from customers of the quarry and hauled by the same vehicles which deliver stone products to the customer.
  13. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50%

~ ~ ~ September 16, 2008, LUCK STONE CORPORATION, SPA 81-S-064-10, *continued from Page 124*

of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.

14. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC. Grass located between the pond in the EQC and the picnic pavilion shall not be mowed, except for the area for boat and fishing access.
15. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains.
16. The design of the berm along the northern lot line on the north side of Route 29, Lee Highway shall be maintained so as to permit uninterrupted flow from drainage areas off- site to the existing pond on site.
17. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of \$2,000 per acre for the 134 unrestored acres shall be maintained for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DPWES.
18. Blasting vibrations shall be limited to a maximum resultant particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.
19. Blasting shall be regulated as follows:

Millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 15,000 pounds. No single millisecond delay charge shall be loaded in excess of 850 pounds. Blasting within 400 feet of any non-company owned residence shall conform to the standard blasting operation procedure as approved with this use permit.

In addition to the above referenced blasting procedures, blasts 200 feet or closer to the Trans Continental Pipeline shall be subject to the following additional provisions:

Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

Each such notice shall be given at least twenty-four hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

Any blast within 200 feet of the pipeline shall adhere to the following minimum delays.

17 milliseconds between decks in a hole.

25 milliseconds between holes.

The following information shall be forwarded to Trans Continental following each blast that occurs within 200 feet of the pipeline:

A diagram or pattern of the shop;

Maximum pounds per delay of explosives in the shop;

Depth of the holes in the shop;

Type of explosive used;

Type of delays used;

Seismography reading and location;

Blasting records for the entire site shall be made available to the County.

20. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

21. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.
22. The Zoning Enforcement Branch of the Zoning Administration Division, Department of Planning and Zoning, shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring. The Fairfax County Department of Public Safety Communications shall be notified prior to 8:00 am each day a blast is scheduled.
23. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.
24. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.
25. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.
26. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
27. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday, only. All reasonable measures shall be taken to minimize adverse effects of blasting upon any privately owned occupied dwellings.
28. All explosives, blasting agents, and associated materials shall be handled and stored in accordance with standards and regulations established by the Fairfax County Fire Marshal, the Virginia Department of Mines, Minerals, and Energy, and other appropriate agencies.
29. There shall be no work performed other than sales of materials or maintenance activities of facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m., except as qualified by Condition #7. There shall be no work on Sundays.
30. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as reasonably possible.
31. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flyrock. Flyrock is defined as any dirt, stone, fragmented rock, or other material that is displaced from the blast area in an uncontrolled or unplanned manner by the effects of a blast. All reasonable precautions shall be taken to prevent flyrock from leaving the blast area. In the event of an occurrence of flyrock leaving the blast area, causing injuries, or damaging any structures, equipment, or property, such an occurrence shall be investigated and any reasonable additional measures shall be taken to correct the cause of the flyrock.
32. Public roads in the immediate vicinity of the blast are to be closed to all traffic during the blast when blasting within 600 horizontal feet of a public road. For all other blasts, public roads may be blocked for blasting when best blasting practices deem necessary.
33. The Zoning Administrator or designated agent shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.
34. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the Special Permit Plat may be used to fulfill this requirement. Magazines used for the storage of explosives, blasting agents, or associated materials shall be enclosed within a secure fenced perimeter and properly marked to indicate restricted access and the hazards within.
35. Water quality monitoring reports shall be provided by the applicant on an annual basis to the

~ ~ ~ September 16, 2008, LUCK STONE CORPORATION, SPA 81-S-064-10, *continued from Page 126*

Department of Planning and Zoning. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients and alkalinity.

36. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.
37. The water/oil separator system shall be a totally closed system. There shall be no discharges of water, oil or other waste from the facility. Sludge materials which are removed in the cleaning of the facility shall be disposed of in accordance with applicable local, state and federal requirements.
38. The applicant shall ensure that the siltation pond located on the south side of Route 29, Lee Highway, is functioning in accordance with Best Management Practices (BMPs) standards, as determined by DPWES.
39. The emergency spill response and containment plan developed by the applicant to address accidental spills of any hazardous substances stored on the premises shall be submitted to and approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.
40. Special Permit Amendment SPA 81-S-064-10 is granted for a period of five (5) years from the date of approval, with annual review by the Zoning Administrator or designee in accordance with Section 8-104 of the Zoning Ordinance.
41. The Applicant shall forward all seismographic records to the Zoning Enforcement Branch and the Fire Marshal for review on a quarterly basis. These reports shall also include the following information pertaining to blasts:
  - A. Date of blast
  - B. Time of blast
  - C. Pounds of explosives per delay
  - D. Total pounds of explosives per blast
  - E. Ground vibration levels
  - F. Air blast in decibels
42. The Applicant shall forward any and all blasting - or explosive-related complaints to the Fire Marshal within one (1) business day of receipt, except those complaints claiming damage. Complaints claiming damage shall be reported to the Fire Marshal immediately upon receipt. The Fire Marshal shall investigate all complaints and forward all verified, legitimate complaints to the Zoning Enforcement Branch. This includes complaints from any citizen, local, state, or federal agency whether located in Fairfax County or not, but only those referring to operations conducted within Fairfax County. In addition, the Applicant shall instruct complainants to contact the Zoning Enforcement Branch and the Fire Marshal to submit their complaint directly as well.
43. The applicant shall notify the Zoning Enforcement Branch and the Fire Marshal immediately upon discovering a violation of any blasting- or explosive-related condition of this special use permit, including but not limited to ground vibrations or air blast above the levels set forth in the special use permit.
44. Irrespective of the quarterly seismograph results submittals referenced in Condition 41, the Applicant shall provide the results from seismograph monitoring, which includes the date and time of each blast, within seven (7) days of receipt of such request by the Zoning Administrator or the Fire Marshal.
45. When a conflict exists between these conditions and other regulations by local, state or federal authorities regarding the quarry operations the stricter condition shall apply.
46. The peak overpressure from any blast shall be limited to 0.0092 psi (130 dB) at any privately-owned occupied structure not on quarry property.

~ ~ ~ September 16, 2008, LUCK STONE CORPORATION, SPA 81-S-064-10, *continued from Page 127*

47. The Applicant and its agents or contractors shall acquire any and all applicable fire prevention code permits, as provided by the Fire Marshal, for blasting- or explosive-related operations that occur within Fairfax County.
48. The Applicant shall use the best readily available standard industry-accepted technology and standard industry practices applicable to quarry operations in blast design and blasting operations to ensure accuracy in drilling, loading, timing, and detonating blasts to maintain the lowest effective powder factor and pounds of explosive per delay to produce the desired blast effects.
49. The Applicant shall use the best readily available standard industry-accepted technology and standard industry practices applicable to quarry operations to reduce the creation and effects of air blast and ground vibrations, particularly vibration peak particle velocity and frequency.
50. The Applicant shall maintain accurate drilling, blasting, and seismographic records on-site and readily available for Zoning Enforcement Branch and the Fire Marshal's review for a period of five years.
51. The Applicant shall notify the Zoning Enforcement Branch and the Fire Marshal of any change in the location of fixed permanent seismographs monitoring blast effects and the reason(s) for the change.
52. This special permit may be renewed in accordance with the provisions of Section 8-104(4).

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.

Mr. Smith and Ms. Gibb 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.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:30 A.M. AMERICAN TURKISH FRIENDSHIP ASSOCIATION (ATFA), A 2007-PR-025 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant's use of property in the I-4 District as a meeting facility and/or educational center and a Public Benefit Association, without a proffer condition amendment, Special Exception approval or a valid Non-Residential Use Permit, is not in substantial conformance with the conditions of Proffer Condition Amendment PCA 82-P-084-1 in violation of Zoning Ordinance provisions. Located at 1776 Old Meadow Rd. on approx. 28,305 sq. ft. of land zoned I-4. Providence District. Tax Map 29-4 ((6)) 94B. (Admin. moved from 10/16/07, 1/15/08, and 3/4/08 at appl. req.)

Chairman Ribble noted that A 2007-PR-025 had been withdrawn.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:30 A.M. DAVID L. BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred). (Admin. moved from 4/10/07, 5/15/07, 9/18/07, 1/8/08, and 4/8/08 at appl. req.)

Chairman Ribble noted that A 2006-DR-012 had been administratively moved to November 4, 2008, 9:30 a.m., at the applicant's request.

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~ ~ ~ September 16, 2008, Scheduled case of:

9:30 A.M. BRIAN L. KELLY, A 2008-SP-031 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has conducted land disturbing activities in excess of allowable area and depth without an approved grading plan, has established a storage yard, and is keeping commercial vehicles which are not allowable, all on property in the R-C and WS Districts in violation of Zoning Ordinance provisions. Located at 5812 Three Penny Dr. on approx. 5.05 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-4 ((2)) 5.

Chairman Ribble called the applicant to the podium.

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

Brian L. Kelly, 5812 Three Penny Drive, Fairfax Station, Virginia, came forward.

Charles Fitzhugh, Staff Coordinator, presented staff's position as set forth in the staff report dated September 9, 2008. Staff has determined that it is clear the appellant has a storage yard and construction equipment on the subject property that is not permitted in the R-C District. The inspections have demonstrated the appellant has added soil and landscaped berms in excess of 18 inches in an area greater than 2,500 square feet without an approved grading plan. Staff requests the BZA uphold the Zoning Administrator's determination of May 2, 2008, that the appellant must immediately permanently cease the storage yard use, remove all construction equipment, roll-off containers, and other related items, remove all fill materials in its entirety, and restore the contour of the property to its original, unaltered condition or, to make application and obtain the Director's approval of a restoration plan to restore the site to its previously approved topography or obtain a grading plan for the completed changes to the lot.

Responding to Mr. Hart's question concerning ownership of the property, Mavis E. Stanfield, Deputy Zoning Administrator, Zoning Administration Division, concurred that there were two owners, both were cited violations, but only one filed an appeal.

The appellant presented the arguments forming the basis for the appeal. He explained the circumstances of his previous property that was cited for violations and, at that time, not realizing there was an appeal process, moved to his current location. He said he brought in hundreds of azaleas to beautify the property, but with his wife's serious illness, had slowed down his efforts on that project. He said he has tried to clean up the property. Mr. Kelly said he has a neighbor who hates him and will not talk to him. He said that after the neighbor assaulted him, he placed dirt on that side of the property to keep this neighbor away. Mr. Kelly said the neighbor continues to act in intimidating ways towards him and his wife. He explained there was a water problem, and he was in the process of having an engineer to create a grading plan.

Addressing Ms. Gibb's question regarding a recordation log of commercial trucks entering and exiting the property, Mr. Kelly listed what was delivered and removed. She also questioned Mr. Kelly on the types and number of trucks on his property, how many hours he has been working on his property, his engineer, and more.

In response to Chairman Ribble's questions, Mr. Kelly said his trucks did not have signage. He did say that he owned three of the five businesses listed on an email received by the Board, but these trucks with these names were not stored on the property. Mr. Kelly said he just had one truck, did not operate his businesses out of his property, and paid \$800 a month for a storage lot.

Responding to Mr. Hart's questions, Mr. Kelly said he did not have a State Board of Contractor's license, but did have a Fairfax County contractor's license. He said he mostly did sub-contracting work, sometimes would rent dumpsters, but used his own equipment, kept his paperwork at his house, and did not have any employees. He also agreed that he was not disputing the fact that he graded a larger than allowed area, but was trying to fix the drainage problem, and plant a number of azalea bushes. Mr. Kelly said he continued work on his property to clean up what he was cited for in the Notice of Violation.

Mr. Kelly said the work trucks are occasionally parked overnight, but it's not a usual occurrence. He stated that the staff's photographs were not showing when he does work on his property. He said he is the only one bringing in the equipment, and working. His storage facility is in Fairfax County on Lee Highway.

~ ~ ~ September 16, 2008, BRIAN L. KELLY, A 2008-SP-031, *continued from Page 129*

In response to Mr. Beard's questions, Mr. Kelly clarified his businesses, the work performed, and the reason for and use of his heavy-duty trucks. He said that, with the exception of the one neighbor across the road, none of the other neighbors have talked to him about his work on his property. He said he probably has disturbed in excess of 2,500 square feet.

Mr. Kelly responded to Mr. Smith's questions regarding how many and what types of vehicles were kept on the property, and where the trucks are stored. Answering Mr. Beard's questions, he said Affordable Container Service was not him, but it used to be.

Chairman Ribble called for speakers.

Jim Wentink, Family Tree Care came forward to speak in support of the application. He occasionally worked with Mr. Kelly, had a lot of respect for him, and thought Mr. Kelly was a good person. He helped Mr. Kelly work on this property a few times, and then sent subcontractors to help him.

The following people came forward to speak in opposition: Bruce Dickinson, 11605 Ten Penny Drive, Fairfax Station, Virginia, president of the homeowners association; Mary Beth Crosson, 11606 Ten Penny Drive, Fairfax Station, Virginia; Barbara Power, 11512 Four Penny Drive, Fairfax Station, Virginia; Janey Nodeen, 11600 Ten Penny Drive, Fairfax Station, Virginia; Forrest Mayes, 5800 Three Penny Drive, Fairfax Station, Virginia. Their main concerns were that there were numerous people working on the property; there was a lot of runoff from the activities on the application property; road deterioration because of the truck traffic; and dirt and debris continually coming onto the property.

Mr. Fitzhugh submitted information from a website that shows the services that Mr. Kelly offers, using the address of 5812 Three Penny Drive, Fairfax Station, Virginia for the Advanced Excavation business.

In rebuttal, Mr. Kelly explained the time and circumstances when he had his corporation, Advanced Excavation, and the time when he burned a little fire wood in a brass pit.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the Zoning Administrator's determination. He gave the following findings of fact: The Board adopts the rationale in the staff report; there was abundant testimony and photographs showing the condition of the property with a lot of piles of mulch, dirt, logs, pallets and other debris; there is equipment in various places and dumpsters; and with the record before the Board, it has not been shown that the Zoning Administrator was wrong in the determination of any of this. He said Mr. Kelly was not disputing the violation for the grading and thickness of what was added, but that was he did was appropriate and helpful, and in the process of getting an engineer. He said the Zoning Administrator's determination, judging by the record before the Board, along with testimony and photographs.

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

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~ ~ ~ September 16, 2008, Scheduled case of:

9:30 A.M.        SCOTT A. CRABTREE, A 2008-MV-032 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has added fill and modified grade and has enclosed a portion of the dwelling, all on property in the R-2 District, which is not in substantial conformance with approved plans nor the development conditions of Special Exception Amendment SEA 2002-MV-028 in violation of Zoning Ordinance provisions. Located at 8019 East Boulevard Dr. on approx. 1.34 ac. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((1)) 35A.

Chairman Ribble noted that A 2008-MV-032 had been withdrawn.

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~ ~ ~ September 16, 2008 After Agenda Item:

Request for Additional Time  
First Baptist Church of Foxchase, SPA 2002-MA-038


Mr. Beard moved to approve additional time to August 28, 2010. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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

Minutes by: Paula A. McFarland and Lorraine A. Giovinazzo

Approved on: January 6, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 23, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 23, 2008, Scheduled case of:

9:00 A.M. JAMES H. WEBB, JR., SP 2008-MA-071 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 additions to remain 10.7 ft. from side lot line and permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3502 Pinetree Ter. on approx. 24,800 sq. ft. of land zoned R-2. Mason District. Tax Map 61-2 ((16)) 792.

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.

Glen Izett, 9141 School Craft Lane, Burke, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Izett presented the special permit request as outlined in the statement of justification submitted with the application. He said a door would be added to the existing carport that already had one side wall, for security purposes.

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

Mr. Hammack moved to approve SP 2008-MA-071 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JAMES H. WEBB, JR., SP 2008-MA-071 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 additions to remain 10.7 ft. from side lot line and permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3502 Pinetree Ter. on approx. 24,800 sq. ft. of land zoned R-2. Mason District. Tax Map 61-2 ((16)) 792. 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 23, 2008; 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. 8-923, the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the applicable sections of the Zoning Ordinance.
3. With respect to Sect. 8-914, the Board has determined that the applicant has met the required standards under that provision of the Ordinance.

~ ~ ~ September 23, 2008, JAMES H. WEBB, JR., SP 2008-MA-071, *continued from Page 132*

4. The evidence supports the fact that the applicant purchased the property in the existing condition, so the issue of whether the buildings/structures were there as a result of his action or whether he acted in good faith is resolved.
5. In looking at the General Standards that the Board has to apply, given the fact that the garage has been there for at least some period of time, shows that it is not detrimental to the adjoining property owners.
6. Allowing a garage door to be installed and it to be further enclosed for security reasons is not unusual for the Board to hear and allow, and will certainly not change the general appearance or have a detrimental impact on the neighborhood.
7. Regarding the fence, it has been there for a long period of time without objection. The additional height is not objectionable, is minimal, and does not even come close to the six feet that many people request.

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

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

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

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

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

1. This special permit is approved for the location of existing carport enclosure (garage), attached storage structure and fence height as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated April 29, 2008 revised through July 3, 2008, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits for the enclosed carport shall be diligently pursued and obtained or the enclosed carport shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

~ ~ ~ September 23, 2008, JAMES H. WEBB, JR., SP 2008-MA-071, *continued from Page 133*

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

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~ ~ ~ September 23, 2008, Scheduled case of:

9:00 A.M. GRACE U. MILLER, TRUSTEE OF THE MILLER FAMILY TRUST, SP 2008-PR-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 3133 Chichester La. on approx. 20,464 sq. ft. of land zoned R-2. Providence District. Tax Map 49-3 ((18)) 92A.

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.

Karen Cheng, 8612 Morningside Woods Place, Fairfax, Virginia, the applicant's agent, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Cheng presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant had support from the neighbors regarding the proposed expansion of a one-car to a two-car garage, which would be similar to other two-car garages in the neighborhood and harmonious with the existing structure. She said the existing garage was too small to house the applicant's sedan, and the proposed garage would provide vehicle protection.

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

Mr. Byers moved to approve SP 2008-PR-067 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

GRACE U. MILLER, TRUSTEE OF THE MILLER FAMILY TRUST, SP 2008-PR-067 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.5 ft. from side lot line. Located at 3133 Chichester La. on approx. 20,464 sq. ft. of land zoned R-2. Providence District. Tax Map 49-3 ((18)) 92A. 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 23, 2008; and

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

1. The applicant is the owner of the land.
2. The application meets all the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.
4. The Board has received one letter in support of the application.

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

~ ~ ~ September 23, 2008, GRACE U. MILLER, TRUSTEE OF THE MILLER FAMILY TRUST, SP 2008-PR-067, *continued from Page 134*

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

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition as shown on the plat prepared by Lawrence H. Spilman III, Land Surveying Services, dated April 15, 2008, revised through June 21, 2008 submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,715 square feet existing + 4,072.5 (150%) = 6,785.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
5. Prior to commencement of construction, tree protective fencing shall be installed between the location of the proposed addition and the dripline of the significant trees determined by the Forest Conservation Branch, DPWES along the northern side property line. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading.

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

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

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

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~ ~ ~ September 23, 2008, Scheduled case of:

9:00 A.M.            DAVID L. BROWN, SP 2008-DR-049 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 1840 Patton Ter. on approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Admin. moved from 7/8/08 for notices).

Chairman Ribble called the applicant to the podium.

~ ~ ~ September 23, 2008, DAVID L. BROWN, SP 2008-DR-049, *continued from Page 135*

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.

Laurie Taub, 1132 S. Washington Street, Falls Church, Virginia, agent for the applicant, reaffirmed the affidavit.

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

Ms. Taub presented the special permit request as outlined in the statement of justification submitted with the application. She said the original six-foot tall fence, which was built by the developer in 1992, began crumbling and was rebuilt by the applicant to a height of five feet, four inches. Ms. Taub said the applicant did not know it was considered a front yard, and it was important to the applicants to keep the fence so they could use the yard, especially based on the topography of the property.

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

Mr. Hart moved to approve SP 2008-DR-049 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

DAVID L. BROWN, SP 2008-DR-049 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit a fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 1840 Patton Terrace on approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Admin. moved from 7/8/08 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 September 23, 2008; and

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

1. The applicant is the owner of the land.
2. Based on the record before the Board, the request for an increase in height in the frame fence in the front yard meets the required standards.
3. There does not appear to be any opposition to the fence, notwithstanding the original complaint.
4. Based on the photographs, it is not going to have a significant negative impact on anyone.
5. It appears that it is a replacement for a similar fence that was present for a number of years.
6. It is a narrow corner lot with a house positioned in the rear corner, so it is going to be difficult for this house to have any kind of private outdoor area absent some sort of relief from the four (4) foot limitation.

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 frame fence in the front yard to the east of the driveway along McArthur Drive and running north to the house, as shown on



~ ~ ~ September 23, 2008, DAVID L. BROWN, SP 2008-DR-049, *continued from Page 136*

the plat prepared by Dominion Surveyors Inc., dated May 24, 2007 as revised through January 4, 2008, as submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ September 23, 2008, Scheduled case of:

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

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.

Amber Sharn, 9200 Church Street, Manassas, Virginia, the applicant's agent, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said staff recommended denial of the special permit and did not believe General Standard 4 of Sect. 8-006 had been met, which addressed pedestrian and vehicular access to the site. Ms. Langdon stated that the area around the church was lacking sidewalks, which the applicant had not committed to provide, and the right-turn lane from Little River Turnpike was substandard. Without the imposition of the development conditions, pedestrian and vehicular traffic would be hazardous and conflict with existing and anticipated traffic in the area.

Ms. Gibb, Mr. Hart, Ms. Langdon, and Angela Rodeheaver, Fairfax County Department of Transportation, discussed waiver of the sidewalk requirement by VDOT, with Ms. Langdon noting that the Board could request the requirement not be waived.

Mr. Hart and Ms. Rodeheaver discussed other problems with the application, such as the length of the turn lane not meeting current standards for a facility of this size.

Ms. Sharn presented the special permit request as outlined in the statement of justification submitted with the application and provided a history of the school and prior permits. Ms. Sharn pointed out that during the site plan process for a previous special permit on the site, a waiver had been approved so the sidewalk along Elizabeth Lane and Little River Turnpike could be shared with the trail.

Chairman Ribble called for speakers.

The following people spoke in opposition to the application: Helene Longdon, no address given, representing the Lee Forest neighborhood; Maria Ingham, 4014 Elizabeth Lane, Fairfax, Virginia; Bonnie Clements, 4010 Elizabeth Lane, Fairfax, Virginia; John Richmond, 4001 Elizabeth Lane, Fairfax, Virginia; Allen Butler, 4012 Guinea Road, Fairfax, Virginia; and Edward Potter, 4120 Doveville Lane, Fairfax, Virginia. They voiced concerns regarding the additional burdens on the neighborhood from the proposed use, safety issues from the amount of traffic and lack of sidewalks, continued requests from the church to enlarge the facilities and increase activities resulting in the removal of vegetation and impacts to neighbors, misrepresentations made by the church to adjoining property owners, and inadequate screening.

In her rebuttal, Ms. Sharn gave the traffic projections for the estimated 70 students of 0.9 trips generated per student, totaling 67 peak hour trips, and addressed the traffic, safety, and screening issues. In response to a

~ ~ ~ September 23, 2008, PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05, *continued from Page 137*

question from Mr. Byers, Ms. Sharn said she would work with the neighbors to address the issues discussed at this meeting.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to defer decision on SPA 82-A-039-05 to December 16, 2008, at 9:00 a.m., for more information to be provided to the Board regarding the gate on Doveville Lane, the sidewalks, the bus stop, and the right-turn lane. Mr. Smith seconded the motion, which carried by a vote of 6-1. Mr. Byers voted against the motion.

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~ ~ ~ September 23, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 previously approved for church with child care center, nursery school and private school of general education to permit increase in land area, building addition, site modifications and an increase in enrollment. Located at 3494 Paul St., 3538 Moncure Ave. and 5811 Hoffmans La. on approx. 1.74 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((30)) 22 and 61-4 ((39)) 6 and 61-4 ((1)) 112. (Admin. moved from 7/15/08 for ads.)

Chairman Ribble noted that SPA 90-M-036-02 had been administratively moved to October 21, 2008, at 9:00 a.m., at the applicant's request.

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The meeting recessed at 11:38 a.m. and reconvened at 11:49 a.m.

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~ ~ ~ September 23, 2008, Scheduled case of:

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

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

9:30 A.M. K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a Contractor's Office and Shop on property in the I-4 and I-5 Districts without site plan approval nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 2726 Merrilee Dr. on approx. 43,562 sq. ft. of land zoned I-4 and I-5. Providence District. Tax Map 49-1 ((16)) 5.

Chairman Ribble called the appellants to the podium.

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

~ ~ ~ September 23, 2008, ACCURATE TOWING & STORAGE, INC., A 2008-PR-034, FLEET PROPERTIES, INC., A 2008-PR-035, and K&H LAWN SERVICES, INC., KRIS HJORT, BRAD HJORT, A 2008-PR-036, *continued from Page 138*

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

Mark Jenkins, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, attorney for Fleet Properties, Inc., said he had submitted a request for a six-month deferral to file a site plan, and an engineer had been obtained. John Farrell, McCandlish & Lillard, P.C., 11350 Random Hills Road, Suite 500, Fairfax, Virginia, attorney for Accurate Towing and Storage, Inc., and Kris Hjort, K&H Lawn Services, Inc., 8300 Merrifield Avenue, Fairfax, Virginia, consented to a six-month deferral.

Mr. Beard moved to defer A 2008-PR-034, A 2008-PR-035, and A 2008-PR-036 to January 13, 2009, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hart recused himself from the hearing.

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~ ~ ~ September 23, 2008, Scheduled case of:

9:30 A.M. LEWIS MOORE, A 2007-LE-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and a junk yard on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4706 Eaton Pl. on approx. 12,750 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (D) 15. (Deferred from 10/2/07 and 1/29/08 at appl. req.)

Brian Parsons, Staff Coordinator, stated that the County was present to hear Mr. Moore's position. He said he had attempted to contact him several times, but Mr. Moore wanted only to present his position to the Board, not County staff.

