

2012 BOARD OF ZONING APPEALS MEETING MINUTES

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 11, 2012. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr., Nancy E. Gibb; James R. Hart; Norman P. Byers; and V. Max Beard. Thomas Smith was absent from the meeting.

Chairman Ribble called the meeting to order at 9:01 a.m.

During Board Matters, Mr. Hart moved to elect the following slate of officers for 2012: Chairman – Mr. Ribble; Vice Chairman – Mr. Hammack; and Secretary – Ms. Gibb. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Smith was absent from the meeting.

Mr. Hart then moved that Kathleen Knoth be elected as the Clerk to the Board for 2012. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Smith was absent from the meeting.

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

~ ~ ~ January 11, 2012, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (Admin. moved from 12/1/10 and 5/4/11 for ads) (Admin. moved from 1/26/11 at appl. req.) (Decision deferred from 6/22/11, 9/28/11, and 10/26/11)

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (Admin. moved from 12/1/10 and 5/4/11 for ads) (Admin. moved from 1/26/11 at appl. req.) (Decision deferred from 6/22/11, 9/28/11, and 10/26/11)

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth. He reminded the Board that the applications were for decision only.

Shelby Johnson, Staff Coordinator, updated the Board on the status of the applications. She said that they had been deferred to allow staff time to address questions raised regarding notification to the Mt. Vernon Apartments complex, the amount of rear yard coverage, and whether the current structures were listed on a house survey plat recorded at the time the applicant purchased the property. Ms. Johnson referenced an updated plat of the property showing 78% minimum required rear yard coverage, including the 9-foot high shed, the larger shed to the northwest, a portion of the one-story garage, and a portion of the concrete area. At the time of settlement, the survey did not show the presence of the 9-foot high shed, but noted that the applicant avers that she purchased the property with all these structures in place. Ms. Johnson said the applicant held that she did not understand the encroachment issues and rear yard coverage violations on the property at the time she purchased it, relying on her realtor to translate the purchase process and any potential issues. She stated that the owners of Mount Vernon Apartments were opposed to allowing the storage structures and fencing to remain on their property.

In response to a question from Mr. Hart, Ms. Johnson confirmed that in order to approve an accessory structure, the Ordinance requires that it be located on the same lot as the principal use.

Ms. Johnson deferred to the applicant regarding the installation of the 9-foot shed. Melvin Mineonas, attorney representing the applicant, said both sheds pre-existed the applicant's purchase of the property, noting that he possessed correspondence from neighboring property owners stating the same.

Although the applicant was considering possible litigation regarding the inaccuracy of the original survey, Mr. Mineonas stated that he had a proposed resolution to the encroachment problem, and handed out copies of the written proposal to the Board. After reviewing the document, Mr. Hart stated that the majority of the solutions would take time and some the Board had no control over. He also pointed out that part of the larger shed was not on the applicant's property.

In response to a question from Ms. Gibb, Susan Langdon, Chief, Special Permit and Variance Branch, stated that a wall between two sheds had been previously approved by the Board, but she did not believe it could be now since there had been a change in the Zoning Ordinance language.

Mr. Beard and Mr. Mineonas discussed the claim of adverse possession, with Mr. Mineonas stated that it did attach to real estate and to the prior owner also. He confirmed that no commercial enterprises were taking place on the property.

Mr. Hart did not think that removal of the one shed would bring the rear yard coverage down to 30 percent. Mr. Mineonas stated that a significant portion of an extensive concrete driveway and parking area would also have to be removed. They discussed the possibility of replacing the concrete with gravel or dirt, with Ms. Langdon noting that gravel was considered pavement. Ms. Johnson had made a rough calculation, assuming the minimum of 1750 feet, accordingly, 525 square feet would need to be removed. She said that if both sheds and a portion of the concrete were removed, it would accomplish the 30 percent requirement.

Ms. Gibb commented on the long process ahead for the applicant, noting that it could take years to work out. Additionally, if part of the driveway was removed, it could diminish the aesthetic value of the property. Mr. Hart stated his agreement with Ms. Gibb's viewpoint.