During a PowerPoint presentation, Mr. Moore said the violations had been cleared. Mr. Moore stated that he never should have been cited since the items on his property were temporary and only being used for improvements to his home. He also objected to County staff initially accessing his property without his permission.

After discussion with County staff and Roy Biedler, Property Management Inspector, Zoning Enforcement Branch, Mr. Moore agreed to allow inspection of his property to verify that the cited violations had been cleared.

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

Mr. Smith moved to defer decision on A 2007-LE-024 to October 7, 2008, at 9:30 a.m., to allow County personnel to inspect the property. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 23, 2008, Scheduled case of:

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

Chairman Ribble noted that A 2008-PR-027 had been administratively moved to November 4th, 2008, at 9:30 a.m., for ads.

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~ ~ ~ September 23, 2008, Scheduled case of:

9:30 a.m. KENNETH AND MARIA CLINE, A 2008-SP-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is keeping dogs in association with a pet rescue service on property in the R-3 (Cluster) District in violation of Zoning Ordinance provisions. Located at 13206 Poplar Tree Rd. on approx. 11,021 sq. ft. of land zoned R-3 Cluster and WS. Springfield District. Tax Map 45-3 ((2)) (21) 15.

Chairman Ribble noted that A 2008-SP-025 had been administratively withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the notice of violation had been rescinded and reissued.

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~ ~ ~ September 23, 2008, After Agenda Item:

Request for Intent to Defer  
James G. Miller, Trustee for James G. Miller Revocable Trust, J.G. Miller, Inc.,  
A 2008-SU-016, and Atlantic Construction Fabrics, Inc., A 2008-SU-017

Mr. Hart moved to approve the request for an intent to defer to October 21, 2008, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 23, 2008, After Agenda Item:

Approval of December 20, 2005 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 6-0-1. Mr. Smith abstained from the vote.

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~ ~ ~ September 23, 2008, After Agenda Item:

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

Doug Hansen, Staff Coordinator, Zoning Administration Division, stated that updated photographs of the property had been obtained by Chuck Cohenour, Zoning Enforcement/Property Maintenance Inspector.

Mr. Cohenour said there had been some cleaning/moving of the items on the property with noticeable improvement since the last hearing. He reviewed the photographs with the Board, explaining the pictures from each angle, but noted that he had never been able to access Lot 8 to verify progress on that portion of the property.

In response to a question from Mr. Hart, Mr. Hansen confirmed that a site plan was required, but had not been submitted to date.

J. Charles Curran, Kidwell, Kent & Curran, PC, Woodson Square, 9695 C Main Street, Fairfax, Virginia, the appellant's agent, stated that a substantial improvement had been realized with cleaning up the site. He distributed a memorandum to the Board which delineated the debris and items removed from the site along with equipment remaining on the property which was used in the business.

Cynthia Wood, daughter of the property owner, stated that 15 tractor trailer loads of debris, over 35,000 pounds, had been removed from the site since the last hearing.

Ms. Gibb, Mr. Beard, Mr. Hart, Mr. Hansen, and Ms. Wood discussed the need for a site plan to be submitted on the property as soon as possible. Ms. Wood stated that her family had concentrated on site clean-up first and cited a lack of funds for the delay of a site plan submittal.

~ ~ ~ September 23, 2008, After Agenda Item, A 2008-SU-008, Cronan Family, LLC, *continued from*  
Page 138

In response to a question by Ms. Wood, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that it was up to the Department of Public Works and Environmental Services as to whether a minor site plan would be acceptable.

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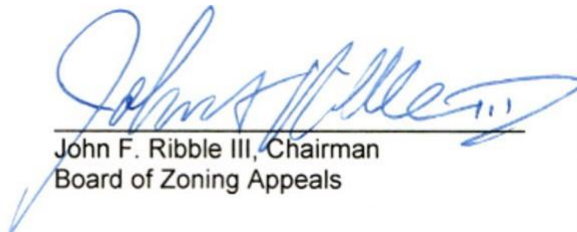
As there was no other business to come before the Board, the meeting was adjourned at 12:55 p.m.

Minutes by: Suzanne L. Frazier

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 Tuesday, September 30, 2008. 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. Byers moved to accept the Board of Zoning Appeals 2009 meeting dates proposed by staff. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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

~ ~ ~ September 30, 2008, Scheduled case of:

9:00 A.M.           STEPHEN WILLIAM CRUTCHLEY, ANN CRUTCHLEY, SP 2008-SU-069 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 12020 Wayland St. on approx. 24,696 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 40.

Chairman Ribble noted that SP 2008-SU-069 had been administratively moved to October 21, 2008, at 9:00 a.m., at the applicants' request.

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~ ~ ~ September 30, 2008, Scheduled case of:

9:00 A.M.           AHMED GARMA AND KADIJA NOURY, SP 2008-MA-072 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 9.2 ft. from side lot line and roofed deck to remain 31.6 ft. from front lot line. Located at 6384 Lakeview Dr. on approx. 11,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 135.

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, the applicants' agent, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Ms. Kelsey informed the Board that the applicant, Mr. Garma, was present with a friend who would interpret for the applicant if necessary.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the modification for the stoop was approved by the Zoning Administrator, and the issue with the carport arose after the applicants installed windows in the open holes of the carport. The violation was discovered when a County inspector saw the construction of the stoop and noticed there was no posted building permit. Ms. Kelsey said the carport had been there since 1956, and she thought the windows were attractive and enhanced the appearance of the house.

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

Mr. Hammack moved to approve SP 2008-MA-072 for the reasons stated in the Resolution. Mr. Byers seconded the motion.

Discussions ensued regarding staff's position on the enclosure and the masonry wall, staff's research on the carport, a variance approval years prior that involved an administrative reduction, building permit requirements for decks and porches, the Chesapeake Bay Resource Protection Area as it related to the stoop, clarification of permits required, the steps from the deck, the availability of records, the development

~ ~ ~ September 30, 2008, AHMED GARMA AND KADIJA NOURY, SP 2008-MA-072, *continued from*  
*Page 142*

conditions, the advertisement of the application, and there being no formal notice of violation issued for the property.

After questioning Ms. Caffee regarding the effect of doing so, Mr. Hammack amended the motion to delete Development Condition 2. Mr. Byers accepted the amended motion.

The motion carried by a vote of 7-0.

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## COUNTY OF FAIRFAX, VIRGINIA

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

AHMED GARMA AND KADIJA NOURY, SP 2008-MA-072 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 9.2 ft. Located at 6384 Lakeview Dr. on approx. 11,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 135. 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 30, 2008; and

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

1. The applicants are the owners of the land.
2. The applicant meets the required criteria set forth under the Code section in particular that the non-compliance was done in good faith, or through no fault of the property owner.
3. The reduction will not impair the purpose or intent of the Ordinance.
4. The reduction will not be detrimental to the use or enjoyment of other property in the immediate vicinity.
5. The reduction will not create an unsafe condition with respect to both other properties and the public streets.
6. It satisfies the other requirements as well.
7. This is really a minimal request.
8. The building has been there permitted under the original construction.
9. The applicant simply puts some windows in the existing open spaces.
10. The Board agrees with the applicant that the addition is really an improvement of the property in all respects.

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

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

~ ~ ~ September 30, 2008, AHMED GARMA AND KADIJA NOURY, SP 2008-MA-072, *continued from Page 143*

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

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

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

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

1. This special permit is approved for the location of an existing addition (enclosed carport) shown on the plat prepared by Andrew L. Westerman, Alexandria Surveys International, LLC, dated May 9, 2008 signed through July 16, 2008 submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ September 30, 2008, Scheduled case of:

9:00 A.M. CELINE VAN ZEEBROECK, SP 2008-PR-068 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck 11.0 ft. and addition 14.7 ft. from front lot line. Located at 2608 Pine Knot Dr. on approx. 7,124 sq. ft. of land zoned R-5. Providence District. Tax Map 38-3 ((42)) 33.

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.

Celine Van Zeebroeck, 2608 Pine Knot Drive, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-PR-068, subject to the proposed development conditions.

Ms. Van Zeebroeck presented the special permit request as outlined in the statement of justification submitted with the application. She said the special permit was requested to reduce the minimum front setback from 20 feet to 16 feet in order to build an addition above the existing garage and family room to provide space for two additional bedrooms, a home office, and two bathrooms. The reduction of the front setback would set the second floor front wall right above the existing garage wall. The second request would reduce the minimum front setback from 20 feet to 11 feet to add a portico over the existing brick stoop leading to the front doorway. Ms. Van Zeebroeck said the proposal had the support of the neighbors, in harmony with the neighborhood, and her homeowners association voiced no concerns.

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



~ ~ ~ September 30, 2008, CELINE VAN ZEEBROECK, SP 2008-PR-068, *continued from Page 144*

Mr. Byers moved to approve SP 2008-PR-068 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CELINE VAN ZEEBROECK, SP 2008-PR-068 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of roofed deck 11.0 ft. and addition 14.7 ft. from front lot line. Located at 2608 Pine Knot Dr. on approx. 7,124 sq. ft. of land zoned R-5. Providence District. Tax Map 38-3 ((42)) 33. 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 30, 2008; and

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

1. The applicant is the owner of the land.
2. The staff recommends approval, and the Board concurs in that recommendation.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 764 square feet) of the proposed second story addition and the roofed deck (portico), as shown on the plat prepared by Kendall Consulting, Inc., dated May 27, 2008 as revised through June 30, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,846 square feet existing + 5,769 square feet (150%) = 9,615 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

~ ~ ~ September 30, 2008, CELINE VAN ZEEBROECK, SP 2008-PR-068, *continued from Page 145*

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

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

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~ ~ ~ September 30, 2008, Scheduled case of:

9:00 A.M.           CENTERPOINTE HOMES ASSOCIATES LIMITED PARTNERSHIP, SP 2008-SP-070 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a temporary sales office. Located at 4156 and 4158 Rush St. and 12111 Loyola La. on approx. 4,203 sq. ft. of land zoned PDC and WS. Springfield District. Tax Map 46-3 ((26)) 35, 36 and 73.

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.

Elizabeth McKeeby, the applicant's agent, Walsh, Colucci, Lubeley, Emrich & Walsh, P.C., 2200 Clarendon Boulevard, 13<sup>th</sup> Floor, Arlington, 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.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SP-070, subject to the proposed development conditions.

Ms. McKeeby presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant sought to continue the temporary home sales office for an additional 30 months and move the office from the current model to two model units across the street. She said there were no proposed modifications to the approved final development plan or site plan and no zoning violations or issues with the sales office.

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

Mr. Hart moved to approve SP 2008-SP-070 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CENTERPOINTE HOMES ASSOCIATES LIMITED PARTNERSHIP, SP 2008-SP-070 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a temporary sales office. Located at 4156 and 4158 Rush St. and 12111 Loyola La. on approx. 4,203 sq. ft. of land zoned PDC and WS. Springfield District. Tax Map 46-3 ((26)) 35, 36 and 73. 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 30, 2008; and

~ ~ ~ September 30, 2008, CENTERPOINTE HOMES ASSOCIATES LIMITED PARTNERSHIP, SP 2008-SP-070, *continued from Page 146*

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

1. The applicant is the owner of the land.
2. We have a favorable staff recommendation, and the Board would adopt the rational in the staff report.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, Centerpointe Homes Associates Limited Partnership, and is not transferable without further action of this Board, and is for the location indicated on the application, and is not transferable to other land.
2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bowman Consulting, dated May 2008, signed May 28, 2008, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum hours of operation for the temporary sales office shall be 11:00 a.m. to 6:00 p.m. daily.
6. Parking for the sales office shall be provided on Lots 13 and 14 and shall remain as parking spaces until the sales operation ceases.
7. The temporary subdivision sales office shall be removed from the model home upon completion of house sales onsite or within 30 months of the BZA approval date, whichever comes first.

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

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

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~ ~ ~ September 30, 2008, Scheduled case of:

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

Chairman Ribble noted that SP 2007-DR-085 had been administratively moved to October 28, 2008, at 9:00 a.m., at the applicant's request.

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~ ~ ~ September 30, 2008, Scheduled case of:

9:30 A.M. MATTHEW D. FERGUSON, A 2008-PR-033

Chairman Ribble noted that A 2008-PR-033 had been administratively withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the notice had been rescinded and reissued.

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~ ~ ~ September 30, 2008, Scheduled case of:

9:30 A.M. SAGRES CONSTRUCTION CORPORATION, A 2008-LE-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and contractor's offices and shops on property in the C-3 District in violation of Zoning Ordinance provisions. Located at 5419 Oakwood Rd. on approx. 2.0 ac. of land zoned C-3. Lee District. Tax Map 81-2 ((3)) 33.

9:30 A.M. SAGRES CONSTRUCTION CORPORATION, A 2008-LE-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and contractor's offices and shops on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 5505 Oakwood Rd. on approx. 2.0 ac. of land zoned R-3. Lee District. Tax Map 81-2 ((3)) 31.

Chairman Ribble called the appellant to the podium.

Harry P. Hart, the appellant's agent, 307 North Washington Street, Alexandria, Virginia, came forward.

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

Brian Parsons, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 23, 2008. The appeals were of a notice of violation dated May 27, 2008, pertaining to Lot 31 owned by Oakwood Road II, L.P., and Lot 33 owned by Oakwood Road, L.P., zoned R-3 and C-3, for the appellants allowing the operation of a contractor's office, shop, and storage yard. The two tenants involved were Sagres Construction Corporation and AAA Tree Service. Mr. Parsons said the notices were sent to the owners and tenants; however, AAA Tree Service refused to sign the receipt acknowledging acceptance of the certified letter. Zoning Enforcement Branch then sent a second notice by sheriff's letter to AAA Tree Service. On June 26, 2008, Sagres Construction Company filed appeals of the notice of violation for Lots 31 and 33. The property owners did not file an appeal.

Mr. Parsons explained the history of the properties regarding prior rezonings, enforcement efforts, and litigation concerning a previous tenant, Southern Asphalt Company, using the property as a storage yard, in which the Zoning Administrator's determination was upheld.

Zoning Enforcement Branch staff's initial inspection determined that Sagres was using Lot 31 as storage for construction equipment, construction vehicles, various construction material, and debris. AAA Tree Service was using Lot 33 for a tree service business consisting of an occupied office trailer, wood piles, tree spraying equipment, company trucks, and a second unoccupied office trailer. Staff's follow-up site visit on September 17, 2008, revealed that the storage had been intensified with additional construction vehicles and equipment stored on both lots appearing to be owned by Sagres Construction Company.

Mr. Parsons said the appellant's position was that there was no contractor's office, shop, or any establishment on the property and no inhabited structures. At the time of the initial inspection, AAA Tree Service had an office trailer on the property that the inspector entered and spoke with people inside. Staff's position was that the appellant had taken the definition of contractor's office and shop out of context to suit its purposes. Staff requested that the Board uphold the Zoning Administrator's determination as set forth in the violation to allow appropriate enforcement action to bring the property into compliance with the Zoning Ordinance. Mr. Parsons said the appellant requested that if the BZA upheld the Zoning Administrator's decision, the Board grant a 180-day period in which to mitigate the effects of the alleged violation, and staff could not support that amount of time to remove the contractor's office, shops, and storage yard from the

~ ~ ~ September 30, 2008, SAGRES CONSTRUCTION CORPORATION, A 2008-LE-038 and SAGRES CONSTRUCTION CORPORATION, A 2008-LE-039, *continued from Page 148*

properties. He said the amount of time necessary to clear the violations would have to be worked out with staff based on the appellant's proven need for additional time.

In response to a question from Chairman Ribble regarding the identity of the principal of AAA Tree Service, Mr. Harry Hart stated the company was no longer there, and it had nothing to do with the subject case. Chairman Ribble commented that it then was not necessary for him to recuse himself from participating in the public hearing.

In response to a question from Ms. Gibb concerning notification, Roy Biedler, Senior Zoning Inspector, Zoning Enforcement Branch, explained staff's procedure for determining property ownership, the principal parties involved, and to whom a notice of violation would be issued. He said it was staff's position that the use was most similar to a contractor's office and shop, and the notice of violation was written for that and a storage yard.

Staff responded to Mr. Hart's questions concerning non-residential use permits, building permits, a fence shown on the plat, site plan approval, and a possible solution for the situation.

Mr. Harry Hart said Sagres Construction had purchased a parcel at another location, submitted a site plan, and was actively moving its operation, and adequate time was necessary to accomplish the documentation and subsequent relocation. He said the appellant was currently diligently moving some of its equipment and materials to its new location to alleviate some of the neighbors' complaints.

Mr. Harry Hart responded to questions from Ms. Gibb concerning two letters from residential neighbors complaining of the truck noise, saying efforts would be taken such as parking the vehicles at the bottom of a hill. He also said a fence was erected to buffer noise.

Dan Dragacevac, Vice President of Sagres Construction, addressed Mr. Byers' question concerning a recent increase in truck noise. He explained that the company recently purchased new construction vehicles.

Discussion ensued regarding illegal parking of the trucks on other properties, citizen complaints, debris, chopping of wood, and Oakwood Road appearing not like a residential street, but an industrial street that was in transition. Mr. Harry Hart said the wood chopping was done by AAA Tree Service, who was no longer on the property. Mr. Dragacevac said there were other construction companies located on the street, and Sagres trucks were parking only on the two subject lots.

At Ms. Gibb's request, William Haas, Paciulli Simmons & Associates, 11212 Waples Mill Road, Suite 100, Fairfax, Virginia, came to the podium. He said a site plan he prepared was filed with Fairfax County in November of 2007, with a post-submission conference held in April of 2008 to discuss staff comments. He explained the site's layout, acreage, topography, existence of flood plain, stormwater management, and proposed construction of an entrance road. He gave a brief history of the application process and assured the Board that a plan to solve the issues raised by staff was forthcoming. He estimated the appellants would have an approved plan in six months and could begin clearing and constructing on the new site, and the equipment could be moved to the new location to be used for the construction.

Mr. Harry Hart corrected his previous statement regarding AAA Tree Service, clarifying that its on-site office had been relocated, but some tree chopping and trucking had been recently done.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition to the appeal: Karen Davis, 5791 Westchester Street, Alexandria, Virginia; Tom Shear, 5787 Westchester Street, Alexandria, Virginia; and Susan Tomasovic, 5793 Westchester Street, Alexandria, Virginia. They voiced concerns regarding the disruptive effects the construction activities had on residential neighbors; the resulting dust, dirt, and noise having a negative effect on health and quality of life; the clearing of trees on property which had previously been a beautiful wooded area; continuing chopping and use of buzz saws on the property by AAA Tree Service; encroachment onto County property with construction vehicles parked along the water main easement where a walking trail had been provided by the County; and a three-story high pile of wood and mulch located immediately behind a neighboring backyard.

~ ~ ~ September 30, 2008, SAGRES CONSTRUCTION CORPORATION, A 2008-LE-038 and SAGRES CONSTRUCTION CORPORATION, A 2008-LE-039, *continued from Page 149*

Mr. Harry Hart said he did not represent the tree service, and he thought all the referenced activity involved the tree service.

In response to a question from Ms. Gibb concerning whether the appellant was aware of the ongoing activity by the tree service, Mr. Dragacevac said he was aware that trees were being chopped on Lot 32, and the activity had been ongoing since 2001.

Jeffery Snow, 8895 McNair Drive, Alexandria, Virginia, came forward to speak. He said he was owner of the land and general partner of the leasing companies, Oakwood I and II. He agreed with previous testimony regarding continuing activity, but said the construction trailer had been removed. Responding to questions from Mr. Beard, he said AAA Tree Service had paid last month's rent, and Greg Foster was the lessee's name. Mr. Snow said he had a written lease and had not received notification of the lease being terminated. He said the lease provided that the lessees were to comply with all federal, state, and local laws and ordinances. He said he was shocked at the testimony he had heard, and he was willing to comply with the Board's decision.

Chairman Ribble stated that he would be conducting business with Greg Foster in the near future, and he recused himself from the public hearing.

Vice Chairman Hammack assumed the Chair.

Mr. Biedler said he was verbally told by AAA Tree Service that they would vacate the property. His follow-up site inspection found all equipment removed, the trailer remaining, and a major stockpile of wood and mulch, which he said he assumed was the cause of the wood chopping activity.

Mr. Beard pointed out that a significant part of the citizen testimony concerned the tree company activity. He requested clarification of staff's resolution for the two entities. Mr. Biedler stated that if the Board upheld the Zoning Administrator, the property owner and managing service had been notified, and he would take legal action to remove everyone from the property.

Discussion ensued regarding the notifications; whether allowing Sagres additional time to cure the violation would legally affect AAA Tree Service if the case went to court; the fact that the tree service refused to sign for the notice of violation; Mr. Biedler's conversations with the tree service's principal; the number of different violations cited; the complexity of the case; the fact that AAA Tree Service could not appeal because they had not accepted the notices and were legally unaware they were in violation and had the right to appeal; the timeframe for subsequent enforcement action against the different entities; and several similar previous cases that were difficult.

Mr. Beard stated that the Board's action was whether or not to uphold the Zoning Administrator, and any subsequent enforcement was staff's and the appellant's responsibility.

Mr. Hart said he wanted to understand the procedural implications of granting one company additional time and whether that complicated action against the other company and would affect enforcement regarding the wood/mulch pile.

Mr. Byers said he agreed with Mr. Beard's position, that the Zoning Administrator would be upheld and staff would work with the construction company regarding the time given to exit the property.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said Mr. Byers was correct in his understanding, and she explained the typical scenario.

Ms. Gibb gave her recollection of a previous case and its resolution regarding notices.

In his rebuttal, Mr. Harry Hart reiterated that Sagres Construction was doing its best to try to relocate as quickly as possible, and he asked the Board to accommodate that, to whatever extent possible.

~ ~ ~ September 30, 2008, SAGRES CONSTRUCTION CORPORATION, A 2008-LE-038 and SAGRES CONSTRUCTION CORPORATION, A 2008-LE-039, *continued from Page 150*

Mr. Snow said he would prepare a default of lease to serve AAA Tree Service if that would be helpful, and if they did not comply, he would take them to court. Vice Chairman Hammack suggested Mr. Snow discuss the situation with staff.

Mr. Byers suggested that staff coordinate with Fairfax County Water Authority to investigate whether damage had occurred to the area.

Mr. Hart referenced a previous case, noting the actions taken. He gave various scenarios with the current case, suggesting what could or could not happen.

Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to uphold the Zoning Administrator's determination. She said that at the time of the violation notice on Lot 33, there was a trailer office, a contractor's office, a storage yard, and construction machinery. She said she was not convinced that the office across the street qualified as an office on Lot 31, although she thought there was a storage yard that remained. Ms. Gibb said she respected the fact that there were efforts to move, and attaining site plan approval took a long time. She said she did not know where in Fairfax County such material and machinery could be legally stored. Ms. Gibb said that although Sagres Construction was not associated with AAA Tree Service, its activities tainted Sagres Construction and made the things worse by taking trees down and bulldozing. She said it was understandable the neighbors were upset, and it was hard to say they should have six more months of continuing activities, trucks backing up and noise. She said she knew what it was like to live next to, and the neighbors had dealt with it for two years. Ms. Gibb said that was why she would not suggest a deferral and hoped something would be worked out by upholding the Zoning Administrator so a way would be found to move things quickly. She said the property owner was to get rid of AAA Tree Service, and the neighbors would realize that things would get better. She said she hoped County staff understood the relocation process, including engaging Paciulli Simmons, was neither inexpensive nor short and would not be heavy handed with the appellant. Mr. Byers seconded the motion.

Mr. Hart commented that he had no problem with going forward. He said, at least to the appellant, he was not persuaded that the contractor's office was on Lots 31 and 33, and he thought the evidence was it was across the street on Lot 32. He said although the Board was given a lot of helpful examples in the staff report, he was not sure any of them showed that an office across the street could be a violation of having an office on the property that was the subject of the appeal. Based on the photographs and the record, he said it was clearly a storage yard on both lots for both tenants, and it may also have been an office for the tree company, but he really had not understood that. Mr. Hart said, as to the appellant, he would have been more comfortable upholding-in-part because it was a storage yard, but he was not persuaded that it was a violation on the subject two lots to have the office across the street. He said it still was a violation, but not for all the reasons in the staff report.

Ms. Gibb clarified for Mr. Hart that her motion was to uphold-in-part that it was a storage yard. Mr. Hart said he would support the motion.

Mr. Smith indicated he would support the motion that it was a storage yard. He said he was hopeful that the appellant could find an alternative transitional space because it was not reasonable to continue the operation with a residential neighborhood adjoining the property. Mr. Smith made suggestions concerning the notification process.

The motion carried by a vote of 7-0.

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Chairman Ribble resumed the Chair.

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~ ~ ~ September 30, 2008, Scheduled case of:

9:30 A.M. ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor’s office and shop, has erected a trailer and accessory storage structures, and is permitting outdoor storage on property in the I-3 District without site plan approval, Building Permit approval, nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13. (Reconsideration granted on 7/29/08)

9:30 A.M. JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and is allowing the operation of contractors offices and shops, the erection of a trailer and accessory storage structures, and outdoor storage on property in the I-3 District without site plan approval, Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13. (Reconsideration granted on 7/29/08)

Chairman Ribble noted that the Board had previously issued an intent to defer A 2008-SU-016 and A 2008-SU-017 to October 21, 2008.

Mr. Hart moved to defer A 2008-SU-016 and A 2008-SU-017 to October 21, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ September 30, 2008, After Agenda Item:

Approval of BZA Meeting Dates for 2009

Chairman Ribble noted that the approval of the BZA meeting dates for 2009 had been addressed at the beginning of the meeting.

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Mr. Hammack moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding the Geracimos vs. BZA case in Fairfax County Circuit Court, development conditions recommended by staff, and the subject of placing witnesses under oath, pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Byers seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 11:04 a.m. and reconvened at 11:11 a.m.


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

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

Minutes by: Paula A. McFarland

Approved on: March 18, 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 Tuesday, October 7, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ October 7, 2008, Scheduled case of:

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

Chairman Ribble noted that SPA 77-P-091-03 had been administratively moved to November 4, 2008, at the applicants' request.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:00 A.M. MITCHELL J. HANNON, SP 2008-SP-052 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 deck to remain 12.0 ft. from side lot line, to permit reduction of certain yard requirements to permit roofed deck 16.7 ft. from side lot line and to permit a fence greater than 4.0 ft. in height to remain in front yard. Located at 5802 Fitzhugh St. on approx. 22,836 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((4)) 22. (Deferred from 7/29/08 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.

Mitchell J. Hannon, 5802 Fitzhugh Street, Burke, Virginia, reaffirmed the affidavit.

Chris DeManche, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart said the paved area in the front appeared to be almost half of the front yard. Susan Langdon, Chief, Special Permit and Variance Branch, responded that the applicant should have calculated the amount, but she had no paperwork with those numbers.

Mr. Hannon introduced his wife, Renay, who presented the special permit request as outlined in the statement of justification submitted with the application.

Mr. Hart and Mr. Hannon discussed the gravel in the driveway area. Ms. Langdon noted that the 25 percent requirement in the Ordinance came into being in 2002 or 2003.

Chairman Ribble called for speakers.

Bob Neitz, 5808 Fitzhugh Street, Burke, Virginia, came forward to speak in support of the application.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2008-SP-052 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA****SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MITCHELL J. HANNON, SP 2008-SP-052 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 deck to remain 12.0 ft. from side lot line, to permit reduction of certain yard requirements to permit roofed deck 16.7 ft. from side lot line and to permit a fence greater than 4.0 ft. in height to remain in front yard. Located at 5802 Fitzhugh St. on approx. 22,836 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-2 ((4)) 22. (Deferred from 7/29/08 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 October 7, 2008;

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 criteria set forth in the statute and, in particular, that the non-compliance was done in good faith, or through no fault of the property owner.
3. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
4. It satisfies the remainder of that statute.

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

~ ~ ~ October 7, 2008, MITCHELL J. HANNON, SP 2008-SP-052, *continued from Page 154*

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 (2.0 feet in height), roofed deck (10.5 feet in height) and location and height of the existing fence to remain as shown on the plat prepared by Harold A. Logan Associates P.C. dated August 18, 2008, as submitted with this application and is not transferable to other land.
2. The decks shall comply with the current floodplain and Chesapeake Bay Ordinance requirements as determined necessary by the Department of Public Works and Environmental Services (DPWES). An exception for the decks shall be obtained, if necessary, from DPWES prior to approval of building permits.

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

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

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~ ~ ~ October 7, 2008, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISOR'S OWN MOTION, SP 2008-MA-079 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 15.5 ft. from the front lot line. Located at 4217 Evergreen La. on approx. 22,360 sq. ft. of land zoned R-5, HC and SC. Mason District. Tax Map 71-2 ((2)) 29. (In association with RZ 2008-MA-013)

Chairman Ribble noted that SP 2008-MA-079 had been administratively moved to November 4, 2008, at the applicant's request.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:00 A.M. DONALD J. MCCARTHY, SP 2007-MA-001 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 ft. with eave 7.5 ft. from side lot line and to permit an accessory dwelling unit. Located at 3915 Glenbrook Rd. on approx. 1.47 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((9)) 20A. (Admin. moved from 3/20/07, 5/1/07, 9/11/07, and 4/1/08 at appl. req.)

Chairman Ribble noted that SP 2007-MA-001 had been administratively moved to the April 7, 2009, at the applicant's request.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:00 A.M. MANUEL E. ORTIZ, SP 2008-MA-074 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 5.0 ft.

~ ~ ~ October 7, 2008, MANUEL E. ORTIZ, SP 2008-MA-074, *continued from Page 155*

from side lot line and 15.3 ft. from rear lot line. Located at 6400 Holyoke Dr. on approx. 6,928 sq. ft. of land zoned R-5. Mason District. Tax Map 72-1 ((22)) 6.

Chairman Ribble noted that SP 2008-MA-074 had been administratively moved to the October 28, 2008, for notices.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:00 A.M. STEVEN R. BROWER, SP 2008-BR-073 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 5301 Ravensworth Rd. on approx. 14,041 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((4)) (58) 19.

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.

Steven R. Brower, 5301 Ravensworth Road, Springfield, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Brower presented the special permit request as outlined in the statement of justification submitted with the application. He said that relocating the fence to the corner of the house would result in significant loss of use of the backyard, since this was a corner lot and the fence in question was located on what appeared to be the side of the house. He said it would cost a significant amount of money to relocate the fence. Mr. Brower pointed out the swimming pool in his backyard and said that a six-foot fence would provide additional security for the pool while providing him a level of personal and property security.

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

Mr. Byers moved to approve SP 2008-BR-073 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

STEVEN R. BROWER, SP 2008-BR-073 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 5301 Ravensworth Rd. on approx. 14,041 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((4)) (58) 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 October 7, 2008; 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 property consists of 14, 041 square feet of land.

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

~ ~ ~ October 7, 2008, STEVEN R. BROWER, SP 2008-BR-073, *continued from Page 156*

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 existing 6 foot high fence as shown on the plat prepared by Fitzroy J Bertrand, Suburban Development Engineering (SDE), Inc., dated April 2, 2008, signed June 3, 2008 submitted with this application and is not transferable to other land.

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

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

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~ ~ ~ October 7, 2008, Scheduled case of:

9:30 A.M. SOK C. REED, A 2008-MV-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a second dwelling unit on property in the R-4 in violation of Zoning Ordinance provisions. Located at 2500 Belleview Avenue on approx. 9,538 sq. ft. of land zoned R-4 and H-C. Mt. Vernon District. Tax Map 83-3 ((9)) (4) 17. (Admin. moved from 7/15/08 at appl. req.)

Chairman Ribble noted that A 2008-MV-018 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant had removed the second kitchen.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:30 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, LLC, A 2008-BR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that, according to the conditions specified in Special Permit Amendment SPA 81-A-022-8, the expiration date for the mausoleums and columbariums approved with SPA 81-A-022-4 and extended by SPA 81-A-022-5 shall continue to remain in effect. Located at 4401 Burke Station Rd. and 9900 and 9902 Braddock Rd. on approx. 127.04 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A.

Chairman Ribble noted that A 2008-BR-040 had been administratively moved to the January 13, 2009, at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant was filing an amendment to their special permit which would resolve the issues on appeal.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:30 A.M. SOHAIL CHEEMA, A 2008-MA-041 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and has erected accessory uses (fence and cement pad) on a vacant lot without a primary use on property in the

~ ~ ~ October 7, 2008, SOHAIL CHEEMA, A 2008-MA-041, *continued from Page 157*

R-2 District in violation of Zoning Ordinance provisions. Located at 5273 Canard St. on approx. 14,140 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 1.

Chairman Ribble noted that A 2008-BR-041 had been administratively moved to the October 21, 2008, at the appellant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was unable to attend the hearing.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:30 A.M. WASHINGTON D.C. SMSA D/B/A VERIZON WIRELESS, A 2008-MV-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that special exception approval for an existing electric substation would be required in conjunction with special exception approval to install a proposed monopole on property in the R-3 District. Located at 8229 Riverside Rd. on approx. 459 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 18A.

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.

Frank W. Sterns, 8010 Towers Crescent Drive, Suite 300, Vienna, Virginia, came forward and identified himself as the attorney representing Verizon Wireless.

Brian Parsons, Staff Coordinator, presented staff's position as set forth in the staff report. Subsequent to the appellant's application for a special exception in December of 2007, Zoning Evaluation Division staff referred the application to the Zoning Administrator to determine whether a special exception was required for the substation. Mr. Parsons said the Zoning Administrator had concluded that a special exception was required for the substation as a whole, in addition to the special exception that was required for the monopole since the substation was being intensified by the addition of a monopole to the lot.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that during her research for the case, she had found many similar cases where an additional use had been added to an existing special permit or special exception use, and the entire site had been brought into the application.

A discussion ensued between Mr. Smith, Mr. Parsons, and Lorrie Kirst, Deputy Zoning Administrator of the Ordinance Administration Branch, regarding lot size and setback requirements for a monopole and whether one or two special exceptions would be necessary on the property, with Ms. Kirst noting that only one would be required, but it would encompass both uses.

Mr. Hart and Ms. Kirst discussed the original approval of the special permit, noting that there was no limitation on the substation itself and the substation could expand its use as long as it remained a substation use.

Mr. Sterns presented the arguments forming the basis for the appeal. He said whether a monopole facility should or should not be approved on the site was not the issue. Mr. Sterns said the issue at hand was whether the Virginia Power substation would be violation of their permit by allowing a monopole to locate there. He said Sect. 2-514 clearly contemplated that a monopole will locate with other public utilities or other special permit or special exception uses, and it was to be encouraged because the Board liked to keep those types of uses together as long as they did not substantially violate any conditions of the existing permits.

In response to question from Mr. Hart, Mr. Sterns stated that he was not aware of any case law that would support his position. However, he said the Ordinance was written to allow multiple uses on the same site.

Mr. Hart and Mr. Sterns discussed whether by-right uses could locate on the property, with Mr. Sterns opining that they could if the property was large enough. He also stated that the addition of the telecommunication equipment would not change the use of the property.

~ ~ ~ October 7, 2008, WASHINGTON D.C. SMSA D/B/A VERIZON WIRELESS, A 2008-MV-042, *continued from Page 158*

Replying to a question from Mr. Smith, Ms. Kirst said that Sect. 2-514 was not applicable in this case, and, hypothetically, if the monopole were allowed by right, it would have to be in substantial conformance with the previous approval. She said it was staff's position that adding any additional use would change the prior approval.

Chairman Ribble called for speakers.

Russell Stumpe, 2003 Cool Spring Drive, Alexandria, Virginia, spoke in opposition to the proposed monopole.

Mr. Hammack, Mr. Smith, and Ms. Kirst discussed Category 1 uses, specifically restrictions when adding another distinct use to a site, and whether one or two special exceptions would be required.

Mr. Sterns noted that Sect. 8-014 did not mention anything prohibiting a new use, but talked about compatibility with the existing use and allowing it on a portion of the property. He said it said nothing about having to bring in the entire property.

In response to a question from Mr. Hammack, Mr. Sterns said there was nothing in the Ordinance that said a new use would trigger the requirement to bring in all special exceptions on the site.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said the question was relatively narrow, but he was not persuaded that the Zoning Administrator was plainly wrong. He stated that there was not much of a record from 1949, but the minutes were clear that what was being requested was for Lot 18, specifically all of Lot 18 in 1949, no more and no less. He said what was requested and approved was for a substation, not two uses, not multiple uses, just a substation on the whole lot in 1949. Mr. Hart said the Board gives great weight to consistent interpretations of the Ordinance over the years. He said the Board was given examples of approvals of other combination uses or a change to one of the uses over the years and was not given any authority stating to the contrary, that a judge had looked at this question and said either under this Ordinance or other similar ordinance in a different county, when you have a use already and you are adding a second use, that you are not coming back to amend the first use. Mr. Hart said he would look particularly at Sect. 8-004, Subsection 4(a)(3), which was addressed at some length in the staff report, and he adopted the rationale in the staff report.

Mr. Hart stated that the Zoning Administrator had flexibility to approve certain minor modifications that were consistent with the existing use or in substantial conformance with it. For instance, the 1965 building permit where transformers and other equipment were added was consistent with the Zoning Administrator's flexibility to take the existing use and allow that sort of change to it which did not really violate any of the conditions of the approval. He said it was really still a substation on the same lot, and nothing was being changed. Mr. Hart addressed one of the questions that Mr. Smith brought up about carving out 9,000 square feet of the 20,000 square feet and putting something else on it. He said he felt that would require an amendment to the 1949 approval for a reduction in area because the approval, as abbreviated as it was, was for Lot 18, not part of Lot 18, and maybe in their wisdom the Board decided that on a big enough lot like this, it was okay to put the substation on it even though it was in the middle of the neighborhood. Mr. Hart said there was some testimony about the setbacks that indicated they may have been looking at the entirety of the lot. However, he noted that it was hard to judge what the Board felt 60 years ago. Mr. Hart said the paperwork was not quite as fancy as it is now, but the approval was for one thing on one lot, no more and no less. He said that adding a second use to that mix was something new and different; it changed what was being approved in 1949. Going back to Sect. 8-004 and 483, he stated that this was not a minor modification, not something that the Zoning Administrator could approve, and was going to require a special exception all by itself for the telecommunications equipment. He said that because the proposal would be concentrating more things within the same area, it would not be in substantial conformance to add an additional use on the same lot that was not mentioned in 1949. For those reasons, he said he did not believe the Zoning Administrator was plainly wrong, the interpretation of the provision was correct, and the determination should be upheld.

Mr. Hammack seconded the motion, which carried by a vote of 6-1. Mr. Beard voted against the motion.

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~ ~ ~ October 7, 2008, Scheduled case of:

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

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was requesting a deferral. She recommended a deferral to the January 16, 2009 meeting.

Mr. Hart moved to defer A 2008-LE-011 to January 6, 2009, at 9:30 a.m., at the appellants' request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 7, 2008, Scheduled case of:

9:30 A.M. LEWIS MOORE, A 2007-LE-024 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and a junk yard on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4706 Eaton Pl. on approx. 12,750 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((17)) (D) 15. (Deferred from 10/2/07, 1/29/08, and 9/23/08 at appl. req.)

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.

Brian Parsons, Staff Coordinator, stated that the appellant previously requested that the Board dismiss the violation. He said staff was asking that the Board dismiss the appeal since the Zoning Inspector cleared the violation.

In response to Chairman Ribble's question, Lewis Moore, the appellant, stated that he had no objection to the dismissal.

Ms. Gibb moved to dismiss A 2007-LE-024. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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~ ~ ~ October 7, 2008, After Agenda Item:


Request for Additional Time  
Trustees for the Congregation Olam Tikvah, SPA 81-P-068-3

Mr. Beard moved to approve three months of additional time. Mr. Smith seconded the motion, which carried by a vote of 7-0. The new expiration date was December 2, 2008.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Suzanne L. Frazier

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

  
John F. Ribble III, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 21, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Tom 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.

~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M. JESSIE CRAWFORD, JR., SP 2008-LE-075 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 9.9 ft. from side lot line. Located at 5515 Dunsmore Rd. on approx. 12,280 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 41

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.

Jessie Crawford, Jr., 5515 Dunsmore Road, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Crawford presented the special permit request as outlined in the statement of justification submitted with the application. He said he wanted to convert the existing carport into a garage, with the footprint remaining the same.

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

Mr. Hammack moved to approve SP 2008-LE-075 for the reasons stated in the Resolution.

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## **COUNTY OF FAIRFAX, VIRGINIA**

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

JESSIE CRAWFORD, JR., SP 2008-LE-075 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 9.9 ft. from side lot line. Located at 5515 Dunsmore Rd. on approx. 12,280 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 41. 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 21, 2008; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the required standards set forth in that section of the Code, in particular that the non-compliance was done in good faith through no fault of the property owner.
3. Given that the extension has been there for such a long time, it would not be detrimental to the use and enjoyment of the property in the neighborhood.

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

~ ~ ~ October 21, 2008, JESSIE CRAWFORD, JR., SP 2008-LE-075, *continued from Page 161*

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

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

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

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

1. This special permit is approved for the location of an existing enclosed carport (garage) as shown on the plat prepared by L.S. Whitson, Sam Whitson Land Surveying, Inc., dated April 2, 2008, submitted with this application and is not transferable to other land.
2. Within six months of approval of this application, building permits and final inspections for the enclosed carport shall be obtained or the enclosed carport shall be removed or brought into compliance with Zoning Ordinance Requirements.

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

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

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~ ~ ~ October 21, 2008, Scheduled case of:

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

Chairman Ribble noted that SP 2008-LE-076 had been administratively moved to December 16, 2008, at 9:00 a.m., for notices.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M.       STEPHEN WILLIAM CRUTCHLEY, ANN CRUTCHLEY, SP 2008-SU-069 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 12020 Wayland St. on approx. 24,696 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 40. (Admin. moved from 9/30/08 at appl. req.)

Chairman Ribble noted that the applicants had requested a deferral to December 16, 2008.

Mr. Byers moved to defer SP 2008-SU-069 to December 16, 2008, at 9:00 a.m., at the applicants' request. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M.       ALANE A. FRASER, SP 2008-SU-077 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.7 ft. from side lot line such that side yards total 16.3 ft. Located at 15016 Tarleton Dr. on approx. 10,794 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (10) 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.

Arif Hodzic, the applicant's agent, 1003 Snapper Cove Lane, Pasadena, Maryland, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-SU-077, subject to the proposed development conditions.

Mr. Hodzic presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition would consist of a garage with additional living space above it. The garage would include an area for storage, and the existing tool shed would be removed. In response to a question from Mr. Hart, Mr. Hodzic said the applicant agreed with the development conditions and would provide additional plantings.

Mr. Hart moved to approve SP 2008-SU-077 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ALANE A. FRASER, SP 2008-SU-077 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 7.7 ft. from side lot line such that side yards total 16.3 ft. Located at 15016 Tarleton Dr. on approx. 10,794 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (10) 9. 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 21, 2008; 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, and the rationale in the staff report is adopted.

~ ~ ~ October 21, 2008, ALANE A. FRASER, SP 2008-SU-077, *continued from Page 163*

3. With the development conditions, there is not going to be any significant negative impact on anybody.
4. The Board has determined that the application meets all the standards set forth in the Standard Sect. 8-922 motion.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (1,160 square feet) of an addition, as shown on the plat prepared by Alexandria Surveys International, LLC, dated July 2, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,700 square feet existing + 4,050 square feet (150%) = 6,750 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. A minimum of five (5) evergreen trees, a minimum of six (6) feet in height at planting, shall be installed between the finished addition and the western lot line. These trees shall be planted a maximum of ten feet on center.

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

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

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

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~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M. ALBERTO & JUANA GONZALEZ, SP 2008-LE-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 4.0 ft. with eaves 3.2 ft. from rear lot line and 12.3 ft. from side lot line, accessory structure to remain 0.2 ft. from rear

~ ~ ~ October 21, 2008, ALBERTO & JUANA GONZALEZ, SP 2008-LE-078, *continued from Page 164*

lot line and 0.1 ft. from side lot line and reduction of certain yard requirements to permit construction of roofed deck 28.2 ft. from front lot line and second story addition 13.8 ft. and 14.8 ft. from side lot lines. Located at 6268 Wills St. on approx. 12,056 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 8.

Chairman Ribble noted that SP 2008-LE-078 had been administratively moved to December 2, 2008, at 9:00 a.m., for notices.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 previously approved for church with child care center, nursery school and private school of general education to permit increase in land area, building addition, site modifications and an increase in enrollment. Located at 3494 Paul St., 3538 Moncure Ave. and 5811 Hoffmans La. on approx. 1.74 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((30)) 22 and 61-4 ((39)) 6 and 61-4 ((1)) 112. (Admin. moved from 7/15/08 for ads.) (Admin. moved from 9/23/08 at appl. req.)

The applicant's agent was not present, and Chairman Ribble said SPA 90-M-036-02 would be addressed later in the meeting.

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~ ~ ~ October 21, 2008, Scheduled case of:

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

Chairman Ribble noted that A 2008-SP-043 had been administratively moved to January 27, 2009, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 21, 2008, After Agenda Item:

#### Approval of June 8, 2004 Minutes

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

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The meeting recessed at 9:18 a.m. and reconvened at 9:27 a.m.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:30 A.M. TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home business, which is operating on property in the R-12 District, is most similar to a School of Special Education and is, therefore, allowable under Zoning Ordinance provisions and that the property is in compliance with the limitations of the Home Occupation Permit. Located at 8134 Boss St. on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((43)) 22.

~ ~ ~ October 21, 2008, TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044, *continued from Page 165*

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant was working with the property owner to come to a mutual agreement and requested the hearing be deferred to November 18, 2008.

Ms. Gibb moved to defer A 2008-PR-044 to November 18, 2008, at 9:30 a.m., at the appellant's request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:30 A.M. GONZALO FLORES, A 2008-LE-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 4420 Roundhill Rd. on approx. 10,560 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((13)) 73.

Chairman Ribble noted that A 2008-LE-045 had been withdrawn.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:30 A.M. SOHAIL CHEEMA, A 2008-MA-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a storage yard and has erected accessory uses (fence and cement pad) on a vacant lot without a principal use on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 5273 Canard St. on approx. 14,140 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((7)) 1. (Admin. moved from 10/7/08 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.

Sukhwinder S. Ruprai, the appellant's architect, no address given, requested a deferral to allow time to prepare the appellant's position.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff did not support a deferral as one had been previously granted, and a number of remedies were available that could be quickly completed. She said there were people present to testify to the merits of the appeal, and staff was ready to go forward.

Getachew Tadesse, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated October 10, 2008. This was an appeal of a determination that the appellant had established a storage yard, erected a six-foot high stockade fence, and constructed a cement pad on vacant property which had no principal use. He said the appellant claimed that the property was used as a parking lot prior to his purchase and continuing the use should be permitted, but staff could not find evidence that the use was ever legally established. The fence was an accessory use not permitted without a principal use, and because the property failed to meet the definition of a reverse frontage lot, erecting a fence was not permitted. Mr. Tadesse said the appellant maintained that no Zoning Ordinance provision was cited by staff that prohibited the cement pad, but the two accessory structures, the cement pad and the fence, were separate accessory structures, and all provisions cited regarding accessory uses applied to the cement pad as well as to the fence.

Discussions ensued regarding the 2,500-square-foot land disturbance, the means by which the appellant could obtain a permit to keep the fence and storage yard, how a home occupancy permit is obtained, a boundary adjustment having no relationship to the home occupancy permit, development conditions, the

~ ~ ~ October 21, 2008, SOHAIL CHEEMA, A 2008-MA-041, *continued from Page 166*

house location plat, the subject property's current lot lines, parking provisions, accessory services, and the filing of a building plan and requirement for a grading plan.

Mr. Ruprai said the pad area was already paved, and he did not know when that occurred, but there was no land disturbance. He said staff had informed him under what circumstances a permit was required for a fence, and the appellant was in the process of combining the lots and attaining the necessary permits. Mr. Ruprai said more time was needed to resolve the situation. He said the property was not a junkyard, and although perhaps not legal to park there, the limousines were attractive.

Discussions ensued regarding the violation notification process, the parking of the limousines on the property, and fence heights.

In response to a question from Mr. Hammack concerning the amount of time needed for the appellant to come into compliance, Jim Ciampini, Zoning Enforcement Inspector, said it was his opinion that the appellant had sufficient time to resolve the issue. He said he had explained exactly what needed to be done, and no paperwork had been filed. Mr. Ciampini said it would take only a few hours to remove the 12 cars currently parked on the site, and the violation would be cleared. He said 30 days would be sufficient time to file the paperwork and clear the violations.

Chairman Ribble called for speakers.

The following speakers came forward to speak in opposition to the appeal: Grail Harte, 5106 Colebrook Place, Alexandria, Virginia; Jim Kolb, 5247 Canard Street, Alexandria, Virginia; George Harte, 5106 Colebrook Place, Alexandria, Virginia, and Priscilla Glasow, 6518 Spring Valley Drive, Alexandria, Virginia. They voiced concerns regarding businesses encroaching into residential areas, the fence, sight distance issues, and the size of the paved parking area.

Mr. Tadesse said past aerial photographs showed the area to be a vacant lot, and it was not true the subject property was a parking lot for the past seven years.

In his rebuttal, Mr. Ruprai pointed out the presence of several nearby gas stations. He said the aerial photographs were misleading. A family could easily have at least three cars per household, and to run the limousines business, cars came and went at different times, which accounted for there being more than one vehicle on the lot. He said that at one time there were Virginia Department of Transportation vehicles parked there with no neighbors objecting. Mr. Ruprai responded to questions from Ms. Gibb and Mr. Hart concerning the parking pad, its use and compliance with Zoning Ordinance requirements, one commercial vehicle being allowed at the appellant's home, and the appellant's home and business addresses.

Sohail Cheeman, 5271 Canard Street, Alexandria, Virginia, came forward to speak. He said 5278 Kessler Crossing Drive was his former home/business, and he continued to use it as a business address until renovations to the Canard house were completed. Mr. Cheeman said it took time for the phone and street address to be updated in the telephone directory and on the WEB, and he had obtained a business license for the Canard address.

Chairman Ribble closed the public hearing.

At Ms. Gibb's request, Mr. Ciampini explained the enforcement process if the violations were not cleared. He said the fence, the concrete pad, and the parked cars were the three issues.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She said the appellant had acknowledged that many more than one limousine was parked on Lot 1, and consistent with the staff report, the appellant had established a storage yard. She said the appellant did not contest that the fence was six feet high, there was a cement pad, and there was no principal use in an R-2 District. Ms. Gibb noted that the Board had heard how the appellant could bring the property into compliance. Mr. Beard seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ October 21, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 previously approved for church with child care center, nursery school and private school of general education to permit increase in land area, building addition, site modifications and an increase in enrollment. Located at 3494 Paul St., 3538 Moncure Ave. and 5811 Hoffmans La. on approx. 1.74 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((30)) 22 and 61-4 ((39)) 6 and 61-4 ((1)) 112. (Admin. moved from 7/15/08 for ads.) (Admin. moved from 9/23/08 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.

Arlene L. Pripeton, the applicant's agent, Arlene Lyles Pripeton, P.C., 10195 Main Street, Suite B, Fairfax, Virginia, reaffirmed the affidavit.

Susan C. Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. In the original staff report dated July 8, 2008, staff recommended denial based on Comprehensive Plan language that infill development in this area should be of a compatible use, type, and intensity, and in accordance with the guidance provided by the Policy Plan. Ms. Langdon said a child care center at the proposed intensity of 125 students directly adjacent to single-family detached dwellings should have full screening provided, on-site parking, and sound attenuation, which the application did not originally provide. The location of the child care center on Lot 22 intruded into the existing neighborhood in an area where at least one new house had been constructed. She said the Environmental and Urban Forrest Management analyses stated that there was desirable mature vegetation that should be preserved on the site. Under the plan originally submitted by the applicant, there was no opportunity to do so.

Ms. Langdon said the applicant subsequently submitted a revised statement and special permit plat. The revised plat depicted several significant changes on Lot 22. The building for the child care center was redesigned so that full transitional screening was provided along the southwestern and northwestern lot lines adjacent to the closest single-family properties. A brick wall was now provided around the perimeter of the playground, which provided noise attenuation when the children would be outside playing. Several existing trees, including a 24-inch oak, were shown to be preserved along the southwestern lot line, and landscaping was added along the northwestern lot line. The changes addressed staff's concerns about the intensity and intrusion into the surrounding neighborhood, and full transitional screening along with the preservation of several significant trees provided a better buffer for surrounding single-family homes. Full transitional screening had not been provided along the northeastern lot line, but vegetation had been added to that area. The closest single-family dwelling was across Moncure Avenue, not directly adjacent to the center. The addition of vegetation there would increase screening of the building and cars in the parking lot.

Ms. Langdon said the applicant had clarified the request concerning the use of the parsonage and stated that the use proposed was for a dwelling with a home office for the assistant pastor, not for use as an office related to the church or for counseling. The applicant had indicated that the gate between the church and the dwelling on Lot 6 would be kept closed except when in use by the assistant pastor because neighbors had indicated the opened gate was used as a cut-through by people living outside the neighborhood. Ms. Langdon said a development condition had been added requiring the gate to be kept locked. Staff recommended approval of SPA 90-M-036-02, subject to the revised proposed development conditions distributed at the meeting. Ms. Langdon said the changes to the conditions were highlighted in Conditions 17, 20, and 21.

Discussion ensued regarding Development Condition 20, parking, direction of traffic flow, possible traffic backups onto Moncure Avenue, the parsonage, and calculation of the floor area ratio.

Ms. Pripeton presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the parsonage for the assistant pastor would never be used as a childcare center or anything else. She gave a brief history of the church, described the proposed new development, and said there were several letters received supporting the project. Ms. Pripeton explained how the applicant would meet the required transitional screening provision as well as addressing the situation across Moncure Avenue. She described the church's activities, proposed parking, and traffic flow



~ ~ ~ October 21, 2008, TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02, *continued from Page 168*

directions, noting that the Department of Transportation (DOT) had no problem with the proposed drop-off and pick-up plan. Ms. Pripeton requested a 10-foot waiver right onto Moncure Avenue, stating they would put in additional vegetation there. She said they were not asking for any other modifications that were not previously approved.

Ms. Pripeton addressed questions from Mr. Hart concerning the playground's design, clarification of Development Condition 20 with respect to scheduled services, and day and times of parent conferences. She responded to questions from Mr. Smith regarding the letters in support and opposition and the height of the brick wall.

Chairman Ribble called for speakers.

Ms. Pripeton stated that there were people present in support, but it was not necessary for each to give testimony, and at Chairman Ribble's request, they stood up to be recognized.

The following speakers came forward to speak in opposition to the application: Junne Liou, 3493 Paul Street, Alexandria, Virginia; Ezel Alveranga, 3492 Paul Street, Alexandria, Virginia; and Marco Johnson, President of Sunset Manor Civic Association, 3495 Paul Street, Alexandria, Virginia. They voiced concerns regarding the danger of the church generated traffic on the narrow residential streets, unauthorized use of the gate by cut-through traffic, the signage posted for the public hearing, the uses of each building, the areas slated for development clearly being visible to the residential neighbors, and the screening the brick wall would provide. A development condition was requested stipulating that if the Paul Street property was included in the application, all uses except the parsonage were prohibited.

In her rebuttal, Ms. Pripeton said the revised development conditions addressed the citizens' concerns. She described the parsonage and its use, the provision of transitional screening on Moncure Street, and other proposed screening and buffering. She explained the process of posting signage for the public hearing and the notices sent to the required landowners. Ms. Pripeton stated that the gate being used by cut-through traffic would be locked.

Ms. Langdon responded to questions from Mr. Beard regarding staff's justification in changing its recommendation, the increase in attendees and resultant traffic generated, and the fact that DOT had no issues with the proposal after the matter of the crosswalk was decided.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SPA 90-M-036-02 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Byers suggested an amendment to clarify the restrictions of Development Condition 20.

Mr. Beard stated that he would reluctantly support the motion, although he continued to find the traffic to be an issue. He said he found it troubling the way the Paul Street property was encompassed into the other parcels.

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## COUNTY OF FAIRFAX, VIRGINIA

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

TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 previously approved for church with child care center, nursery school and private school of general education to permit increase in land area, building addition, site modifications and an increase in enrollment. Located at 3494 Paul St., 3538 Moncure Ave. and 5811 Hoffmans La. on approx. 1.74 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((30)) 22 and 61-4 ((39)) 6 and 61-4 ((1)) 112. (Admin. moved from 7/15/08 for ads.) (Admin. moved from 9/23/08 at appl. req.) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

~ ~ ~ October 21, 2008, TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02, *continued from Page 169*

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 and HC.
3. The area of the combined property is 1.74 acres.
4. The applicant has done a good job working with the citizens, listening to concerns and addressing the concerns that they could.
5. In response to citizen concerns, changes were made to the redesign of the child care center, which allowed for addition transitional screening, the brick wall, the saving of a number of existing trees, and landscaping along the northeastern lot line, which resulted in much of the support that the applicant received.

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, Crossroads Baptist Church, and is not transferable without further action of this Board, and is for the locations, 3494 Paul Street, 3538 Moncure Avenue and 5811 Hoffmans Lane, indicated on the application and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce and Associates, Ltd. dated October 30, 2007 revised through September 24, 2008 and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon obtaining a Non-RUP for the Child Care Center building on Lot 22, the total maximum daily enrollment for the child care center and private school of general education shall be 150 children, 25 of which will be students of the private school of general education, as qualified by Condition Number 7.
6. The maximum number of seats in the church shall not exceed 232, as qualified by Condition 7.
7. If a shared parking agreement or parking reduction is approved by the Department of Public Works and Environmental Services (DPWES) the number of parking spaces provided shall be 73. All parking shall be on site as shown on the special permit plat. If a shared parking agreement or parking reduction is not approved by DPWES, the number of seats in the sanctuary and/or the

~ ~ ~ October 21, 2008, TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02, *continued from Page 170*

number of students in the child care center/school must be reduced to correspond to a number that can be supported by the parking spaces provided on site as determined by DPWES. No buses shall be parked or stored on the site.

8. The hours of operation for the child care center shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday. The hours of operation for the private school of general education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.
9. Until such time as a Non-RUP for the new child care center on Lot 22 is issued, the maximum number of children permitted in the outdoor recreational area at any one time shall be thirty (30). The outdoor recreational area of 9,000 square feet as shown on the special permit plat shall be provided. This area shall be enclosed with a six (6) foot high solid board-on-board fence on the southeastern side of the playground. The portable fence with a minimum of three (3) feet high shall be utilized any time children are present in the play area. This fence shall not block any accessible parking spaces or ramps. In addition to the play area outlined above, the applicant shall use the additional play areas as outlined in their statement of justification. These play areas shall consist of the three (3) playgrounds located on the Oakview Garden Apartment property and the Bailey's Crossroads Recreation Center. If the play areas at the Oakview Garden Apartments and/or the Recreation Center are not available, then the child care center and school use shall be null and void.

Following issuance of a Non-RUP for the child care center on Lot 22, the only recreation area in use shall be the first floor level recreation space as shown on the approved special permit amendment plat.

10. All existing vegetation around the periphery of the site of the existing church on Lot 112, shall be maintained and supplemented as deemed necessary by the Urban Forest Management Branch to provide screening to adjacent residential properties. This landscaping shall be deemed to satisfy the transitional screening requirements along the property lines on Lot 112. Dead or dying plant material shall be replaced to maintain the transitional screening. The foundation plantings around the structure which are designed to soften the visual appearance of the structure shall be maintained and any dead or dying planting shall be replaced with Dogwoods, Silverbells, Magnolias and Crab apple to the satisfaction of the Urban Forest Management Branch.
11. Barrier F (brick wall) shall be provided along a portion of the northern lot line and a board-on-board fence shall be provided along a portion of the northern lot line, the eastern lot line and a portion of the southern lot line as depicted on the plat. The barrier requirement shall be waived along the rest of the lot lines of the existing church on Lot 112.
12. All outdoor lighting fixtures used to illuminate the parking area shall not exceed 12 feet in height and shall be of such design and so located and oriented as not to produce glare or cause illumination in excess of 0.5 foot candles on the adjacent existing residential uses. No outdoor area shall be lighted at any time other than when necessary due to evening functions or other special events. Any new 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. Any new outdoor lighting fixtures shall not exceed twelve (12) feet in height, measured from the ground to the highest point of the fixture, shall be of low intensity design and shall utilize full cut-off fixtures which focus directly on the subject property.
13. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.
14. Stormwater detention shall be provided as determined as necessary by the Department of Public Works and Environmental Services (DPWES). If underground detention is used, the tanks shall be locked and secured such that children in the area are unable to enter the detention facility.
15. Prior to site plan approval, detailed plant schedule with specifications for all landscape plantings shall be provided to the satisfaction of Urban Forest Management, DPWES. In order to contribute to

~ ~ ~ October 21, 2008, TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036-02, *continued from Page 171*

- maintaining water quality and providing native plant material for wildlife, native shrubs and groundcover shall be provided around the buildings and along portions of the parking lot as determined by DPWES.
16. Full transitional screening shall be provided along the southwestern and northwestern lot lines on Lot 22. Number, size and variety of the plant material shall be determined in consultation with Urban Forest Management (UFM), DPWES.
  17. Interior Parking lot landscaping on Lot 112 shall be provided and maintained in accordance with Article 13.
  18. A tree preservation plan shall be submitted to Urban Forest Management for review and approval at the time of site plan review. This plan shall designate the limits of clearing to preserve the trees shown to be saved along the southwestern lot line of Lot 22 as determined feasible by UFM. Prior to any land disturbing activities, a pre-construction conference shall be held on-site between DPWES, including the Urban Forester and representatives of the applicant and the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, tree protection measures, and erosion and sedimentation controls to be implemented during construction.
  19. Prior to site plan approval, it shall be demonstrated to the satisfaction of DPWES that adequate outfall can and shall be provided in accordance with the PFM.
  20. There shall be no child care center activities on Lot 22 or school of general education activities on Sundays or concurrent with any other evening church services. This condition does not preclude the use of the facility as a nursery during either weekday or weekend services.
  21. The administrators of the child care center and school shall designate a carpool coordinator to administer and encourage participation in a carpool program designed to reduce the number of vehicle trips to and from the school during rush hour periods.
  22. Lot 6 shall be used for a parsonage and home office for the pastor/assistant pastor and related family, and will not be used for day-care or other church activities. The gate located in the wall between Lot 112 (the church) and Lot 6 (the parsonage) shall be locked except when in use by the pastor/assistant pastor and related family.

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

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

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

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~ ~ ~ October 21, 2008, Scheduled case of:

- 9:30 A.M. ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a contractor's office and shop, has erected a trailer and accessory storage structures, and is permitting outdoor storage on property in the I-3 District without site plan approval, Building Permit approval, nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13. (Reconsideration granted on 7/29/08) (Deferred from 9/30/08)
- 9:30 A.M. JAMES G. MILLER TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established and is allowing the operation of contractors offices and shops, the erection of a trailer and accessory storage structures, and outdoor storage on property in the I-3 District without site plan approval, Building Permit approval nor a valid Non-Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 3720 Stonecroft Bv. on approx. 2.62 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-2 ((2)) 13. (Reconsideration granted on 7/29/08) (Deferred from 9/30/08)

Chairman Ribble noted that a reconsideration of the Board's previous decision had been granted on July 29, 2008, and referenced a letter from W. McCauley Arnold, McCandlish & Lillard, 11350 Random Hills Road, Suite 50, Fairfax, Virginia, addressing the reconsideration and whether or not it was proper. He asked whether Mr. Arnold wanted to speak to the issue raised in his letter. Mr. Arnold, appearing on behalf of J. G. Miller, said he would withdraw his objection regarding the timely disposition of the reconsideration request as he had been under the mistaken impression the Board had met on July 22nd, which it did not, and had not taken up the reconsideration request at the next meeting as is required under *Robert's Rules of Order*.

Doug Hansen, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the memorandum dated October 10, 2008. In a Notice of Violation dated March 11, 2008, to the appellants, James G. Miller, Trustees for James G. Miller Revocable Trust; J. G. Miller, Inc.; and Atlantic Construction Fabrics, Inc.; a determination was made that the appellants were allowing the operation of a contractor's offices and shops, which was not permitted in the I-3 District, and had allowed for the erection of trailers and accessory storage structures on the property without site plan approval, building permit approvals, and valid non-residential use permits. Mr. Hansen said that at the July 15, 2008 hearing, the Board upheld all elements of the notice of violation with the exception of the definition of a contractor's offices and shops as it applied to the activities and uses taking place on the subject property. A reconsideration was requested as it was the Zoning Administrator's position that the use determination of the subject property for a contractor's offices and shops as outlined in the notice of violation was correct. The former farmhouse and certain trailers on the subject property were being used by James G. Miller, Inc., as offices, and the Quonset style hut was being used as a shop to service the contractor's equipment. Mr. Hansen said James G. Miller, Inc., stored construction equipment on the site, materials for building, highway, and sewage projects, and had an additional garage for storage on the subject property. At the previous public hearing, it was also established that Atlantic Construction Fabrics, Inc., had an office trailer on the subject property and a large storage yard for materials they provide to off-site customers. Mr. Hansen said those were not conditions indicative of merely an office use, and storage of materials and equipment encompassed a much larger area of the property than the offices themselves. He said staff believed the combination of the offices, shop, and storage by the appellants constituted a contractor's offices and shops. In staff's October 10, 2008 memorandum, additional documentation was provided showing consistent interpretation of the Zoning Administrator pertaining to a variety of business uses where although such uses were not listed specifically in the Zoning Ordinance definition of contractor's offices and shops, they had been deemed most similar to the use category of a contractor's offices and shops. Mr. Hansen said that in such cases where a particular use was not defined in the Zoning Ordinance, the Zoning Administrator was given authority by the Zoning Ordinance to assign a use having the most similar characteristics as the use in question.

Discussions ensued regarding what transpired at the previous hearing, the Zoning Administrator's position as expressed in the reconsideration request, whether the specific types of construction trades or service activities enumerated in the definition of contractor's office and shops were broad enough to include the appellants' heavy construction operation, the rationale for why the Zoning Administrator determined contractor's office and shops was the most similar use to the appellants' road building operations, other

~ ~ ~ October 21, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 173*

appeals involving similar determinations, J. G. Miller being listed as a Class A contractor with the Virginia Department of Professional and Occupational Regulation, and the definition of a Class A contractor.

Mr. Arnold said his client objected to the reconsideration because it was questionable whether or not it was authorized by the Code of Virginia and the Zoning Ordinance. He explained the daily activities on the site. He acknowledged that there was some outside storage, but said that was not an issue because outside storage was not cited in the zoning violation that was before the Board. He stated that the uses had been there for 28 and 24 years, and there had been a request over 10 years ago for a rezoning that was not pursued, but indicated the County was aware of the use and until recently chose not to issue any zoning violations. Mr. Arnold said that staff's position was that the appellant should come into compliance with the Ordinance before site plan approval, but they were unable to obtain building permits until the site plan was approved, and without the building permits, no occupancy permit would be issued. He said a determination that these were office uses would allow them to pursue site plan approval, and an engineering firm had been engaged at great expense to prepare the site plan. Additional steps had been taken to clean up the site, and a plan amendment was instituted requesting the Planning Commission change the Comprehensive Plan to allow a rezoning to an I-5 or I-6 category, which required notice to over 80 landowners. Mr. Arnold said it was a long process, but they had taken the steps they were able to so far. He noted that the issues had arisen as a result of a complaint regarding adjacent property, not the subject property, and described the surrounding properties used by the Virginia Department of Transportation to store sand and salt for roads and a property used for the training of firemen and policemen with noise from gunshots. He said the property was located in airport noise overlay districts, and there were no residences in the area. Mr. Arnold said it would not be a good decision to put the companies out of business, resulting in their employees being put out of work and the loss of the County's stream of revenue from business occupancy use taxes paid by the appellants. He asked the Board to determine that both uses were office uses, confirm the decision the Board already made, or allow the matter to be continued indefinitely to allow the appellants to pursue the rezoning and site plan to come into compliance with the County requirements.

Discussion ensued regarding the circumstances under which the violations were discovered and the notice of violation issued.

Joseph Jackson, 8270 Greensboro Drive, McLean, Virginia, agent for Atlantic Construction Fabrics, Inc., came forward to speak. He said his client agreed with everything said by Mr. Arnold and would incorporate his arguments on their behalf as well.

Discussion ensued regarding the Board's by-laws providing for a reconsideration process, the deadline to appeal the Board's decision to the court, and two appeals to the court being filed as a result of a reconsideration being granted.

At Mr. Hammack's request, Mr. Hansen quoted the definition in the Zoning Ordinance of an office.

In response to a question from Mr. Hammack as to under which category a large contractor fell, Mr. Arnold said it did not clearly fall under any category, but the definition read by Mr. Hansen was closer to the use on the subject property than the definition of a contractor's office in the Zoning Ordinance, and he explained why he believed that was the case.

Discussion ensued regarding staff's position on and understanding of Mr. Arnold's application and justification of the definitions. Mr. Hansen said it was the Zoning Administrator's prerogative to make the decision as to what use most clearly aligned to which definition, and the preponderance of evidence showed the appellants' business more weighted towards contractor's offices and shops than just office. Mr. Arnold noted that the issue of stored materials was not one before the Board because it was not part of the zoning violation.

Discussion ensued regarding the notice of violation, definition of a storage yard, and the Board's action taken on July 15, 2008.

Chairman Ribble closed the public hearing.

~ ~ ~ October 21, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 174*

Mr. Hart moved to uphold the determination of the Zoning Administrator. He said he made the motion the first time, and he had carved out of it the question of what the use was. He said he thought he had indicated in the questions what would happen next if the Board had concluded that the use did not fit the definition of contractor's office and shops. Mr. Hart said that based on the information in the Zoning Administrator's supplemental memorandum and his review of two more provisions in the Ordinance, which he thought the Board did not previously have, one could link up the Zoning Administrator's conclusion with the facts of the case. He said it was a close call in some respects as to what exactly this was, and the definition of contractor's office and shops seemed somewhat narrower than it ought to be in 2008. It would be clearer if the definition said things like establishments for grading and installations of roads, walkways, parking lots, and stormwater management, and companies with bulldozers and things like that.

Mr. Hart said it was his view, looking at Sect. 2-302, Subsections 1 and 2, that the Board was given a roadmap as to what to do if a use does not quite fit the definition, but it would be more helpful if the Board had some court cases where a judge had tried to explain the second sentence of Subsection 1. Even without that guidance, it tells them that if there was not a particular use listed in the Ordinance that corresponded with the use in question, it shall be interpreted that the use having the most similar characteristics as the use in question shall govern, and that if it was uncertain, the question was directed to the Zoning Administrator. Mr. Hart said that a tie basically goes to the Zoning Administrator in a situation like that. He said that Subsection 2 answered Mr. Hammack's question regarding whether this was an office, and it said notwithstanding that a given use might be construed to qualify as a use permitted in a district, as in this case an office, if such use has characteristics more similar to a particular use listed or defined elsewhere in the Ordinance, than it shall be interpreted that the latter listing or definition shall govern.

Mr. Hart said that even if the violation did not reference outdoor storage, the Board was empowered to look at the photographs of the site to determine what the characteristics of the use were. Based on the record before the Board, which included photographs of the operation, a lot of vehicles coming and going, and materials stockpiled on the site, some of which the appellants would be installing, he said he thought it was a reasonable conclusion that those kinds of attributes of the operation were more similar to contractor's office and shop than the plain definition of office for an accountant, real estate agent, or a massage therapist, which would be a more internalized quiet thing rather than a more wide ranging operation with pallets of materials stocked up, vehicles, and equipment.

Mr. Hart said the Board had not been shown that the Zoning Administrator's conclusion was plainly wrong. Where there was a history of prior interpretations reaching a certain conclusion, great weight was to be given to what the Zoning Administrator had interpreted in the past. On the record before the Board, even though this may be a close call as to what the use exactly was, given the guidance in the Ordinance, Mr. Hart said it was clear that the Zoning Administrator had discretion, and the Board had also been given guidance of past interpretations of other uses that did not quite fit the definition.

Mr. Hart said that with respect to the procedural issue regarding the reconsideration process, he thought in general the Board had the power to adopt procedures as to how meetings and public hearings were to be conducted, and the Board had not had any authority tell them their by-laws were improper. He said that absent some showing to them that they did not have the power to adopt by-laws, which would provide for a specific mechanism for reconsideration, or adopt some other procedural handbook like Robert's Rules of Order, which the Board had adopted, there were procedures within those books for making and tabling motions, amending them, voting on them, reconsiderations, and all those things by which deliberative bodies conduct their business. Mr. Hart said that if the Board could not do a motion for reconsideration, either in accordance with the by-laws or with Robert's Rules, it would be very difficult for the board to make decisions on certain types of cases. He said he would conclude that the Board was properly within its authority to follow the by-laws and do a reconsideration at the next meeting, and if properly requested in writing, which was what the Zoning Administrator had done, that aspect also being proper, the Board was empowered to do the reconsideration.

Ms. Gibb seconded the motion.

Mr. Hammack indicated he would support the motion. He said he agreed with the rationale set forth by Mr. Hart. He said he also agreed with Mr. Hart on the use of the by-laws, and the Board had advice of counsel in

~ ~ ~ October 21, 2008, ATLANTIC CONSTRUCTION FABRICS, INC., A 2008-SU-016 and JAMES G. MILLER, TRUSTEE FOR JAMES G. MILLER REVOCABLE TRUST, J.G. MILLER, INC., ATLANTIC CONSTRUCTION FABRICS, A 2008-SU-017, *continued from Page 175*

that regard and were assured that the present by-laws were in compliance with the Code. He said he thought the Board was within its right to follow them as long as appellants and people who appeared before them followed the by-laws.

Mr. Beard said he was torn by the case, especially because there was no complaint and he did not think the appellants were hurting anyone. He said Mr. Arnold made some compelling points, such as that they were in the proximity of the airport, the financial situation of the County, and the trend that the County seemed to be pushing businesses like this out of the County. Mr. Beard that although he was sympathetic, he could not get there within the Code interpretations, the latitude that is given the Zoning Administrator, and all the complexities of the case, so he would support the motion.

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


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Chairman Ribble said he would like to recognize a former Board member, Jim Pammel, who was present in the audience. He said it was good to see him present, and he invited Mr. Pammel to get together with the Board members after the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

Minutes by: Paula A. McFarland

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals



The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 28, 2008. 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.

~ ~ ~ October 28, 2008, Scheduled case of:

9:00 A.M. YK & KP CORP. T/A ARA RESTAURANT, SP 2008-MA-080 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial recreation use (karaoke). Located at 7137D Little River Tnpk. on approx. 36,500 sq. ft. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((1)) 116F.

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.

Keith Martin, 8270 Greensboro Drive, Suite 810, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

Chris DeManche, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MA-080, subject to the proposed development conditions.

In response to a question from Mr. Hart, Mr. DeManche stated that only six bar stools were permitted in each karaoke room regardless of how many were delineated on the site plan.

Mr. Beard and Mr. DeManche discussed the parking space requirements for the restaurant, with the calculations based upon the number of seats and bar stools.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the seventh bar stool would be removed in accordance with the development conditions. Mr. Martin noted that the owners had invested \$500,000 to construct the seven private karaoke rooms, but did not know until the final inspection that they needed a special permit to operate them. He stated his agreement with the development conditions and said there was no known opposition to the application.

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

Mr. Hammack moved to approve SP 2008-MA-080 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

YK & KP CORP. T/A ARA RESTAURANT, SP 2008-MA-080 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a commercial recreation use (karaoke). Located at 7137D Little River Tnpk. on approx. 36,500 sq. ft. of land zoned C-6, CRD, HC and SC. Mason District. Tax Map 71-1 ((1)) 116F. 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 28, 2008; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 7137 D Little River Turnpike, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s), and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips Inc. dated July 14, 2008, revised through October 9, 2008 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. Prior to the issuance of a Non-RUP for the Commercial Recreation Use (karaoke) the applicant shall obtain approval from the Board of Supervisors for a 20% parking reduction in accordance with Section A7-109 of the Zoning Ordinance. If the approval of a parking reduction is not obtained, the number of seats in the restaurant and/or the number of karaoke rooms shall be reduced to meet the parking requirements of the site as determined by DPWES.
6. The Commercial Recreation Use (karaoke) is limited to a maximum of seven rooms totaling 871 square feet in area as delineated on floor plan "A-1" prepared by MKK Architects, dated November 20, 2006, included as Attachment 1, notwithstanding that the maximum number of barstools shall be 6.
7. The maximum number of seats at restaurant tables shall be 50, and the maximum number of bar stools shall be 6 as noted on the special permit plat.
8. No further additions or expansion to the karaoke rooms or eating establishment shall be permitted without approval of an amendment to the special permit.
9. Any signage erected on the building shall be of a size and materials which are compatible with existing signage for the project site as determined by DPZ, and shall be subject to the requirements of Article 12 of the Zoning Ordinance.

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

~ ~ ~ October 28, 2008, YK & KP CORP. T/A ARA RESTAURANT, SP 2008-MA-080, *continued from*  
*Page 178*

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

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

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~ ~ ~ October 28, 2008, Scheduled case of:

9:00 A.M.        GEORGE R. LASNIER & WENDY L. KING, SP 2008-DR-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.1 ft. from rear lot line. Located at 1464 Pathfinder La. on approx. 11,174 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (8) 305.

Chairman Ribble noted that SP 2008-DR-082 had been administratively moved to December 2, 2008, at 9:00 a.m., at the applicant's request.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the application had subsequently been indefinitely deferred.

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~ ~ ~ October 28, 2008, Scheduled case of:

9:00 A.M.        MANUEL E. ORTIZ, SP 2008-MA-074 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 5.0 ft. from side lot line and 15.3 ft. from rear lot line. Located at 6400 Holyoke Drive on approx. 6,928 sq. ft. of land zoned R-5. Mason District. Tax Map 72-1 ((22)) 6. (Admin moved from 10/7/08 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.

Steven Ortiz, 6400 Holyoke Drive, Annandale, Virginia, the applicant's agent, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommends approval of SP 2008-MA-074, subject to the proposed development conditions.

Mr. Ortiz presented the special permit request as outlined in the statement of justification submitted with the application. He said the proposed location of the shed was the best option considering the shape and topography of the lot and the easement running through the property.

Mr. Hammack and Mr. Ortiz discussed the intended use of the shed, with Mr. Ortiz noting that his father was involved in drag racing, so he might occasionally use a drill in the shed, but not noisy power tools. Mr. Ortiz said that his father's car was housed in a trailer, and no vehicle would be located in the shed.

In response to a question from Mr. Hart, Mr. Ortiz said that the shed was a kit and did not contain a garage door, but the window could be placed wherever the owner wished.

Mr. Hart and Ms. Hedrick discussed proposed screening for the shed, with Ms. Hedrick noting the prior trees on the site had been damaged in a storm.

~ ~ ~ October 28, 2008, MANUEL E. ORTIZ, SP 2008-MA-074, *continued from Page 179*

Mr. Hammack and Mr. Ortiz talked about the previous shed on the site that had been damaged during a storm. Mr. Ortiz noted that the prior shed was about half the size of the proposed shed and did not have electricity.

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

Mr. Byers moved to approve SP 2008-MA-074 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

MANUEL E. ORTIZ, SP 2008-MA-074 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 5.0 ft. from side lot line and 15.3 ft. from rear lot line. Located at 6400 Holyoke Dr. on approx. 6,928 sq. ft. of land zoned R-5. Mason District. Tax Map 72-1 ((22)) 6. (Admin moved from 10/7/08 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 October 28, 2008; 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 Section 8-922 of the Zoning Ordinance.
3. Staff recommends approval and the Board adopts the rationale of the staff.

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

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

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

2. This special permit is approved for the location and size (approximately 294 square feet) of the proposed accessory structure, as shown on the plat prepared by Land Surveying Services, dated April 2, 2008 as revised through August 25, 2008, submitted with this application and is not transferable to other land.
3. All applicable permits shall be obtained prior to construction of the accessory structure.
4. The accessory structure shall be architectural compatible with the existing dwelling on site, as depicted on Attachment 1.
5. The applicant shall remove the concrete pad, as depicted on the plat, so that it is outside the area of the storm drainage easement.
6. Evergreen and/or deciduous trees, a minimum of six feet in height at time of planting, shall be planted between the finished accessory structure and the side lot line and between the rear of the structure and the storm drainage easement. The trees shall be planted a maximum of ten feet on center.

~ ~ ~ October 28, 2008, MANUEL E. ORTIZ, SP 2008-MA-074, *continued from Page 180*

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 6-1. Mr. Hammack voted against the motion.

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~ ~ ~ October 28, 2008, Scheduled case of:

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

Chairman Ribble noted that SP 2007-DR-085 had been administratively moved to January 27, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ October 28, 2008, Scheduled case of:

9:30 A.M. LARS KJAER AND BERIT KJAER, A 2008-DR-024 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 at 11530 Brockman Lane on approx. 6 ac. of land zoned R-E. Dranesville District. Tax Map 2-4 ((4)) 2. (Admin. moved from 8/5/08 at appl. req.)

Chairman Ribble noted that A 2008-DR-024 had been withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the violation had been cleared on the property.

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~ ~ ~ October 28, 2008, Scheduled case of:

9:30 A.M. JOLANDA N. JANCZEWSKI, A 2008-SP-046

Chairman Ribble noted that A 2008-SP-046 had been administratively moved to December 9, 2008, at 9:30 a.m., at the appellant's request.

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~ ~ ~ October 28, 2008, Scheduled case of:

9:30 A.M. STUART S. MALAWER AND SANDRA MALAWER, A 2008-DR-047 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are allowing the occupancy of property in the R-E District as a commercial recreation use in violation of Zoning Ordinance provisions. Located at 10955 Crossview Dr. on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((2)) 11. (Concurrent with A 2008-DR-048)

~ ~ ~ October 28, 2008, STUART S. MALAWER AND SANDRA MALAWER, A 2008-DR-047 and ERIC KENNEDY, A 2008-DR-048, *continued from Page 181*

9:30 A.M. ERIC KENNEDY, A 2008-DR-048 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established the use and is occupying property in the R-E District as a commercial recreation use in violation of Zoning Ordinance provisions. Located at 10955 Crossview Dr. on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((2)) 11. (Concurrent with A 2008-DR-047)

Chairman Ribble noted that A 2008-DR-047 and A 2008-DR-048 had been withdrawn.

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~ ~ ~ October 28, 2008, Scheduled case of:

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

Chairman Ribble noted that A 2008-SP-046 had been administratively moved to January 27, 2009, at 9:00 a.m., at the appellant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was in the process of filing a grading plan which would resolve the violation.

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~ ~ ~ October 28, 2008, Scheduled case of:

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-009 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a detached garage is not in substantial conformance with the development conditions of Variance VC 2002-DR-139. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. moved from 6/3/08 and 8/5/08 at appl. req.) (Decision deferred from 9/9/08 at appl. req.)

9:30 A.M. MARK AND SUSAN STADSKLEV, A 2008-DR-026 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have engaged in development and tree removal that is not in conformance with the conditions of Variance VC 2002-DR-139 and without a valid Building Permit, have established a storage yard, and have outdoor storage that is not properly located, all on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2310 Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Decision deferred from 9/9/08 at appl. req.)

Chairman Ribble called the appellants to the podium.

Susan F. Earman, Friedlander, Friedlander & Earman, P.C., 1364 Beverly Road, Suite 201, McLean, Virginia, the appellants' agent, came forward to speak. She stated that her clients had filed a variance amendment application on October 23, 2008, that would hopefully provide a global resolution regarding the development on the property. She asked that the decisions on the appeals be deferred.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff supported the deferral request and suggested a date of March 31, 2009, to allow for time for the application to be accepted and processed.

There were no speakers to address the deferral request.

~ ~ ~ October 28, 2008, MARK AND SUSAN STADSKLEV, A 2008-DR-009 and MARK AND SUSAN STADSKLEV, A 2008-DR-026, *continued from Page 182*

Mr. Hart moved to defer decision on A 2008-DR-009 and A 2008-DR-026 to March 31, 2009, at 9:30 a.m., at the appellants' request. Mr. Smith seconded the motion.

Mr. Hammack stated that he would support the motion, but noted that the Board had received one e-mail in opposition.

The motion carried by a vote of 7-0.

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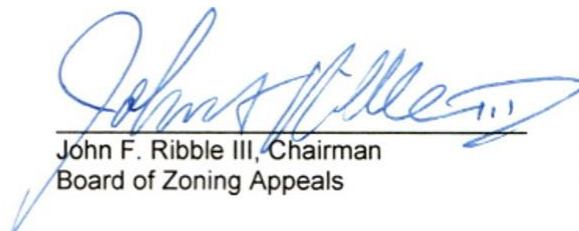
As there was no other business to come before the Board, the meeting was adjourned at 9:35 a.m.

Minutes by: Suzanne L. Frazier

Approved on: September 24, 2014



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



John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, November 4, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Tom Smith and Nancy E. Gibb 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.

~ ~ ~ November 4, 2008, Scheduled case of:

9:00 A.M. LINCOLNIA PARK RECREATIONAL CLUB, INC., SPA 76-S-077 (Indefinitely deferred from 7/1/08 at appl. req.) (Reactivated from indefinitely deferred)

Chairman Ribble noted that SPA 76-S-077 had again been indefinitely deferred.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:00 A.M. BOARD OF SUPERVISORS' OWN MOTION, SP 2008-MA-079 (In association with RZ 2008-MA-013) (Admin. moved from 10/7/08 at appl. req.)

Chairman Ribble noted that SP 2008-MA-079 had been indefinitely deferred.

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~ ~ ~ November 4, 2008, Scheduled case of:

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

Chairman Ribble noted that SPA 77-P-091-03 had been administratively moved to December 2, 2008, at 9:00 a.m., at the applicants' request.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08, 5/13/08, 7/15/08, and 9/16/08 at appl. req.)

Chairman Ribble noted that SPA 82-D-047-02 had been administratively moved to December 16, 2008, at 9:00 a.m., at the applicant's request.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:30 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use



~ ~ ~ November 4, 2008, 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011, *continued from Page 184*

Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La. On approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, and 6/10/08 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to February 24, 2009, at 9:30 a.m., at the appellants' request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellants were still trying to work out the details of their special exception application.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:30 A.M. DAVID L. BROWN, A 2006-DR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence in excess of four feet in height, child's play equipment, a patio, and outdoor storage, all located in the front yard of property located in the R-2 District, are in violation of Zoning Ordinance provisions. Located at 1840 Patton Te. On approx. 10,607 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((11)) 21. (Indefinitely deferred from acceptance) (Reactivated from indefinitely deferred). (Admin. moved from 4/10/07, 5/15/07, 9/18/07, 1/8/08, 4/8/08, and 9/16/08 at appl. req.)

Chairman Ribble noted that A 2006-DR-012 had been withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellant was able to obtain special permit approval to retain the fence.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:30 A.M. THOMAS MUGAVERO AND PATRICIA MUGAVERO, A 2008-MA-051 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that bamboo located in the floodplain on property in the R-2 District is considered a use that is interfering with the drainage on the property in violation of Zoning Ordinance provisions. Located at 6609 Dearborn Dr. on approx. 24,232 sq. ft. of land zoned R-2. Mason District. Tax Map 60-4 ((15)) 7.

Chairman Ribble called the appellants to the podium.

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

Charles Fitzhugh, Staff Coordinator, presented staff's position as set forth in the staff report dated October 28, 2008. Staff recommended that the Board uphold the Zoning Administrator's determination of July 8, 2008, that the bamboo located in the flood plain was considered a use that was interfering with the drainage of property in violation of Zoning Ordinance provisions.

In response to a question from Mr. Beard concerning the portion of the appellants' property located within the area designated as a flood plain by the Federal Insurance Administration, Mr. Fitzhugh clarified that the rear half of the lot where the bamboo was located was within the flood plain.

Chad Crawford, Branch Chief, Watershed Projects Implementation Branch, Department of Public Works and Environmental Services (DPWES), came forward to speak, and the oath was administered to him. He said staff did not know exactly when the bamboo was established. He said as early as 1997 there was bamboo established, and over the years it spread and was getting thicker.

~ ~ ~ November 4, 2008, THOMAS MUGAVERO AND PATRICIA MUGAVERO, A 2008-MA-051, *continued from Page 185*

Discussion ensued regarding whether bamboo was considered a use of property by the Zoning Ordinance, pertinent court cases, staff report language concerning growing or retention of bamboo, DPWES approval for vegetation grown within a flood plain, clarification of Zoning Ordinance language regarding flood plains, the definition of "use" in relation to bamboo, and whether naturally occurring trees and plants may be removed by DPWES.

William Schell, Deputy Director, Watershed Planning and Evaluation Branch, DPWES, came forward to address the Board's questions, and the oath was administered to him. He explained the issue with bamboo as compared to naturally occurring vegetation such as maple trees. He said bamboo was very invasive, an extremely dense material, formed barriers, and in this case, the bamboo was causing a direct influence on the properties upstream as well as creating erosion on some of the areas the County installed to mitigate flooding. Mr. Schell responded to questions concerning bamboo vegetation used as landscaping/screening, invasive versus non-invasive categories of plants, and occasional circumstances when the Director of DPWES may choose to determine appropriate action for an area deemed with probable water flow and runoff considerations.

Michael Congleton, Deputy Zoning Administrator, Zoning Administration Division, clarified that the matter was under the Zoning Ordinance and administered by the Zoning Administrator. He said that in cases when the material is naturally occurring, there would usually be no type of enforcement action in the flood plain, but when material was introduced as landscaping features, notices are sent to the persons who installed the landscaping or made changes to the land's contours. Mr. Congleton stated that in the subject case, the bamboo was not a native species that was considered a landscaping use. He said dozens of violations had been written to people who installed landscaping and drainage swells in areas of the flood plain which blocked drainage, causing detrimental impact to people both upstream and downstream.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the referenced Zoning Ordinance provisions had been in the Ordinance since 1978 and probably longer than that. She pointed out a map of the subject property in the staff report delineating the location of the bamboo.

Staff responded to Mr. Hart's questions concerning the presence of invasive plant materials and the Zoning Administrator's determinations for those circumstances when an invasive species was inadvertently spread or specifically planted. Mr. Congleton quoted pertinent Ordinance language, noting that the responsibility to assure the integrity of the flood plain was the property owner's, not whoever may have initially planted the material.

Anne Reilly Jones, McCandlish & Lillard, PC, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, the appellants' agent, presented the arguments forming the basis for the appeal. She said she represented the appellant's appeal of the zoning determination that passively watching bamboo grow was a use under the Zoning Ordinance. She said her clients requested she state their regret that they were unable to come up with a compromise acceptable to the County, they were dealing with a difficult challenge that affected their desire to have privacy, and they were aware the County was looking for a comprehensive solution. Ms. Jones said they were at the point where watching the grass grow was a use, and the Zoning Ordinance was the gardener for the County. She said the application of the law in this case was inappropriate, regulation of vegetation was not authorized, and the appellants' reference to the Chesapeake Bay Preservation Act was to note to the Board that when legislation authorizes regulation of vegetation, they know how to do it. The Chesapeake Bay Preservation Act and the grass ordinance were excellent examples of such legislation. Ms. Jones referenced a Fairfax County case involving passive grass growth and noted that the Board of Supervisors argued that it was not the Zoning Ordinance, but police powers under the Grass Cutting Act that gave the authority. She said the appeal's justification was the problem of who was deciding who was growing the good stuff and the bad stuff, and the Zoning Administrator had no guidelines. Ms. Jones addressed the Baker Engineering Study referenced in the staff report, saying she did not think the study could be used as clear proof that bamboo was the problem. She said that perhaps the appellants could have communicated their privacy needs better, but their backyard was a gorgeous sanctuary, and the County's plan for introducing vegetation did not appear to afford the same ambiance and privacy.

John Farrell, McCandlish & Lillard, P.C., 11350 Random Hills Road, Suite 500, Fairfax, Virginia, came forward to speak. He referenced a case of his years before where 122,000 cubic feet of fill was deposited in a flood plain, but did not raise the 100-year surface elevation of the flood plain two inches. He said the

~ ~ ~ November 4, 2008, THOMAS MUGAVERO AND PATRICIA MUGAVERO, A 2008-MA-051, *continued from Page 186*

appellants sought to protect and preserve their privacy from persons walking on a nearby County trail. Mr. Farrell relayed the discussions he had with County staff regarding his client's privacy preservation, trail easement, bamboo vegetation, and a levy installed by the County. He maintained that it could not be proven the bamboo caused the flooding. Mr. Farrell said the Zoning Administrator had the obligation to put the ordinary person of ordinary intelligence on notice of what was and was not a violation, that those determinations could not be left to the personal preference of an administrator, and the Zoning Ordinance did not authorize that kind of interpretation.

Mr. Farrell responded to questions from Mr. Byers concerning the distance of the appellants' property to the trail.

Mr. Crawford addressed Mr. Byers' question regarding the feasibility of the County to install a levy system. He clarified the location of the unimproved footpath, indicating it was not a trail. He noted the 50-foot sanitary easement in which a large portion of the bamboo was located.

Mr. Farrell responded to Mr. Hart's questions concerning the adoption of Sect. 2-602 of the Zoning Ordinance, the probable commencement of the bamboo's growth, the size of the bamboo stand at the rear of the property when the appellants moved in, the fact that the grove was an escaped invasive and not a landscaping introduction. He noted the beneficial results of invasive vegetation, such as bulrushes and cattails, in flood plains that screen out siltation, take out nitrogen and phosphorus, and enhance water quality. Mr. Farrell said the Zoning Administrator's interpretation in this case would encourage homeowners to denude their flood plain. He said he did not want this decision made without guidelines, and if the County wanted to regulate vegetation, it should go to the General Assembly and get the authority.

Discussion ensued regarding the bamboo, the fence, the flooding conditions, the houses around the flood plain corridor, the flow and frequency that touched the houses, the impact of Hurricane Hannah, and the difficulty of developing solutions to the problems.

Mr. Farrell responded to Mr. Beard's questions regarding the materials backing up because of the appellants' fence and bamboo stand. He contended that the accumulation of debris was a product of the original board-on-board fence that was left by a previous owner, which his clients agreed to replace. He said the problem was not the bamboo. Mr. Beard referenced Page 8 of the staff report, which said that allowing bamboo to grow in flood plain areas would obstruct drainage way patterns and cause upstream and downstream impact, to which Mr. Farrell said he disagreed with the analysis, and there was no proof to support it.

Addressing Mr. Hammack's question, Mr. Crawford said his agency was working to get the right type of vegetation that could appropriately be used in flood plain areas.

Discussion ensued regarding the fence and past floods.

Mr. Crawford said the County was now receiving and consistently recording many more reports of flood damage because in the 1950s and 1960s, homeowners had not routinely made reports as they assumed the problem was theirs. Because now residents were more readily in tune with the County's many services and agencies, residents were contacting the County to see what services may be provided.

Mr. Congleton responded to Mr. Hammack's questions concerning grandfathering, the 60-day rule, violations issued, the establishment of the pertaining Ordinance section, the kind of plant material and the growth pattern of bamboo. Mr. Congleton noted the issue was that the appellants allowed the growth of bamboo on their property with a detrimental impact on adjacent properties. He explained that the Zoning Ordinance provided that such a use or activity, when occurring in a flood plain, needed the approval of the Director of Public Works, and common sense told one that everyone who planted grass need not call the Director. He said it was a daily occurrence that calls were received questioning installation of fences, shrubbery, and landscaping materials in the flood plain, but the uncontrolled growth in this case had a detrimental impact. Staff considered it a landscaping use, and for three years the County had worked with all the neighbors to come up with a practical solution that would not cost County residents any funds. Mr. Congleton said the placement of the material in the flood plain constituted a Zoning Ordinance violation. Staff wanted it removed and requested that the BZA support its position.

~ ~ ~ November 4, 2008, THOMAS MUGAVERO AND PATRICIA MUGAVERO, A 2008-MA-051, *continued from Page 187*

Ms. Stanfield said there was no personal preference of the Zoning Administrator with the administration of law in this situation, and the study evidenced there were numerous property owners involved and the appellants were not being singled out. The violation notice was served because the appellants' property was the last where there was no compliance.

Chairman Ribble closed the public hearing.

Mr. Hammack said he wanted more information about the size of the bamboo stand before 1978 before he would make his decision, because knowing whether it enlarged over the decades would help him determine whether the homeowner enlarged the use.

Mr. Beard said he thought Mr. Congleton more or less summed up the issue in that it was what the Board was dealing with now and what had been allowed to happen. He suggested that a deferral for Mr. Hammack's reason was not appropriate.

Mr. Hammack moved to defer decision on A 2008-MA-051. The motion died for lack of a second.

Mr. Beard moved to uphold the Zoning Administrator's determination on A 2008-MA-051. Mr. Byers seconded the motion.

Mr. Hart said he could not conclude that what was shown to the Board fell within the definition of "use" in Sect. 2-300 and Subsections 1 and 2 of Sect. 2-602. He said it was not a building, was not a change in any existing contours of any land, and was not filling a change of contours. He said staff argued it was an establishment of a use, but there were no court cases, no series of interpretation by the Zoning Administrator, and it seemed to him it was down to interpretation of the Ordinance provisions. He said it was obvious there was a flooding problem in the neighborhood, and it was obvious that the bamboo was part of, although not all of the problem. Mr. Hart said he hoped the compromise discussion continued as there were plenty of ways to have privacy in a backyard that did not involve a thicket of bamboo. He said the question was whether the presence of bamboo in the appellants' backyard was a zoning violation, and the Zoning Ordinance's definition of "use" was the pertinent provision. He said he thought the Zoning Administrator was plainly wrong in determining it was a use or within the Zoning Ordinance provisions. Mr. Hart said he could not support the motion, and although he wished they would get rid of the bamboo, he did not think it was a zoning violation.

Discussion ensued regarding the motion, whether there was sufficient information to make a final determination, staff's position on the definition of "use," and the fact that until there was a resolution, there would be continued damage to homes in the area.

Mr. Byers stated that he believed the public good outweighed the particular perceived rights of an individual property owner.

Chairman Ribble called for the vote. The motion to uphold the Zoning Administrator's determination carried by a vote of 2-2-1. Chairman Ribble and Mr. Hart voted against the motion. Mr. Hammack abstained from the vote. Ms. Gibb and Mr. Smith were absent from the meeting.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:00 A.M. PHUOC V. NGUYEN, A 2008-MA-052

Chairman Ribble noted that A 2008-MA-052 had been withdrawn.

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~ ~ ~ November 4, 2008, Scheduled case of:

9:30 A.M. HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall without a Special Permit and has expanded the use limitations and conditions of Non-Residential Use Permit #A-2004-1013 and Special Permit Amendment SPA 95-Y-069-2 in violation of Zoning Ordinance provisions. Located at 14114 Lee Hy. on approx. 9.32 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C. (Admin. moved from 9/9/08 at appl. req.)

Chairman Ribble noted that the Board had received a request from the appellant to defer A 2008-SU-028 to December 9, 2008.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff would support the deferral request.

Chairman Ribble called for speakers to address the question of a deferral; there was no response.

Mr. Byers moved to defer A 2008-SU-028 to December 9, 2008, at 9:30 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith were absent from the meeting.

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~ ~ ~ November 4, 2008, Scheduled case of:

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

Chairman Ribble noted that the Board had received a request from the appellant to defer A 2008-PR-027.

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

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that a citizen was present who wished to speak regarding the appeal.

Grayson Hanes, Reed Smith, 3110 Fairview Park Drive, Falls Church, Virginia, the appellant's agent, came forward to speak. He said the deferral request had been made to allow time to pursue proof that the use was a nonconforming use established prior to 1941.

Chairman Ribble called for speakers to address the question of the deferral.

Malak Abou-Hargah and Ahmed El-Ariny, 3424 Jermantown Road, Fairfax, Virginia, came forward to speak, with Mr. El-Ariny stating that his wife would speak on his behalf. Ms. Abou-Hargah said they were not in favor of the deferral because the matter had been ongoing for over seven years and had prevented the sale of their property for a reasonable amount. She said the trucks from Shenandoah Valley Landscape Company and Craig Van Line had caused repeated damage to their driveway for which they had spent \$17,000 to repair.

Mr. Hammack moved to defer A 2008-SU-028 to January 6, 2009, at 9:30 a.m., at the appellant's request. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith were absent from the meeting.

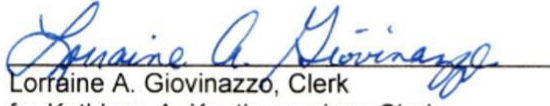
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~ ~ ~ November 4, 2008 meeting, *continued from Page 189*

As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Paula A. McFarland

Approved on: February 11, 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 Tuesday, November 18, 2008. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ November 18, 2008, Scheduled case of:

9:00 A.M. LYNN HARVEY TJEERDSMA, SP 2008-MV-085 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition and eave to remain 3.9 ft. from side lot line. Located at 2108 Yale Dr. on approx. 11,619 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((28)) (3) 15 (Concurrent with VC 2008-MV-006)

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

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.

Lynn Tjeerdsma, 2108 Yale Drive, Alexandria, Virginia, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation as contained in the staff report.

In response to a question from Mr. Hart, Ms. Caffee stated that the rear yard was determined by Zoning Administration Division, specifically that lot line which is the furthest and mostly closely parallel to the front lot line.

Mr. Hammack and Ms. Caffee discussed the research performed on the property, with Ms. Caffee noting that prior building permits were found for construction of the house and the pool. She could not find a building permit for the shed.

Responding to a question from Mr. Hammack concerning impervious surfaces in the rear yard, Ms. Caffee stated that there was a brick patio, shed, and concrete patio surrounding the pool. She said the plat which accompanied the building permit for the pool issued in 1973 depicted only the pool and not a concrete patio; therefore, it was unclear to her whether the permit was for the concrete patio around the pool.

In response to a question from Mr. Hammack, Ms. Caffee said the 30 percent maximum impervious rear yard coverage requirement was included in the 1953 Ordinance. Mr. Hammack and Ms. Caffee discussed possible ways to bring the rear yard into compliance without a variance, with Ms. Caffee stating that the shed took up a good portion of the yard.

Mr. Tjeerdsma presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He noted that the pool and shed were present when he purchased the property, although he had replaced the deck in its original footprint. Mr. Tjeerdsma said he owned the adjoining non-buildable property to the rear of the property which was a wooded certified wildlife habitat area. He asked if that would help offset the impervious surface percentage, noting that he had no knowledge of the restriction, but only wished to bring the property into conformance with the regulations.

Responding to Mr. Smith's question whether the applicant could designate both lots for purposes of the applications, Ms. Caffee stated that the applicant could use both lots. However, she noted that in this instance, only the one lot had been submitted for review for the special permit and variance. Mr. Smith and Ms. Caffee discussed the possibility of deferring decision on the applications so that the applicant could resubmit the requests designating both lots.

~ ~ ~ November 18, 2008, LYNN HARVEY TJEERDSMA, SP 2008-MV-085 and LYNN HARVEY TJEERDSMA, VC 2008-MV-006, *continued from Page 191*

Mr. Tjeerdsma said he would reapply with the additional lot if that would bring his property into compliance. He said the property was well buffered and not obtrusive to the neighborhood.

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

Mr. Hammack moved to defer decision on SP 2008-MV-085 and VC 2008-MV-006 to January 27, 2009, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ November 18, 2008, Scheduled case of:

9:00 A.M. JOANNE K. NANOS, SP 2008-MV-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from front lot line. Located at 2217 Martha's Rd. on approx. 24,271 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 105.

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.

Joanne K. Nanos, 2217 Martha's Road, Alexandria, Virginia, reaffirmed the affidavit.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-083, subject to the proposed development conditions.

Ms. Nanos presented the special permit request as outlined in the statement of justification submitted with the application. She said only one corner of the carport would encroach into the setback, and the carport was needed for safety purposes due to her disability.

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

Mr. Byers moved to approve SP 2008-MV-083 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

JOANNE K. NANOS, SP 2008-MV-083 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 20.0 ft. from front lot line. Located at 2217 Martha's Rd. on approx. 24,271 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 105. 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 18, 2008; and

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

1. The applicant is the owner of the land.
2. The application meets all of the submission requirements set forth in Section 8-922.
3. Staff recommends approval and the Board adopts the rationale of the staff.



~ ~ ~ November 18, 2008, JOANNE K. NANOS, SP 2008-MV-083, *continued from Page 192*

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

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

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

1. This special permit is approved for the location and size (approximately 350 square feet) of the proposed carport addition, as shown on the plat prepared by L.S. Whitson, Land Surveyor, revised by Rebecca L.G. Bostick, Architect, dated July 26, 2007, revised through July 8, 2008, as submitted with this application and is not transferable to other land.
2. The carport addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.
3. A building permit shall be obtained prior to construction and approval of final inspections shall be obtained.

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

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

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

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~ ~ ~ November 18, 2008, Scheduled case of:

9:00 A.M. CHRISTOPHER F. LINDSAY, MAURA T. LINDSAY, SP 2008-MV-084 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 19.9 ft. from rear lot line. Located at 2108 Wakefield Ct. on approx. 16,300 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 5.

Chairman Ribble called the applicants to the podium.

Mr. Beard 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 swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Thomas M. French III, 6723 Whittier Avenue, Suite 402, McLean, Virginia, the applicant's agent, reaffirmed the affidavit.

Chairman Ribble gave a disclosure and indicated that he would recuse himself from the public hearing.

Vice Chairman Hammack assumed the chair.

Debbie Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-MV-084, subject to the proposed development conditions.

~ ~ ~ November 18, 2008, CHRISTOPHER F. LINDSAY, MAURA T. LINDSAY, SP 2008-MV-084, *continued from Page 193*

Mr. French presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit was necessary to erect a serviceable garage using the existing driveway due to the unusual geometry of the lot lines and topography on the property.

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

Mr. Hart moved to approve SP 2008-MV-084 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

CHRISTOPHER F. LINDSAY, MAURA T. LINDSAY, SP 2008-MV-084 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 19.9 ft. from the rear lot line. Located at 2108 Wakefield Ct. on approx. 16,300 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (15) 5. 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 18, 2008; and

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

1. The applicants are the owners of the land.
2. Staff recommends approval and the Board adopts the rationale in the staff report.
3. This is a house that was built in 1940 and it is fair to say that things have changed since then. It is not unreasonable to update this house to have a two car garage.
4. One corner of the garage sticks out into the 25 foot minimum yard, but that side of the lot is adjacent to a large Park Authority parcel and should not negatively affect anyone.
5. Although the addition is two stories, measuring from the ground, the addition is pushed down lower than the front of the house because of the topography, so it won't be particularly obstructive to 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 Sect(s). 8-922 of the Zoning Ordinance.

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a two story addition (847 square feet), as shown on the plat prepared by Alexandria Surveys dated July 14, 1999, as recertified by Thomas French Architect, P.C. dated June 12, 2008 as revised through August 30, 2008, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the

~ ~ ~ November 18, 2008, CHRISTOPHER F. LINDSAY, MAURA T. LINDSAY, SP 2008-MV-084, *continued from Page 194*

dwelling that existed at the time of the first expansion (6335.7 square feet existing + 9,503.6 square feet (150%) = 15,839.3 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Chairman Ribble recused themselves.

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~ ~ ~ November 18, 2008, Scheduled case of:

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an establishment for processing of earthen materials, which is not a permitted use in the I-5 District, and operating without site plan, Non-Residential Use and Building Permit approval for storage structure and other structures on property zoned I-5 and H-C in violation of Zoning Ordinance provisions. Located at 2809 Old Lee Hwy. on approx. 1.128 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 65A. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, 10/2/07, 3/4/08, 7/8/08, and 9/9/08)

9:30 A.M. ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-043 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has expanded the use of property zoned I-5 and H-C without valid site plan and Non-Residential Use Permit approvals and established outdoor storage that exceeds allowable total area and is located in minimum required front yard in violation of Zoning Ordinance provisions. Located at 8524 & 8524A Lee Hwy. on approx. 1.35 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3((1)) 67 & 65B. (Admin. moved from 10/24/06 at appl. req.) (Continued from 2/27/07, 6/12/07, 10/2/07, 3/4/08, 7/8/08, and 9/9/08)

Vice Chairman Hammack called the appellants to the podium.

Chairman Ribble resumed the chair.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, gave a brief history of the appeals. She said staff had been waiting for the appellant to get approval and implement the site plan. The implementation was almost complete, with the appellant awaiting plan approval and inspections. She reminded the Board that at the previous public hearing, they had decided to no longer entertain any further deferrals. Ms. Stanfield asked that the Board uphold the determination of the Zoning Administrator.

~ ~ ~ November 18, 2008, ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-040 and ARMSTRONG, GREEN AND EMBREY, INC., A 2006-PR-043, *continued from Page 195*

Ms. Gibb and Ms. Stanfield discussed the pending approvals, specifically plan approval for a small portion of construction that needed to be completed and subsequent non-residential use permit (non-RUP) issuance. Ms. Stanfield stated that the appellant had been moving forward with the work, and she expected the appellant to finish in the near future.

In response to a question from Mr. Hart, Ms. Stanfield said the appellant was aware of the hearing, but she did not expect him to attend the meeting. She said she had spoken to him and explained that it was going forward, but he did not indicate any objection nor submit anything in writing to that effect.

Responding to a question from Ms. Gibb, Ms. Stanfield said that if the Board upheld the Zoning Administrator, a package would be prepared and sent to the County Attorney's Office for legal action against the appellant.

Charles Cohenour, Senior Zoning Inspector, stated that he went by the subject property, and it appeared that just a few minor things, such as gutters on the storage building, needed to be finished before the appellant could call for a final inspection.

Mr. Smith asked if the processing of earthen material, as noted in A 2006-PR-040, had been cleared, to which Mr. Cohenour indicated it had been. Ms. Stanfield stated that the issues contained in A 2006-PR-043 would be addressed in the site plan process.

Ms. Gibb said she would prefer not to waste taxpayer money and asked staff for their thoughts on the matter of upholding the Zoning Administrator. Mr. Cohenour stated that it would take approximately three to four months to prepare the paperwork and for the County Attorney's Office to process it. He said he anticipated the appellant would be in compliance and have a non-RUP before he could get it to the County Attorney to file a lawsuit.

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

Ms. Gibb moved to uphold the Zoning Administrator in part, specifically with respect to the requirement for site plan implementation and approval of a non-RUP. She said if the appellant had been present to explain the situation, it might have been helpful. Ms. Gibb stated that based on what she understood, the appellants had an approved site plan, obtained the required building permits, and there was no longer an issue of outdoor storage which exceeded the allowable total area or was located in the minimum yard. She said the only issue was a few items that had to be done, and when those items were completed, the appellant could apply for an inspection in order to get a non-RUP. She noted that the Board previously had said they were not going to grant any more deferrals, and there previously had been a number of them. Ms. Gibb said that if there had been some extenuating circumstance that the appellant wanted to tell the Board about, she wished he would have come to the hearing. Mr. Smith seconded the motion.

Chairman Ribble commented that the appellant probably knew he would not receive another deferral, which was why he probably did not attend the hearing. He said the County did a good job of speaking on his behalf.

Mr. Hart stated that the Board sometimes deferred cases to create an incentive for a property owner, but he did not believe a deferral in this matter would serve any purpose, and he would support the motion.

The motion carried by a vote of 6-0. Mr. Beard was not present for the vote.

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~ ~ ~ November 18, 2008, Scheduled case of:

9:30 A.M. TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home business, which is operating on property in the R-12 District, is most similar to a School of Special Education and is, therefore, allowable under Zoning Ordinance provisions and that the property is in compliance with the limitations of the Home Occupation Permit. Located at 8134 Boss St.

~ ~ ~ November 18, 2008, TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044,  
continued from Page 196

on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((43)) 22.  
(Deferred from 10/21/08 at appl. req.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she had heard from the appellant's attorney, who stated that the appellants were awaiting signatures on an agreement, and once they were obtained, the appellant would withdraw the appeal. She said they discussed a deferral to December 2, 2008, but she expected the appeal to be withdrawn by that date.

Mr. Smith moved to defer decision on A 2008-PR-044 to December 2, 2008, at 9:30 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote.

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~ ~ ~ November 18, 2008, After Agenda Item:

Request for Additional Time  
Trustees of the Full Gospel First Church of Washington, SPA 89-M-041-2

Mr. Byers moved to approve 42 months of additional time. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was not present for the vote. The new expiration date was December 28, 2011.

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~ ~ ~ November 18, 2008, After Agenda Item:

Request for Reconsideration  
Regarding Thomas and Patricia Mugavero, A 2008-MA-051

Chairman Ribble noted that the Board had received a Request for Reconsideration regarding the appeal of Thomas and Patricia Mugavero, A 2008-MA-051.

No motion was made; therefore, the request for reconsideration was denied.

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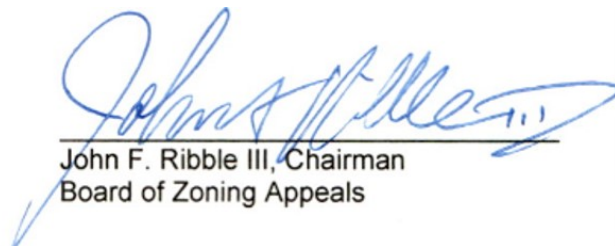
As there was no other business to come before the Board, the meeting was adjourned at 10:10 a.m.

Minutes by: Suzanne L. Frazier

Approved on: November 19, 2014



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



John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 2, 2008. The following Board Members were present: Chairman John F. Ribble III; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.; V. Max Beard and Nancy E. Gibb were absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. 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 2, 2008, Scheduled case of:

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

Chairman Ribble called the applicant to the podium.

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

Edward L. Donohue, the applicant's agent, Donohue & Blue PLC, 801 North Fairfax Street, Suite 209, Alexandria, Virginia, reaffirmed the affidavit.

Suzie Zottle, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 77-P-091-03, subject to the proposed development conditions. Ms. Zottle noted that the Planning Commission had requested a minor change to Condition 5 contained in the staff report to clarify that adults meant age 18 and over.

Staff responded to questions from Mr. Hart and Mr. Hammack concerning supplemental plantings, the condition of the parking lot, storage of firewood, removal of debris, parking of school buses, noise considerations with the activities of 18-year-olds, and expansion of the hours of operation.

Mr. Donohue presented the special permit amendment request as outlined in the statement of justification submitted with the application. He described the proposed monopole, the compound, and screening material and said the pole would accommodate up to five carriers. He said swim clubs were experiencing severe financial constraints, and he agreed with staff's analysis that the application met the general and Group 4 standards as set forth in the staff report. He noted the extensive plantings in the applicant's screening proposal. He said the firewood operation that was conceived to raise funds had been discontinued, and the parking lot clean-up was in progress. Mr. Donohue agreed with staff that the hours of operation were on a case-by-case basis. He noted that the site was almost four acres and heavily screened, and with those circumstances, the additional hours of operation and the public address system could be accommodated.

Responding to a question from Mr. Hart concerning Development Condition 12, Mr. Donohue said the language could include the removal of the storage bin.

Responding to a question from Mr. Hammack concerning the location of the cell phone tower, Mr. Donohue said building a wireless tower, particularly one to look like a tree, was the most costly and time-consuming effort to achieve a coverage objective, and the carrier's request for coverage mandated new construction. Mr. Donohue said the Comprehensive Plan's telecommunications policies directed that they look at public lands, and the swim club location was the largest and best screened within the search area.

Discussion ensued regarding viable tower locations.

Chairman Ribble called for speakers in support of the application.

The following speakers came forward to speak: Keith Gardiner, 3313 Hemlock Drive, Falls Church, Virginia; David Smith, 3415 Surrey Lane, Falls Church, Virginia; Margaret Daley, 3415 Hartwell Court, Falls Church, Virginia; David Robinson, 3431 Gaddy Court, Falls Church, Virginia; Keith Peterson, 3319 Hartwell Court,

~ ~ ~ December 2, 2008, HOLMES RUN ACRES RECREATION ASSOCIATION, INC. & COMMUNITY WIRELESS STRUCTURES, SPA 77-P-091-03, *continued from Page 198*

Falls Church, Virginia; Bob Harris, past president of the civic association, 3426 Surrey Lane, Falls Church, Virginia; David Howe, 3404 Cypress Drive, Falls Church, Virginia; James Hoofnagle, 7641 Holmes Run Drive, Falls Church, Virginia. Their main points dealt with the importance and attraction of the pool; the difficulty keeping the pool financially viable and the added revenue from the cell tower; the importance of the club's activities for its members; the attractiveness of the site; the need for reliable cell phone service in the area, particularly in the event of an emergency; providing a choice of cell phone carriers; the precarious future of the club if it did not become financially viable; the development of the site; the negative impact on club members and neighboring communities if the pool closed; there being no legitimate adverse impacts to human health or the environment associated with cell towers; the fact that the club was a wonderful community resource; the cell tower's proposed design not detracting from the appearance of the community; the environment provided for their children to grow up in; allowing the pool to stay open later not having a negative effect on the neighbors because one could complain to the police up to 11:00 p.m. if the noise became annoying; and the facility being a gathering place for neighbors to enjoy and socialize.

Norm Gottlieb, 3332 Elm Terrace, Falls Church, Virginia, came forward to speak in support of the application. He explained that because there were no covenants 25 years ago, the club came into financial straits. He said the extended hours of operation were needed because they had to offer more services to attract and retain members. Mr. Gottlieb said club and pool's maintenance had greatly increased over the years, and for the past three years, membership fees had not covered the operating costs, although being allowed to sell firewood and park the school buses had helped defray the expenses. He said a public address system was for safety reasons and critical for alerting people to emergencies, weather conditions, and the swim team meets.

Chairman Ribble said the Board had received several letters in opposition, and there appeared to be a problem with unauthorized parking.

Mr. Gottlieb said initially donations were requested for the firewood instead of selling it, but when notified that the use was not permitted, a special permit was obtained to make the sales legal. If approved for the special permit, Mr. Gottlieb asked that Development Condition 27 be struck so the firewood operations could continue at some time in the future. Mr. Hammack said he appreciated the efforts to keep the club viable, but there were several opposition letters regarding the firewood whose complaint was the operation of a commercial purpose. In response to a question from Mr. Byers, Mr. Gottlieb said it was four years since the last firewood sale.

Mr. Byers said the fees he paid for his recreation club membership were significantly more than the association charged, and he thought it would be difficult to remain competitive with other clubs because the other clubs offered more services as well as having indoor pools.

Mr. Smith said he was concerned over the 11:00 p.m. operation hours and the impact on the surrounding neighbors. At Mr. Smith's suggestion, Mr. Gottlieb said a modification to Development Condition 5 to restrict the 9:00 p.m. to 11:00 p.m. swims to laps only would be acceptable.

Mr. Hart noted his concern over the sale of the firewood and the size of the operation taking up a large area. He said there were detailed conditions on everything else, and he questioned why the firewood sales were not included in the previous conditions. Mr. Hart clarified that the loudspeaker would not be used for the adult swims or broadcast music.

In response to a question from Chairman Ribble about a proposed trail, Ms. Zottle said the Comprehensive Plan called for an asphalt trail and on-road bicycle lane, and the applicant's request for a waiver of the on-road bike lane and modification of the asphalt trail was denied by the Trails Committee. Ms. Zottle said staff recommended denial as well, but the matter would be discussed at the upcoming Planning Commission meeting.

Chairman Ribble called for speakers in opposition to the application.

Don Kahl, 3426 Executive Avenue, Falls Church, Virginia, came forward to speak. He said the plan was ill conceived legally, financially, and in light of the County's zoning laws. As required by the by-laws, all residents would vote on the matter, but the proposal was not presented to or voted on by the pool

shareholders. He said the firewood sales were ongoing, and the storage shed was in violation of previously approved special permits. There were multiple commercial sales each year, and the required greenery screening was never provided. With regard to the cell tower, Mr. Kahl said the proposal did not meet the planning requirements for such a facility, and it was too close to adjacent property owners. He said the revenue from the cell tower would not save the pool as it constituted only 15 percent of the current operating budget.

Mr. Hart said that when the Board heard a special permit application, the land use issues must be considered and whether the application was consistent with the Comprehensive Plan, but the Board could not consider such matters as covenants and pool by-laws. Mr. Kahl said he understood Mr. Hart's position, and the reason he brought up the by-laws was because it was symptomatic of the applicant's business practices and operations.

Discussion ensued regarding the number of cell towers in the area and the possibility of carriers attaching to them, with Mr. Kahl saying the proposed location was not necessary.

Susan Gates, 3426 Executive Avenue, Falls Church, Virginia, came forward to speak. She said the decision to enter into a commercial lease was not made by the people most impacted by the installation of the monopole and other equipment which would be operating 24 hours daily within 87 feet of homeowners. She said the loudspeaker was already a problem, and she listed regular activities that were intrusive to neighboring properties. Ms. Gates said the civic association had not made a recommendation and chose not to take a position because of the divisiveness in the neighborhood. She said prospective home purchasers were told the parcel was residential, and if the pool failed, there was concern the property would be commercially developed. Ms. Gates said Holmes Run Acres did not support the proposal.

In his rebuttal, Mr. Donohue noted that the people in opposition resided within close proximity to the site. He said that a good deal of work and effort was expended developing the screening and buffering plan, and at staff's suggestion, they would perform on-site assessments to address such things as plant types, heights, and locations. Mr. Donohue stated that the unit was largely invisible and would be well-screened by the heavy canopy of tall mature trees. He said the lot was 3.83 acres, and only 1.5 percent would be used. Mr. Donohue said he would not address the matters concerning the swim club. He said the club's financial circumstances were explained by Mr. Gottlieb. Mr. Donohue said he thought this was a good land use application, and all legitimate land use concerns were addressed.

Mr. Donohue responded to Chairman Ribble's question concerning the monopole's height and noted that one must prove to staff that there were no other co-locations before considering a new structure.

In response to a question from Mr. Hart, Mr. Donohue said there was no humming, buzzing, or flashing/stationary lights, and the sound would be similar to a residential air-conditioner, like every other cell site approved by the County.

In response to Mr. Hart's question concerning screening between the houses on Executive Avenue and the equipment compound, Ms. Zottle said staff agreed that the additional plantings were needed, and a development condition was included with the special exception application that addressed screening to the adjacent homes to the east and along Gallows Road.

Susan C. Langdon, Branch Chief, Special Permit and Variance Branch, referenced Development Condition 17 from the special exception application, noting it specifically included language for additional screening. She agreed with Chairman Ribble's comment that this type application was usually heard after its Planning Commission public hearing; however, this one had been deferred several times to address various issues.

Ribble closed the public hearing.

Mr. Byers moved to defer decision on SPA 77-P-091-03 to December 16, 2008, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Ms. Gibb and Mr. Beard were absent from the meeting.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:00 A.M. SHERRY BROWN, SP 2008-MV-059 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 11.6 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((11)) 11. (Admin. moved from 9/16/08 at appl. req.)

Chairman Ribble noted that SP 2008-MV-059 had been administratively moved to March 3, 2009, at 9:00 a.m., at the applicant's request

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~ ~ ~ December 2, 2008, Scheduled case of:

9:00 A.M. GEOFFREY S. DEAS AND EDNA C. ROSARIO-MUNOZ, SP 2008-MV-086 Appl. under Sect(s). 8-914 and 8-917 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 1.8 ft. from side lot line and to permit modifications to the limitations on the keeping of animals. Located at 2002 Basset St. on approx. 11,919 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (10) 9.

Chairman Ribble noted that SP 2008-MV-086 had been administratively moved to July 14, 2009, at 9:00 a.m., at the applicants' request.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:00 A.M. GEORGE R. LASNIER & WENDY L. KING, SP 2008-DR-082 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.1 ft. from rear lot line. Located at 1464 Pathfinder La. on approx. 11,174 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (8) 305. (Admin. moved from 10/28/08 at appl. req.)

Chairman Ribble noted that SP 2008-DR-082 had been indefinitely deferred at the applicants' request.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:00 A.M. ALBERTO & JUANA GONZALEZ, SP 2008-LE-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 4.0 ft. with eaves 3.2 ft. from rear lot line and 12.3 ft. from side lot line, accessory structure to remain 0.2 ft. from rear lot line and 0.1 ft. from side lot line and reduction of certain yard requirements to permit construction of roofed deck 28.2 ft. from front lot line and second story addition 13.8 ft. and 14.8 ft. from side lot lines. Located at 6268 Wills St. on approx. 12,056 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 8. (Admin. moved from 10/21/08 for notices)

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.

Armando C. Berger, 9846 Sweet Mint Drive, Vienna, Virginia, the applicants' agent, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2008-LE-078 for the second story addition and roofed deck (portico), subject to the proposed development conditions.

~ ~ ~ December 2, 2008, ALBERTO & JUANA GONZALEZ, SP 2008-LE-078, *continued from Page 201*

Mr. Berger presented the special permit request as outlined in the statement of justification submitted with the application. He said the special permit would allow the applicants to renovate their 1950s home to make it more livable, comfortable, and compatible with the surrounding houses in the area.

In response to questions from Mr. Hart regarding the shed, Mr. Berger said it was built in the '50s, did not have electricity or plumbing, and had a concrete base, but he was not sure if that was considered a foundation.

In response to questions from Mr. Hart, Ms. Hedrick said there had been complaints regarding the shed or swing set. The issues were discovered during the application review process, and the swing set was too close to the lot line due to its height.

Chairman Ribble called for speakers.

Alberto Gonzalez, 9846 Sweet Mint Drive, Vienna, Virginia, came forward to speak. He said the swing set had been removed. He owned the house for 11 years, with the shed being there when he purchased the property, and he had made no changes. Mr. Gonzalez said he wanted to make the house look better, and he hoped to run an electric line to the shed to have a lightbulb in it.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve-in-part SP 2008-LE-078 for the reasons stated in the Resolution.

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## COUNTY OF FAIRFAX, VIRGINIA

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

ALBERTO & JUANA GONZALEZ, SP 2008-LE-078 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 4.0 ft. with eaves 3.2 ft. from rear lot line and 12.3 ft. from side lot line, accessory structure to remain 0.2 ft. from rear lot line and 0.1 ft. from side lot line **(THE BOARD DID NOT APPROVE THE SWING SET)** and reduction of certain yard requirements to permit construction of roofed deck 28.2 ft. from front lot line and second story addition 13.8 ft. and 14.8 ft. from side lot lines. Located at 6268 Wills St. on approx. 12,056 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 8. (Admin. moved from 10/21/08 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 December 2, 2008; and

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

1. The applicants are the owners of the land.
2. The accessory structure, swing set, which had been applied for originally identified as Special Permit 2, no longer requires a special 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 Sect(s). 8-922 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;

~ ~ ~ December 2, 2008, ALBERTO & JUANA GONZALEZ, SP 2008-LE-078, *continued from Page 202*

- 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. 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 (1,155 square feet) of a second story addition and a roofed deck (portico) and frame shed, as shown on the plat prepared by Dominion Surveyors, Inc., dated January 9, 2008 as revised through June 10, 2008, as submitted with this application and is not transferable to other land.
- 3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,807 square feet existing + 2,710.5 square feet (150%) = 4,517.5 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
- 4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

~ ~ December 2, 2008, ALBERTO & JUANA GONZALEZ, SP 2008-LE-078, *continued from Page 203*

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

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

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The meeting recessed at 10:50 a.m. and reconvened at 10:55 a.m.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:30 A.M. NICOLAS J. LAGET, A 2008-BR-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an Establishment for Production and a Hotel/Motel on property in the R-2 District in excess of the use limitations of Home Occupation Permit #HOP 2891 for a home office in violation of Zoning Ordinance provisions. Located at 4204 Pineridge Dr. on approx. 28,327 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-2 ((2)) 27B.

Chairman Ribble noted that A 2008-BR-020 had been withdrawn.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:30 A.M. MR. TAE GOH AND GABRIELE B. BELLE, A 2008-DR-053 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants are maintaining and occupying a second dwelling unit on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 2055 Arch Dr. on approx. 10,236 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (L) 5.

Chairman Ribble called the appellants to the podium.

Gabriele Belle, 2055 Arch Drive, Falls Church, Virginia, came forward.

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

Getachew Tadesse, Staff Coordinator, presented staff's position as set forth in the staff report dated November 21, 2008. This was an appeal of a determination that appellants were maintaining and occupying a second dwelling unit on property in the R-4 District in violation of Zoning Ordinance provisions. When reviewing the architectural plan submitted with a building permit application, the Zoning Permit Review Branch found a new kitchen on the addition part of the upper level floor plan, and the lower level floor plan showed a wet bar that replaced the original kitchen. A notation was on the permit application indicating a two-story addition with a new kitchen on second floor and replacement of the first floor kitchen with a wet bar.

Mr. Tadesse said that in response to a complaint, Zoning Enforcement Branch staff inspected the subject property, which revealed that the property was used to manufacture and sell clothes. There was a sign which read Henry & Y. The house was divided into two separate dwelling units. There were two driveways and two separate entrances. A notice of violation was issued to the property owner, Tae Goh. The appellants appealed part of the violation notice, that of the establishment of a second dwelling unit. Staff found the lower level dwelling unit contained a living area, kitchen, bedroom, full bathroom, and was occupied by a tenant, Ms. Belle. The establishment of the second dwelling unit was in violation of Sect. 2-501 of Zoning Ordinance. Staff found no evidence that the second dwelling unit was legally established, and the appellant did not have a permit.

~ ~ ~ December 2, 2008, MR. TAE GOH AND GABRIELE B. BELLE, A 2008-DR-053, *continued from*  
*Page 204*

Discussion ensued regarding approval of a second kitchen, existence of a second dwelling unit arrangement, possible approval of a special permit to allow a disabled person or someone 55 years or older, the duplex appearance, and requirement that a second dwelling unit be subordinate to the primary residence.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, responded to Mr. Hart's question concerning a discussion with the appellants on applying for a special permit as a possible remedy to the situation, adding that the appellants chose to go forward with the appeal.

Mr. Tadesse responded to Mr. Hart's questions concerning staff report attachments, the appellants' plat, the second kitchen, and paperwork evidencing staff inspections.

Ms. Belle presented the arguments forming the basis for the appeal. She said the secondary dwelling unit was not really a secondary accessory dwelling unit, that she was an emigrant whose only family in the states was the Gohs. She said the decisions of Tammy Brown, Senior Zoning Inspector, to require permanent removal of all kitchen items and connections except for one kitchen could not be in accordance with the law because it was basically ordering the destruction of private property. She said she researched wet bars and listed the things they included. Ms. Belle gave a brief history of the dwellings, the additions, permits approved, inspection results, and upon staff's request, the removal of various items. She explained the entranceways, exit ways, stairways, floor plans, living arrangements, and noted that it meant the two living units were not separate. Her PowerPoint presentation depicted her living quarters, furniture, appliances, and inside/outside doorways. She said the stove was not added after the building inspection as evidenced by the unfinished floor area underneath it. Ms. Belle said all the improvements Mr. Goh added increased property values, and the dismantling would be a significant financial hardship. She said her rent money was essential for the Gohs to prevent the property from going into foreclosure. Ms. Belle explained her professional enterprise and said that if forced to move, she would lose her business as she could not afford commercial office space. Ms. Belle said the zoning decision caused significant financial and emotional stress because she would not have anywhere to go and would be rendered homeless.

Ms. Stanfield responded to Mr. Byers' question concerning the criteria under Sect. 8-918.

Tae Goh, 2055 Arch Drive, Falls Church, Virginia, came forward to speak. He said the County twice inspected the property for a second kitchen, and it was the third submission when his application was approved. He said he had not known he did anything wrong, and he requested that he be allowed to keep the kitchen. Mr. Goh responded to Mr. Hart's questions concerning the second kitchen.

In response to questions from Mr. Hart, Tammy Brown, Senior Zoning Inspector, said it was she who inspected the property, and she explained the separate entrances and reasons for determining there were two dwelling units.

In response to a question from Mr. Hart, Mr. Tadesse said there was no Zoning Ordinance definition for a wet bar, only an interpretation.

Addressing Mr. Hart's comments and questions, Ms. Stanfield explained staff's discussion with the appellants, and it was made clear the wet bar was not permitted.

Discussion ensued regarding the Ordinance definition of a kitchen, such things as appliances, cabinets and microwaves that may or may not be permitted, as well as where such things are located.

In her rebuttal, Ms. Belle stated that staff never spoke to her about any of what was previously mentioned. She said they did not currently meet special permit requirements as she was not age 55, but she believed the recent interpretation of what distinguished a wet bar and a kitchen could be taken into account in this case because the wet bar permit was issued in 2002, while the interpretation was recent. Ms. Belle said the information she found regarding a wet bar did not correspond with the County's interpretation.

In response to Mr. Hart's and Mr. Hammack's questions, Mr. Tadesse clarified staff's position on the items not permitted and to be removed as stated in the July 29, 2009 letter of violation. Ms. Stanfield said the appellants were allowed to keep the wet bar, and Mr. Tadesse referenced the Ordinance definition of dwelling unit.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold-in-part the determination of the Zoning Administrator: He said it was a difficult case for a number of reasons. It was not the first time the definition of dwelling unit had come up before the Board, but it may have been the first time for the interpretation of the wet bar and what that constituted. He said the function of the Board was limited on an appeal to determining whether the determination made by the Zoning Administrator was correct or not. The Board had other functions on other types of cases, but in this case, the Board did not have the authority to grant approval for the use because no application for the use had been file. He said the Board had to uphold the Zoning Administrator unless it had been shown that something was plainly wrong. Mr. Hart said he asked some questions at the beginning about whether there was a way to fix this through an application for a second kitchen or an accessory dwelling unit, but it seemed those options would not work. He said that based on the record before the Board, he would conclude the determination in the July 29, 2008 letter was correct except for on page 3 of the letter, the first and second bulleted paragraphs beginning removing on a permanent basis because he thought staff had agreed that the appellants would be allowed to keep the wet bar, but only in accordance with the building permit approval on Attachment 6. He said he was not reaching what level of demolition would clear the violation or at what point the combination of objects became a wet bar instead of a kitchen. Mr. Hart said he agreed with the appellants that the order to get rid of everything, including cabinets, countertops, sinks, and capping utilities in the walls went further than an approval for a wet bar would permit. He said he found sufficient evidence to support the Zoning Administrator's determination that there was a second dwelling unit, and what was shown to the Board was a separate, compartmentalized area of the home with a kitchen, bathroom, and sleeping area, which was confirmed by the references in the correspondence from the appellants describing it as an apartment within the home.

Mr. Hart said that one of the difficult issues was whether the approval at some point by the County at some stage of the construction constituted an approval of what is the second kitchen now. He said the situation is particularly difficult because of the hardship that is imposed on the tenant having to relocate and also hard on the appellants who had invested money in the home with some unfamiliarity with the rules and what was required, but the Board had to go by the Ordinance and what the exhibits showed. Mr. Hart said he thought the zoning review and approval shown on Attachment 6 was proper, with specific notations, an attached drawing which was quite clear and showed just a short cabinet or countertop four or five feet in length with a small sink in the middle. He said the notations on the building permit approval were quite clear that the existing first floor kitchen was to be demolished and a wet bar installed where current kitchen was, with no second kitchen, and what was on the building permit did not correspond to what was built. Mr. Hart said he hoped staff would work with the appellants to bring the property into compliance, if there were a way to do so, that would cause the least financial hardship and disruption to the parties. Mr. Hart stated that his motion was that the determination of the Zoning Administrator was essentially correct, except with respect to the wet bar. Mr. Smith seconded the motion.

Mr. Byers said it bothered him that there was never a consistent definition of what constituted a kitchen, that it seemed to be based on everyone's judgment, and now there was a subsequent interpretation. He said other mitigating circumstances included a possible misinterpretation or language difficulty, but what concerned him most was there was a complaint made for something that was different, and this happened to be a peripheral portion. He said what was being discussed was the possible displacement of a human being, the possibility of not being able to afford other lodging, and the possibility of a foreclosure. Mr. Byers said he thought the issues needed to be worked out and a solution found, and he would not support the motion.

Mr. Hammack indicated he would support the motion. He said there were two dwelling units evidenced by the way they were being used. He said he agreed with Mr. Hart's reservation concerning exactly what constituted a kitchen, and he thought there was a wet bar approved and ways to come into compliance.

Chairman Ribble called for the vote. The motion carried by a vote of 4-1. Mr. Byers voted against the motion. Ms. Gibb and Mr. Beard were absent from the meeting.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:30 A.M. FORREST AND MARVA HATCHER, A 2008-PR-054

Chairman Ribble noted that A 2008-PR-054 had been administratively withdrawn.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the notice of violation had been rescinded.

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~ ~ ~ December 2, 2008, Scheduled case of:

9:30 A.M. TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home business, which is operating on property in the R-12 District, is most similar to a School of Special Education and is, therefore, allowable under Zoning Ordinance provisions and that the property is in compliance with the limitations of the Home Occupation Permit. Located at 8134 Boss St. on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((43)) 22. (Deferred from 10/21/08 and 11/18/08 at appl. req.)

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the appellants and property owner were working closely together, but were unable to communicate over the holiday. She said the appellant had informed staff that they were a day away from withdrawing the appeal, and staff suggested the case be deferred to December 16, 2008, at 9:30 a.m.

Chairman Ribble called for speakers to address the issue of a deferral; there was no response.

Mr. Smith moved to defer A 2008-PR-044 to December 16, 2008, at 9:30 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting.

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~ ~ ~ December 2, 2008, After Agenda Item:

Request for Additional Time  
New Life Christian Church, SPA 01-Y-069

Mr. Hammack moved to approve 12 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Beard were absent from the meeting. The new expiration date was August 16, 2009.

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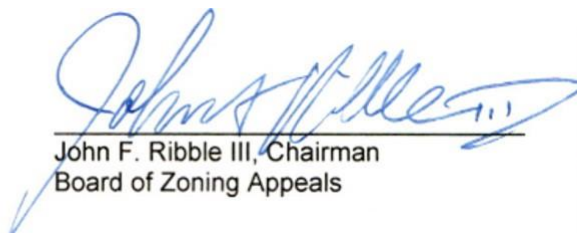
As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Minutes by: Paula A. McFarland

Approved on: March 25, 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 Tuesday, December 9, 2008. The following Board Members were present: Chairman John F. Ribble III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard, Thomas Smith, and Norman P. Byers were absent from the meeting.

Chairman Ribble called the meeting to order at 9:36 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 9, 2008, Scheduled case of:

9:00 A.M. TIMOTHY T. MAI, VC 2008-PR-005

Chairman Ribble noted that VC 2008-PR-005 had been indefinitely deferred at the applicant's request.

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~ ~ ~ December 9, 2008, Scheduled case of:

9:30 A.M. ANTHONY NGUYEN, A 2008-MA-004 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining a second dwelling unit on property in the R-2 District in violation of Zoning Ordinance provisions. Located at 3811 Whispering Lane on approx. 14,543 sq. ft. of land zoned R-2 and H-C. Mason District. Tax Map 61-3 ((13)) 241. (Decision deferred from 5/13/08 and 6/10/08)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was requesting a deferral of the decision to May 5, 2009, and staff supported the request. She said the appellant had filed a special permit which would allow him to keep the accessory dwelling unit.

Mr. Hammack moved to defer decision on A 2008-MA-004 to May 5, 2009, at 9:30 a.m., at the appellant's request. Mr. Hart seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Mr. Byers were absent from the meeting.

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~ ~ ~ December 9, 2008, Scheduled case of:

9:30 A.M. SHERRY BROWN, A 2007-MV-030 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining four separate dwelling units, one of which is located in an accessory structure (garage), on a single lot on property in the R-2 District and has erected a fence in excess of four feet in height, which is located in the front yard of the property, all in violation of Zoning Ordinance provisions. Located at 8324 Frye Rd. on approx. 21,750 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 101-3 ((11)) 11. (Deferred from 10/30/07, 1/29/08, 4/1/08, 6/3/08, and 9/9/08 at appl. req.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was requesting a deferral of the public hearing, and staff supported the request. She said the appellant had a special permit pending for the fence and noted that some other zoning issues were being worked out.

Mr. Hart moved to defer A 2007-MV-030 to March 24, 2009, at 9:30 a.m., at the appellant's request. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Mr. Byers were absent from the meeting.

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~ ~ ~ December 9, 2008, Scheduled case of:

9:30 A.M. JOLANDA N. JANCZEWSKI, A 2008-SP-046 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a Riding/Boarding Stable on property in the R-C and WS Districts without an approved special permit nor a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at



~ ~ ~ December 9, 2008, JOLANDA N. JANCZEWSKI, A 2008-SP-046, *continued from Page 208*

10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15. (Admin. moved from 10/28/08 at appl. req.)

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the appellant was requesting a deferral so that she could file for a special permit to rectify the zoning violation, and staff supported the request.

In response to Chairman Ribble's question, Ms. Stanfield suggested a date of July 14, 2009, at 9:30 a.m. Jolanda Janczewski, the appellant, noted her agreement with the proposed deferral date.

Chairman Ribble called for speakers to address the deferral request.

Steve Smithgall, 10806-A Henderson Road, Fairfax Station, Virginia, came forward to speak, stating that he lived immediately adjacent to the property. He asked why the appeal was being deferred when the original violation was in the spring. Mr. Smithgall noted that additional work had been performed on the property since the issuance of the violation.

Chairman Ribble, Mr. Hammack, and Mr. Hart explained the appeal procedure. Mr. Hart noted that the appellant always had the option to apply for a special permit to correct the zoning violation, and the Board usually defers the public hearing until after the special permit has been filed and heard.

Mr. Smithgall stated that the previous special permit on the property had been issued contingent upon meeting VDOT requirements, and the prior property owner could not meet VDOT standards and moved the riding facility because of that condition.

Steven Fox, 10806 Henderson Road, Fairfax Station, Virginia, came forward to speak, stating he was an adjacent property owner. He said he was against the deferral because of the extreme safety issues involved with the current operation. He said the prior owner did not use the property as a riding stable, so it had not been in continuous use as such. Mr. Fox said the extensive work continuing on the site creates more safety issues. The appellant was using his driveway, a common shared driveway, and the entrance was inadequate. Mr. Fox asked that the operation be shut down until the application was processed and all obstacles removed so there could be a safe place for his family to live on the same driveway.

In response to a question from Mr. Hart, Ms. Janczewski said the work which had been done on the site was due to a drainage problem Mr. Smithgall had on his property because new construction he had done had caused water to back up. She said she redid the culverts with the help of Fairfax County Stormwater Management personnel. Ms. Janczewski said her operation had been there for four years without any accidents with the shared driveway, which had been used by previous owners. She noted that the driveway had been widened since the time the original owner's application for a riding stable was approved. Ms. Janczewski stated that besides correcting the water runoff, she had installed an impervious surface on the driveway so that gravel would not run onto Mr. Smithgall's property.

Mr. Hart and Mr. Fox discussed work on the site, with Mr. Fox stating that the riding ring had been expanded since May. Mr. Fox said he thought the work was complete, but within the last two or three months, an exterior deck had been added to the riding ring, a platform, to allow shows to be held there. He said a show had been held a month before with loudspeakers. Mr. Fox said his main issue was safety for himself and his family, his neighbors, and for people coming in and out of the riding center because it was an extreme hazard to enter the site there.

Mr. Smithgall discussed the safety hazard created by the shared driveway and the entrance onto Henderson Road. He stated his agreement with Mr. Fox's comments, noting that he had almost been rear-ended several times.

Paulette Olmshine, 10806-A Henderson Road, came forward to speak, stating that she was an adjacent property owner. She said the additional grading occurred when the ring was enlarged, noting that the photographs that were taken in May of 2007 were quite different than what was there currently. Ms. Olmshine said the new lights were a huge issue to her and not an improvement.

~ ~ ~ December 9, 2008, JOLANDA N. JANCZEWSKI, A 2008-SP-046, *continued from Page 209*

In response to Mr. Hart's question, Ms. Stanfield stated that the application had been previously deferred because the appellant was unavailable at the earlier date. She noted that staff could not prevent the appellant from operating the riding center during the special permit process unless staff took it to litigation.

Susan Epstein, Property Maintenance and Zoning Enforcement Inspector, stated that when a notice of violation is appealed, the enforcement action is stayed until a decision has been made by the Board.

Mr. Hart, Ms. Stanfield, and Ms. Epstein discussed the proposed deferral, with Ms. Stanfield noting, in a practical sense, that by the time everything was prepared and forwarded for litigation, a special permit application could be filed and scheduled for public hearing.

Mr. Hammack asked why the previous development condition which addressed improvement of the entrance had not been enforced. Ms. Epstein responded that anytime a special permit was approved, an inspector would go out to the property to check on the development conditions, but she did not know if the previous horse center ever operated from the site after having obtained the special permit. Mr. Hammack read Development Condition 10, approved on February 10, 1999, saying the ingress/egress entrance at Henderson Road shall meet VDOT requirements to the satisfaction of DPWES and VDOT.

Responding to questions from Chairman Ribble and Ms. Gibb, Ms. Stanfield said the previous use had not been commenced, to her knowledge, and she believed the permit expired before they could use it.

Ms. Gibb moved to defer A 2008-SP-046 to July 14, 2009 at 9:30 a.m., at the appellant's request, with the understanding that to enforce would take that long anyway. She said everyone had an interest in seeing that there was a sanctioned legitimate use, with appropriate development conditions, and if it was not approved, it would be discontinued. Mr. Hammack seconded the motion, which carried by a vote of 3-1. Mr. Hart voted against the motion. Mr. Beard, Mr. Smith, and Mr. Byers were absent from the meeting.

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~ ~ ~ December 9, 2008, Scheduled case of:

9:30 A.M. APOLONIA FUENTES, A 2008-PR-055

Chairman Ribble noted that A 2008-PR-055 had been administratively moved to January 27, 2009, at 9:30 a.m., at the appellant's request.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, noted that the appellant was unavailable to attend at this time.

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~ ~ ~ December 9, 2008, Scheduled case of:

9:30 A.M. HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028 Appl. under sect(s) 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall without a Special Permit and has expanded the use limitations and conditions of Non-Residential Use Permit #A-2004-1013 and Special Permit Amendment SPA 95-Y-069-2 in violation of Zoning Ordinance provisions. Located at 14114 Lee Hy. on approx. 9.32 ac. of land zoned C-7, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 8C. (Admin. moved from 9/9/08 at appl. req.) (Deferred from 11/4/08 at appl. req.)

Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, the appellant's agent, came forward to speak and requested the appeal be deferred. She said she had been advised by staff to apply for a special permit, and staff would support a deferral until the application was decided by the Board. However, she had later spoken with Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, who indicated staff would not support a deferral because of safety issues. Ms. Kelsey said she had met with staff and Sergeant Bresson of the Police Department, who brought up serious concerns about incidents which had occurred in the parking lot outside of Fast Eddies, but had not provided any details concerning the incidents, so she had been unable to determine if the incidents had been caused

~ ~ ~ December 9, 2008, HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028, *continued from Page 210*

by Fast Eddies. Ms. Kelsey said she had made a FOIA request for the information, and had received a response from the police department that it would take time to produce the data. She said that because of the likelihood of litigation, Grayson P. Hanes, an attorney, was willing to represent the appellant, but was unavailable until March 3, 2009.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that staff did not support the deferral request. She said a police officer was present who could speak to recent incidents at the site.

Sergeant Anthony C. Lampe, Fairfax County Police Department, said that for the past two years, Fast Eddie's had been a continuing problem on Saturday nights, even affecting staffing and day-to-day strategies and planning at the substation. He noted the many injuries that had occurred at Fast Eddie's and many arrests for driving while intoxicated from drinking at the establishment. Sergeant Lampe said the police station had to dedicate extra officers to the Fast Eddie's parking lot due to the frequent fights, and it was not fair to the citizens of the Sully District to have to allocate so many officers to the parking lot, since they were pulled from elsewhere in the area.

Ms. Gibb, Chairman Ribble, and Sergeant Lampe discussed the frequency of the fights, with Sergeant Lampe noting that it was almost every Saturday night. He said there were frequently up to 200 people gathered in the parking lot when Fast Eddie's closed for the night, numerous license plates were from out of state, and there was not always enough manpower to intervene when fights broke out. Sergeant Lampe stated he had observed the activity at Fast Eddie's during the past 18 months while he was on the midnight shift.

Chairman Ribble, Mr. Hammack, and Wayne Bass, Property Maintenance Inspector, Zoning Enforcement Branch, discussed the initial complaint, with Mr. Bass stating that the property was inspected on April 19, 2008. He said the police department had organized several inspections with personnel from the Fire Marshall's Office, Alcoholic Beverage Control (ABC), and Zoning. Mr. Bass noted that it was during his inspection on April 19<sup>th</sup> that he saw dancing in the club.

In response to a question from Mr. Hammack, Sergeant Lampe stated that Fast Eddie's was currently scheduled for a hearing before the ABC Board on January 9, 2009. He said it was a slow process, and the hearing had been continued twice. Sergeant Lampe also noted there had been problems with the club since its inception, under different names and management.

Answering a question from Mr. Hammack, Ms. Kelsey said she was not disputing how to measure a dance floor, just how much room it takes to play pool.

Ms. Kelsey stated that her client had a right to counsel and to see the arrest/incident records for the establishment. She noted that the police data website showed only seven assaults in the last six months and twelve assaults for the past year, and the police records showed 36 assaults at the IHOP shopping center across the street. Ms. Kelsey said she needed more specific information to adequately defend the appellant. She said the owner had been there on Saturday nights during the past month, and there had been no police activity during that time. She said she was there the previous Saturday night and had not seen any police cars.

In response to a question from Mr. Hart, Ms. Stanfield confirmed that the Zoning Administrator had not certified the establishment as an emergency situation, whereas the Zoning Administrator could go before a judge to close the business in cases where the situation was life threatening.

Mr. Hart and Ms. Stanfield discussed the dance floor and parking lot issues, with Ms. Stanfield noting that patrons come from out of town to see the DJs, which plays a major part in the parking lot situation. Ms. Kelsey stated that the owner had fired one of the DJs to help alleviate the problem and would fire the other one if he played hip-hop music, the previous manager was fired, and another one from Nick's in Alexandria, which had a good reputation, had been hired.

~ ~ ~ December 9, 2008, HARCO III, INC., T/A FAST EDDIES RESTAURANT, A 2008-SU-028, *continued from Page 211*

Mr. Hart noted that he had heard a radio commercial on the way to the meeting for Fast Eddie's in Fairfax. He said he felt it was confusing as to which Fast Eddie's was being advertised, and maybe the wording of the ads could be more specific regarding the location of the hip-hop dance on Saturday night.

Mr. Hammack moved to defer A 2008-SU-028 to March 3, 2009, at 9:30 a.m., at the appellant's request. Ms. Gibb seconded the motion, which carried by a vote of 4-0. Mr. Beard, Mr. Smith, and Mr. Byers were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Suzanne L. Frazier

Approved on: September 24, 2014



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



John F. Ribble III, Chairman  
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 16, 2008. The following Board Members were present: V. Max Beard; Nancy E. Gibb; Thomas W. Smith III; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Chairman John F. Ribble III was absent from the meeting.

Vice Chairman Hammack 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, Vice Chairman Hammack called for the first scheduled case.

~ ~ ~ December 16, 2008, Scheduled case of:

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

Vice Chairman Hammack noted that the decision on SPA 77-P-091-03 had been deferred from December 2, 2008.

The Vice 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 re-opened for public comment.

Suzanne Zottle, Staff Coordinator, explained the results of the public hearing with the Planning Commission for the special exception and Section 2232 portions of the application. That decision was deferred to January 29, 2009, at the applicants' request.

Discussion ensued regarding the timeline of the interdependent Planning Commission, Board of Supervisors, and Board of Zoning Appeals meetings and decisions.

Edward L. Donohue, the applicants' agent, Donohue & Blue, PLC, 801 North Fairfax Street, Suite 209, Alexandria, Virginia, said since the Planning Commission meeting, the applicant hired a landscape architect and arborist to develop a more comprehensive landscape plan.

Vice Chairman Hammack closed the public hearing.

Mr. Byers moved to defer the decision on SPA 77-P-091-03 to February 3, 2009, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008, Scheduled case of:

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

Vice Chairman Hammack called the applicant to the podium.

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

[unintelligible] Hussein, 6521 South Kings Highway, Alexandria, Virginia, reaffirmed the affidavit.

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

Discussion ensued regarding the height of the fence and safety issues related to sight distance. Roy V. Biedler, Senior Inspector, Zoning Enforcement Branch, stated that he had exited the property at both gates and had no problem seeing traffic in any direction.

~ ~ ~ December 16, 2008, ISLAMIC FOUNDATION OF NORTH AMERICA, INC., SP 2008-LE-076,  
*continued from Page 213*

Mr. Hussein presented the special permit request as outlined in the statement of justification submitted with the application. He explained the fence provided privacy, screening from headlight glare, and noise reduction. In response to questions from Ms. Gibb, Mr. Hussein said the kitchen facilities previously located in the garage had been removed, cabs were not being stored on the property, and he and his family resided in the home.

In response to Mr. Hart's question regarding the resolution of the issue of the second dwelling unit, Mr. Biedler said the notice would not expire until January 5<sup>th</sup>, and since he had not received a telephone call indicating it had been removed, he had not yet performed a site inspection.

Discussion ensued regarding the Board going forward with the special permit application where there was a pending notice of violation for a second dwelling. Staff explained that since the application was for a fence and not the second dwelling unit, it was enough to include a proposed development condition requiring the unit's removal.

In response to questions by Mr. Hart, it was determined that Mr. Hussein was not a party listed on the affidavit. Saeed Anwar, the applicant's agent, 7633 Tower Drive, Alexandria, Virginia, reaffirmed the affidavit.

Responding to a question from Mr. Beard, Ms. Caffee confirmed that the house was a private residence, not a place of worship.

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

Mr. Hart moved to defer decision on SP 2008-LE-076 to January 6, 2009, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:00 A.M. MARGARET N. BOYNE, SP 2008-MA-087 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.4 ft. from side lot line. Located at 3017 Sylvan Drive on approx. 1.09 ac. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((21)) 55.

Vice Chairman Hammack called the applicant to the podium.

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

Evan J. Lippincott, the applicant's agent, 10605 Concord Street, Suite 1, Kensington, Maryland, reaffirmed the affidavit.

Shannon Caffee, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2008-MA-087, subject to the proposed development conditions.

Mr. Lippincott presented the special permit request as outlined in the statement of justification submitted with the application. He said the house was built in 1941 with a carport, and a deck was built over it in 1991 with a variance approval. Utilizing the same footprint, the applicant wanted to enclose the deck.

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

Ms. Gibb moved to approve SP 2008-MA-087 for the reasons stated in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA****SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

MARGARET N. BOYNE, SP 2008-MA-087 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.4 ft. from side lot line. Located at 3017 Sylvan Drive on approx. 1.09 ac. of land zoned R-1 and HC. Mason District. Tax Map 50-4 ((21)) 55. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 16, 2008; 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. The photographs show that the impact on the neighbor will be minimal.
4. The closest neighbor supports the application.
5. The addition will be on an existing deck, will be straight up, and involves the screening in an existing deck.
6. The addition will be compatible with the neighborhood.

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

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

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

1. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed screen porch addition as shown on the plat prepared by R.C. Fields, Jr., FCFields, Jr. & Associates, dated August 5, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,593 square feet existing + 3,889.5 (150%) = 6,482.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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

~ ~ ~ December 16, 2008, MARGARET N. BOYNE, SP 2008-MA-087, *continued from Page 215*

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

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

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~ ~ ~ December 16, 2008, Scheduled case of:

9:00 A.M.           STEPHEN WILLIAM CRUTCHLEY, ANN CRUTCHLEY, SP 2008-SU-069 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.0 ft. from side lot line. Located at 12020 Wayland St. on approx. 24,696 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 40. (Admin. moved from 9/30/08 at appl. req.) (Deferred from 10/21/08 at appl. req.)

Vice Chairman Hammack noted that SP 2008-SU-069 had been withdrawn.

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~ ~ ~ December 16, 2008, Scheduled case of:

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

Vice Chairman Hammack noted that SPA 82-A-039-05 had been deferred for decision only.

Deborah Hedrick, Staff Coordinator, said the applicants submitted new information that morning, which had been distributed to the Board, but staff had not had time to review it. Responding to a question from Ms. Gibb, Ms. Hedrick said the arborist found that insufficient watering and lack of light prevented any vegetation from surviving in the proposed location, and her recommendation was a board-on-board fence. She said the fence had not been incorporated in a development condition, because the most affected property owner opposed it. The development conditions of the previous amendment required plantings, and the church could not be released from its bond until the condition was satisfied. She said the application was at the site plan approval stage, and Urban Forestry Division was involved. They made frequent field visits and recommended various plants, but it had been found that there were areas in which no vegetation could survive regardless of the church's efforts.

Addressing a question from Ms. Gibb concerning a turn lane, Allan Kessler, Fairfax County Department of Transportation, said the Virginia Department of Transportation (VDOT) had requested an extension of the turn lane. He explained the new standards and requirements which VDOT was using in their assessment. Mr. Kessler said the applicants had not yet provided the required data, so in essence VDOT stated the minimum standards were not currently met due to insufficient data. Once the applicant supplied the information, VDOT may determine the standards were in fact met.

In response to Ms. Gibb, Ms. Hedrick said staff continued to recommend denial based on the unresolved issues.



~ ~ ~ December 16, 2008, PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05, *continued from Page 216*

Discussion ensued regarding coinciding issues and requirements for the turn lane, and VDOT's position on the matter. It was established that VDOT had yet to receive all the required information to make a determination about the turn lane.

Staff responded to questions from Mr. Hart concerning the disagreements with the development conditions. Detail was given regarding the creation of sidewalks and the relative requirements therein. Staff responded to questions from Mr. Smith concerning the turn lane. Mr. Kessler agreed with Mr. Smith that there was a possibility that VDOT could determine the turn lane extension would not be required.

Ms. Hedrick clarified for Mr. Smith that staff did not object to the development condition regarding Doveville Lane, but had concerns regarding how the condition would be enforced.

Discussions ensued regarding the use of the basement by a non-profit skills training company, and the concerns raised that this may result in additional traffic. It was explained that there could be issues with the application if the basement was being leased and not simply used as a resource for the members of the church. Susan C. Langdon, Chief, Special Permit and Variance Branch, said that if the Board approved the application, staff's Development Condition 19 conditioned the approval by requiring the applicants satisfy VDOT before obtaining a Non-Residential Use Permit. Ms. Hedrick said Zoning Enforcement staff had been asked to determine whether the arrangement concerning the basement would be considered another use as opposed to an activity, and a response had not yet been received.

Amber K. Scharn, the applicant's agent, Vanderpool, Frostick & Nishanian P.C., 9200 Church Street, Suite 400, Manassas, Virginia, presented the special permit request as outlined in the statement of justification submitted with the application. She said the right-turn lane extension requirement was dependent upon whether the queuing met the proposed uses, and whether the new requirements of access management design standards were met. She said the applicants had been told the queuing information provided to VDOT was acceptable, but information must also be provided based upon the turn-lane length for deceleration, and the applicants did not meet the latter set of requirements. Ms. Scharn said there was a locked gate that restricted access from Doveville Lane, and the applicants thought that was sufficient enforcement. She said the Department of Public Works and Environmental Services had approved a waiver and escrow funds concerning the sidewalk along the service drive during the previous special permit amendment application based upon safety concerns, because of the configuration of the service drive and the access there. The applicants' view was that this determination should be carried forward. Ms. Scharn said sidewalks would be provided in an effort to help the community along Elizabeth Lane, in order to provide a safe place for the public school students waiting for the bus. It was her understanding that the church had not pursued a lease with the computer training company, and if the proposed use was a problem, the church would not pursue it. Responding to questions from Ms. Gibb, Ms. Scharn explained that the applicant did not provide calculations for the turn-lane length, because VDOT had already told them the standards were not met, and so providing the information would not change VDOT's determination that the turn lane needed to be extended. Ms. Scharn concluded that, based on the queuing analysis and the use, it was the applicant's position that the requirement to extend the turn lane should be waived.

John McBride, the applicant's agent, Vanderpool, Frostick & Nishanian, P.C., 9200 Church Street, Suite 400, Manassas, Virginia, said this was not a new facility, it would not have a site plan associated with construction, and it would not have a new entrance. He said VDOT enforced its access management regulations by either an entrance permit or a County-approved site plan. The subject application was to allow an additional use within an existing facility. There would be no entrance permit or site plan, so VDOT would not make a recommendation, unless the Board imposed the requirement for the extension of the turn lane. He said if there was some reason for site plan review or an entrance permit by VDOT, they would have the authority to impose the requirements, but the applicants were asking that the Board not impose it.

Discussion ensued regarding safety issues which may result from the turn lane. Mr. Smith questioned whether access management standards were discretionary and could in fact be waived by VDOT. He stated that in order to make a decision, the Board needed the input and recommendation of VDOT, because they were responsible for determining what was safe.

~ ~ ~ December 16, 2008, PROVIDENCE PRESBYTERIAN CHURCH, PROVIDENCE NURSERY SCHOOL, INC., NATIONAL CAPITAL PRESBYTERY, INC., SPA 82-A-039-05, *continued from Page 217*

Staff said that there was an issue, because VDOT was waiting to make an official determination until they received the rest of the necessary information from the applicant, but the applicant had explained they were not going to provide the rest of the information, because it would not change VDOT's position that the turn lane needed to be extended. Staff said they would contact VDOT and attempt to get a determination in writing so that the Board may proceed with an official position.

Vice Chairman Hammack closed the public hearing.

Mr. Smith moved to defer decision on SPA 82-A-039-05 to February 3, 2009, at 9:00 a.m. Mr. Hart seconded the motion.

Ms. Gibb commented that she supported the deferral because she needed more information.

Mr. Hart supported the deferral. He discussed the possibility of producing a drawing, so that the Board may visually see the turn lane with respect to the current conditions and VDOT's proposed changes. He mentioned that the sidewalk requirement was warranted for safety purposes.

Mr. Beard said he could not support a deferral, as he did not believe anything would change. He said his particular concern was the safety issues.

Mr. Byers said he too would not support the deferral. He thought it was a bad application, and the safety issues really concerned him. He noted that VDOT established its standards for a reason. He also agreed with Mr. Hart that the sidewalk was a matter of safety, not something to be discussed, but rather simply done. Mr. Byers stated he would not vote for this application until those issues were taken care of.

Vice Chairman Hammack said he supported the deferral, because he wanted the church to have the opportunity to satisfy the requirements although he was unsure of what exactly the requirements were. There were issues of safety, and he wanted a resolution on the sidewalk issue.

There being no further comments, Vice Chairman Hammack called for a vote.

Mr. Smith's motion to defer decision on SPA 82-A-039-05 to February 3, 2009, at 9:00 a.m. carried by a vote of 4-2. Mr. Beard and Mr. Byers voted against the motion. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK & FAIRFAX MEMORIAL FUNERAL HOME, LLC, SPA 81-A-022-09 Appl. under Sect(s). 3-103 of the Zoning Ordinance amend SP 81-A-022 previously approved for funeral home, cemetery, mausoleums, crematory and columbariums to permit modification of development conditions and site modifications. Located at 4401 Burke Station Rd., 9900 and 9902 Braddock Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1, 12 and 12A.

Vice Chairman Hammack noted that SPA 81-A-022-9 had been administratively moved to January 13, 2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:00 A.M. TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-047 previously approved for church and private school of general education to permit child care center, building additions and site modifications. Located at 10610 Sunset Hills Rd. on approx. 4.99 ac. of land zoned

~ ~ ~ December 16, 2008, TRUSTEES OF RESTON PRESBYTERIAN CHURCH, SPA 82-D-047-02,  
continued from Page 218

R-E. Dranesville District. Tax Map 18-3 ((1)) 6. (Admin. moved from 3/18/08, 4/15/08,  
5/13/08, 7/15/08, 9/16/08, and 11/4/08 at appl. req.)

Vice Chairman Hammack noted that SPA 82-D-047-02 had been administratively moved to February 24,  
2009, at 9:00 a.m., at the applicant's request.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M.        SPRINGFIELD MASONIC LODGE 217 A.F. & A.M., A 2007-LE-017, Appl. under sect(s).  
18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has erected an  
accessory storage structure without a valid building permit and is allowing the use of the  
property that is not in conformance with the limitations of Special Permit S-189-77 in  
violation of Zoning Ordinance provisions. Located at 7001 Backlick Rd. on approx. 1.45 ac.  
of land zoned R-1. Lee District. Tax Map 90-2 ((1)) 19. (Admin. moved from 8/7/07 and  
11/6/07 at appl. req.) (Decision deferred from 2/26/08, 5/13/08, and 6/17/08)

Vice Chairman Hammack noted that there was a request that this decision be deferred to April 14, 2009. He  
asked if there was anyone present concerning this appeal.

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

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said neither the appellant nor their agent was  
present.

Doug Hansen, Staff Coordinator, said staff supported the deferral. The appellant was working toward the  
resolution of the issues, as they had applied for a special exception for a private club on the property and  
also for a special permit for the place of worship.

Mr. Byers moved to defer decision on A 2007-LE-017 to April 14, 2009, at 9:30 a.m. Mr. Smith seconded the  
motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Chairman Ribble was absent  
from the meeting.

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The meeting recessed at 10:40 a.m. and reconvened at 10:49 a.m.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M.        CRONAN FAMILY, LLC, A 2008-SU-008 Appl. under sect(s). 18-301 of the Zoning  
Ordinance. Appeal of a determination that appellant has established uses (an office, a motor  
vehicle storage yard, and a storage yard) and the placement of accessory storage structures  
on property in the I-5 District without site plan or Building Permit approval nor a valid Non-  
Residential Use Permit all in violation of Zoning Ordinance provisions. Located at 14800  
Thompson Rd. on approx. 7.8 ac. of land zoned I-5, AN and WS. Sully District. Tax Map  
33-2 ((2)) 12. (Concurrent with A 2008-SU-037) (Continued from 6/17/08)

Vice Chairman Hammack called the appeal case.

Doug Hansen, Staff Coordinator, presented staff's position as set forth in his memorandum, dated  
December 9, 2008. It was staff's observation that although there were efforts made to clean up some of the  
property, the extent of the cleanup was far from complete. In the six months granted to the appellant, no site  
plan had been submitted. Staff believed the appellant had not made a good faith effort to bring the property  
into compliance, and based on the tenor of the recent meeting onsite, believed the appellant would not come

into compliance absent the initiative of further action by the BZA. Staff recommended the BZA uphold the determination of the Zoning Administrator as contained in the original Notices of Violation to Cronan Family, LLC, and Danella Construction Company of Virginia, Inc., to bring the property into full compliance with the Zoning Ordinance.

Mr. Hansen responded to questions from Mr. Hart and Mr. Beard regarding the site inspection, and the time restriction for a follow-up visit due to staff finalizing its report.

J. Charles Curran, Esquire, 9695 Main Street, Fairfax, Virginia, Attorney for the appellant, briefly explained the circumstances and misunderstanding of the site inspection. He noted that the Cronan Family disagreed with staff over the good faith effort, as there were substantial actions taken, but Hydro Crane Company, a tenant, had not done their part in cleaning up. A lease termination letter would soon be delivered to the Hydro Crane Company, as their lease was month-to-month. Mr. Curran pointed out that the recommended improvements were very expensive, and this greatly concerned his client. He said alternatives were being discussed, and the appellant would soon file for a waiver. Mr. Curran said that the cost to bring the property into compliance was in the process of being determined by his client, after which his client would apply for a site plan. He asked for an additional deferral in order to permit time for the filing of permits and delivery of the lease termination letter.

Mr. Curran explained that there would not be a filed site plan until the waivers to be submitted by the appellant were officially approved or disproved.

Discussion ensued regarding the relationship between the appellant and the Hydro Crane Company. Though reluctant, Hydro Crane had agreed to clean up the property, but they ultimately stopped the efforts. This lack of follow through was the reason the Hydro Crane Company was now going to be served a lease termination.

Cynthia Wood, 1111 Montgomery Street, Laurel, Maryland, daughter of Mrs. Cronan, came forward, and addressed the Board's questions concerning the temporary presence of a dump truck on the property.

In response to Mr. Beard's question concerning the tenant, Hydro Crane, Mr. Hansen said staff could not make an adequate determination of what effect the tenant's removal would make, as an on-site inspection was necessary to determine who was doing what.

Discussion ensued regarding the entities involved in the issued violations and the registered agents for each associated company. It was explained that Mrs. Cronan's son, James Robert Cronan, was associated with Hydro Crane.

As it had not yet been administered, the Vice 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.

Staff clarified that James Robert Cronan had been a registered agent for both Cronan Family LLC and Hydro Crane at the time of the issued violation, so effectively the issuer of the violation felt they were including both Fairfax Hydro Crane and the property owner in the initial notice. Mr. Hart did not agree with this, and felt Hydro Crane should have been noticed separately.

Mr. Curran stated that the equipment shown in the recent photographs of the property was owned by Hydro Crane, and lawfully could not be removed by the property owner until the tenant lease was terminated.

It was clarified that James Cronan was a registered agent of Hydro Crane, but John Cronan was the president of the company. It was Mr. John Cronan who had called during the recent site inspection, and told staff to vacate the property until he could be there.

Mr. Curran explained that the appellant, being the property owner, gave full permission for Staff to inspect the property at any time.

Staff found the issuance of a violation addressed to Fairfax Hydro Crane, which was subsequently distributed to the Board.

~ ~ ~ December 16, 2008, CRONAN FAMILY, LLC, A 2008-SU-008, *continued from Page 220*

Given that County had permission to inspect at any time, Ms. Gibb questioned how staff would enter the property. It was established that there was a locked gate to which the property owners and Hydro Crane had a key. Ms. Gibb's main concern was how staff could enter the property if Hydro Crane did not cooperate with the inspection. Ms. Wood stated that they would need to set a time, as they had before. She went on to say she would personally be there with a key to let them in.

Ms. Wood distributed photographs to the Board which showed the state of the property when the appellant purchased it, as well as the creek which was the subject of the RPA issue. Ms. Wood expressed that VDOT's building of culverts had violated their own RPA regulations, and worsened the creek on the appellant's property.

There was discussion of a letter which identified the appellant's property as a nominee for an Area Plan Review . It was concluded that the appellant did not need to rezone like other surrounding properties, but simply needed to produce a site plan.

Ms. Wood recapped the various and numerous actions taken by the appellant to cure the violations and explained all the taxes paid by the appellant. It was the appellant's opinion that the County unfairly took possession of Thompson Road, a private road accessing their property. Ms. Wood believed the County did not, in fact, care about the creek, but wanted a reason to take possession of the appellant's land. The RPA embodied 50 percent of the land which the appellant still paid taxes on. Ms. Wood requested they be permitted a Cease and Desist Order based on her perception that the County was underhandedly trying to run the appellant off their land.

Mr. Beard asked whether staff had a problem with a possible continuance, if the property's cleanup continued and progress was being made for obtaining a site plan. Mr. Hansen said the ultimate goal was the Zoning Administrator's determination to be up-held, but staff was most willing to work with the appellants.

Mr. Hansen said staff preferred that a contractual date be set for the site plan.

Mr. Beard said he was sympathetic to the Cronan family, but it seemed apparent there were not the funds to cure the violation. After hearing those things staff requested be done were not done, he was unsure if he could support a deferral.

In closing comments, Mrs. Cronan agreed to attain and execute a contract for the site's cleanup, and would file a site plan application. There was discussion concerning requirements for a waiver.

There being no further questions or comments, Vice Chairman Hammack closed the public hearing.

Mr. Beard said that after being assured work on the site plan would proceed, that the site would continue to be cleaned up, and staff would be allowed access without pre-approval, he moved to defer decision on A 2008-SU-008 to March 10, 2009, at 9:30 a.m. Mr. Smith seconded the motion.

Mr. Hart submitted reasons to warrant a longer deferral date, as the appellant should be permitted more time to execute the required tasks.

Considering Mr. Hart's comments, Mr. Beard said he thought the matter was actually not a BZA issue, but he would accommodate a deferral date further into the future.

Mr. Byers asked staff to provide a status update report prior on January 6, 2009.

Mr. Beard amended his motion to defer to April 21, 2009, at 9:30 a.m. Mr. Smith seconded the amended motion. The motion carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M. DANELLA CONSTRUCTION COMPANY OF VIRGINIA, INC., A 2008-SU-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant, as a tenant on the subject property, is required to obtain site plan approval and Building Permit approval for trailers and accessory storage structures in order to comply with Zoning Ordinance provisions. Located at 14800 Thompson Rd. on approx. 7.8 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-2 ((2)) 12. (Concurrent with A 2008-SU-008)

Vice Chairman Hammack called the appellant to the podium. He asked staff whether they had any comments, as he knew there was a request for a deferral.

Doug Hansen, Staff Coordinator, Zoning Administration Division, said this case was concurrent with Cronan Family, LLC, A 2008-SU-008. Mr. Hansen said that because the Board deferred the Cronan appeal, staff supported a deferral for Danella Construction.

The appellant's attorney, Frank McDermott, Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, said he was asking for a deferral. He said his client was certainly subject to site plan approval for the entire property. Mr. McDermott requested the Board distinguish between Danella Construction and Cronan Family LLC, as the condition of the Danella's site was not the condition of the rest of the property. He noted that Danella just needed to qualify to get its Non-RUP and building permit for the temporary trailers. Mr. McDermott assured Vice Chairman Hammack that staff had full access onto the Danella site.

As there were no speakers who wished to address the matter of deferral, Vice Chairman Hammack asked if there were any further comments.

Mr. McDermott explained that, if required to relocate because of the site plan issue, it would take time to find another site. He said he thought it helpful to the Cronans' to remain on the property, thereby giving them an income stream which would help with the site plan. Mr. McDermott summarized by saying the appellant wanted to stay on the property and be in compliance, but if eventually it necessary that they move, they may need some time to find another property in which to move.

Mr. Byers moved to defer A 2008-SU-037 to April 21, 2009, at 9:30 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M. HARMAN AND MANFUL, INC., A 2008-MV-021 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without an approved Special Permit or a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hy. and 6117 North Kings Hwy. on approx. 2.85 ac. of land zoned C-8, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Concurrent with A 2008-MV-022) (Admin. moved from 7/29/08 at appl. req.)

Vice Chairman Hammack noted that A 2008-MV-021 had been administratively moved to June 23, 2009, at 9:30 a.m., at the applicant's request.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, said that that was correct; the appellants' had submitted a special permit amendment to add the dance floor use to their property, and if approved, the violation would be resolved.

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M. RICHMOND HIGHWAY, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, A 2008-MV-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a dance hall, which is not in conformance with the approved conditions of Special Permit Amendment SPA 95-V-031-2, without a valid Non-Residential Use Permit or an approved Special Permit in violation of Zoning Ordinance provisions. Located at 6220 Richmond Hy. and 6117 North Kings Hwy. on approx. 2.85 ac. of land zoned C-8, HC and CRD. Mt Vernon District. Tax Map 83-3 ((1)) 22C and 22D. (Concurrent with A 2008-MV-021) (Admin. moved from 7/29/08 at appl. req.)

Vice Chairman Hammack noted that A 2008-MV-021 had been administratively moved to June 23, 2009, at 9:30 a.m., at the applicant's request.

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~ ~ ~ December 16, 2008, Scheduled case of:

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

Vice Chairman Hammack called the appellant to the podium.

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

Charles Fitzhugh, Staff Coordinator, Ordinance Administration, made staff's presentation. Staff recommended the BZA uphold the Zoning Administrator's determination of August 15, 2008, that the appellant cease the parking of vehicles on the un-surfaced areas of his property's front yard.

Discussion ensued regarding applicability of a non-conforming use requirement, and whether the use would be allowed if it were evidenced the appellant had parked there for years. There was clarification of Attachment 7 concerning grandfathering.

Bruce Miller, Zoning Inspector, Zoning Enforcement Branch, explained that a referenced parked vehicle was non-operative and parked for years, and it was grandfathered. However, the appellant's situation provided that the vehicle periodically be moved.

Mr. Hart questioned whether the vehicle in question was parked within the appellant's property, which would in fact be a zoning issue, or in the right of way, which would be a Virginia Department of Transportation (VDOT) issue. Mr. Miller explained he could not verify one way or the other, but could revisit the site.

Ms. Gibb questioned staff on whether the parking issue was even a violation. She quoted Ordinance language which supported overnight parking. Since the vehicle was being moved daily to go to work, it appeared the appellant was not in violation.

Mr. Beard commented that he thought the issue was not the history of whether the appellant was allowed to park in his front yard, but rather if it was a VDOT right-of-way situation.

Discussion ensued regarding the Ordinance language and the applicability to the present case. Mr. Hart expressed his belief that there was enough evidence to prove the appellant had been parking in the grass. The issue was that there was no single finite location where the vehicle had been parked every day since before the amendment to the Ordinance.

In response to Mr. Beard's question concerning how staff became aware of the situation, Mr. Fitzhugh noted it was a notice of violation, and Mr. Miller noted that there was a complaint about parking on the grass.

Mr. Donohue explained photographs taken of his property.

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

Jeanette Beckwith, 1306 Caulder Road, McLean, Virginia, came forward to speak. She said her rental property was adjacent to Mr. Donohue's property, and she had seen his truck parked and moved there many times. She stated he was a wonderful and cooperative neighbor. Ms. Beckwith said she has seen the truck there for many years, and never had an objection.

Ann French, (no address given), came forward to speak. She said she walked by the appellant's property daily, and it was a relief to her that she did not have to walk around Mr. Donohue's car. From a safety point of view for both pedestrians and other vehicles, she wished everyone parked off the roadway and on their own property.

William French, (no address given), came forward to speak. He concurred with the previous speaker, that it was a safety issue. He was thankful to Mr. Donohue for how he parked, and he wished more folks would park closer to their homes so as to allow more room for the many neighbors who regularly walk for health purposes. Responding to Ms. Gibb's question, he said the Donohue's vehicles had been parked there for many years, which was definitely over ten years.

Robert E. Pickeral, 1331 Kurtz Road, McLean, Virginia, came forward to speak. He said since Mr. Donohue had been the property owner in 2000, he had parked in the front yard. Mr. Pickeral stated Mr. Donohue had been parking on the property for 20 years.

Patricia Pickeral, 1331 Kurtz Road, McLean, Virginia, came forward to speak. She pointed out that there was no mire of mud in the front yard, and she did not find it objectionable at all. She stated he had parked there for a very long time.

Vice Chairman Hammack then called speakers in opposition.

Mike White, 6512 Topeka Road, McLean, Virginia, came forward to speak. He said he thought the photograph evidencing the condition of the grass was not valid documentation, and parking occurred regularly prior to 2002. Mr. White said it was not attractive, and detracted from the appearance of the property. He believed it was a use issue, and the Ordinance should be enforced. He said the homeowners association of Salona Village, wanted the County to enforce the Ordinance.

In response to Vice Chairman Hammack's request that he revisit the site to assure the facts presented at the public hearing were accurate and current, Mr. Miller said he thought it his duty to conduct another site visit to assure the information and photographs were current, and that his citation was not issued in error.

In response to Vice Chairman Hammack's question whether staff would support a deferral, Ms. Stanfield said staff would.

To clarify the situation, Mr. Beard said, if Mr. Miller revisited the site and determined that Mr. Donohue's vehicle was parked in the right-of-way, then the County, basically, had no jurisdiction. If that were the determination, the appeal would be administratively withdrawn.

Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to defer decision on A 2008-DR-056, to January 13, 2009, at 9:30 a.m.

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

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~ ~ ~ December 16, 2008, Scheduled case of:

9:30 A.M. TYSONS TERRACE HOMEOWNERS ASSOCIATION, A 2008-PR-044 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a home business, which is operating on property in the R-12 District, is most similar to a School of Special Education and is, therefore, allowable under Zoning Ordinance provisions and that the property is in compliance with the limitations of the Home Occupation Permit. Located at 8134 Boss St. on approx. 1,760 sq. ft. of land zoned R-12. Providence District. Tax Map 39-2 ((43)) 22. (Deferred from 10/21/08, 11/18/08, and 12/2/08 at appl. req.) (Withdrawal pending.)

Vice Chairman Hammack called the case.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, noted that A 2008-PR-044 had been withdrawn.

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~ ~ ~ December 16, 2008 After Agenda Item:

Request for Additional Time  
Trustees of Mount Pleasant Baptist Church  
SPA 75-M-060-2 and VC 2002-MA-060

Mr. Byers moved to approve additional time to March 25, 2010. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Chairman Ribble was absent from the meeting.

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~ ~ ~ December 16, 2008 After Agenda Item:

Request for Additional Time  
Buddhist Association of America  
SPA 87-V-070

Mr. Beard moved to approve additional time to November 5, 2009. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Chairman Ribble was absent from the meeting.


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As there was no other business to come before the Board, the meeting was adjourned at 1:20 p.m.

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

Approved on: July 13, 2016

  
Lorraine A. Giovinazzo, Clerk  
Board of Zoning Appeals

  
John F. Ribble III, Chairman  
Board of Zoning Appeals