Mr. Hart and Mr. Mineonas discussed how the current plat was different from the settlement plat, specifically that the hot tub and larger shed were shown as two separate structures on the settlement plat. Mr. Hart stated that he had a letter from the settlement attorney who indicated that the applicant had full knowledge of all matters on the settlement survey. Mr. Mineonas said it would be preferable if the applicant had an interpreter, since she was not an English speaker, but said the applicant represented to him that she was not told about the encroachment. In response to a question from Mr. Hart, Ms. Mineonas said the issue of the title insurance policy was not an issue that was discussed at closing.

Chairman Ribble asked if the applicant possessed any of the closing documents. Mr. Mineonas said he had some in his possession, but that signed copies of the documents usually stayed with the closing attorney. He also said he did not have a copy of the insurance commitment document.

Mr. Beard, Mr. Mineonas, and Ms. Johnson discussed possible resolutions to the issues, specifically adjusting the fence to move it off the neighboring apartment property and reducing the driveway area. Mr. Mineonas said he would be willing to take those steps towards resolution. Mr. Beard suggested the applications be deferred.

Mr. Hammack said he wanted to set a date for a progress review even if the Board deferred the applications since there were still a lot of issues to be resolved. He asked Mr. Mineonas how much time he might need to further investigate resolution of the issues. Mr. Mineonas said two months. Ms. Langdon suggested March 28, 2012.

Mr. Hammack moved to defer decision on SP 2010-LE-053 and VC 2010-LE-006 to March 28, 2012, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Mr. Smith was absent from the meeting.

//

~ ~ ~ January 11, 2012, Scheduled case of:

9:00 A.M. ABDERRAHMAN RHANIME, SP 2011-MA-093 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 structure to remain 4.8 ft. from side lot line and accessory storage structure to remain 2.0 ft. from side lot line. Located at 4508 Brookside Dr., Alexandria, 22312, on approx. 28,718 sq. ft. of land zoned R-1. Mason District. Tax Map 72-1 ((6)) 51.

Chairman Ribble called the applicant to the podium.

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

Abderrahman Rhanime, 4508 Brookside Drive, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The application was to allow a detached garage to remain 4.8 feet from the side lot line, and a shed to remain 2.0 feet from the side lot line. The applicant did not receive a building permit for the addition and was given a Notice of Violation as a result. The special permit request was subsequently applied for by the applicant. The Zoning Ordinance requires a minimum side yard of 20 feet, therefore, a modification of 15.2 feet was requested for the detached garage and a modification of 18.0 feet was requested for the shed.

Mr. Hart asked if the garage had gotten taller without a building permit. Ms. Horner replied that staff was not sure of the garage details because it had been altered prior to staff receiving the file. However, she noted that there were historic aerials which showed what the detached garage looked like prior to the reconstruction, when it appeared to be one and a half stories.

In response to a question from Mr. Hart, Ms. Horner said that the detached garage had vested rights since it was constructed in 1939. However, when reconstruction began, the vested rights were lost.

Mr. Hart and Ms. Horner discussed revised development condition 2B, with Ms. Horner noting that staff would not object to the addition of qualifying language stating that no kitchen, cooking area, or sleeping accommodations would be present in the garage.

Mr. Rhanime presented the special permit request as outlined in the statement of justification submitted with the application. He gave a brief history of the property, noting that he purchased the house in foreclosure and that it had fire damage. Mr. Rhanime said he applied for a building permit in September, but the County had issues with the addition to the main house, so he decided to work on the garage while waiting for permit approval from the County. A contractor had told him he could obtain more space by bumping out the garage and changing the location of the stairs, however, he did not understand that a special permit would be required. Mr. Rhanime delineated the work which had been done, including removal of the dormers and raising the building height to two stories. He said an inspector then came by and told him to stop work on the garage, noting that a permit was necessary. Mr. Rhanime said he did not have any building experience and took the contractor's word that a permit was not necessary. He had wanted to make the area larger so his wife could use it as a craft room, and that changing the location of the stairs within the garage would allow cars to be parked there.

Chairman Ribble asked the name of his contractor. Mr. Rhanime said he did not have one, noting that the contractor's quote was too high so he did the work himself.

In response to a question from Mr. Hammack, Mr. Rhanime said he was an analyst with the federal government.

In response to questions from Mr. Hart, Mr. Rhanime stated that electricity and plumbing had been installed in the garage. He clarified that the contractor had done the framing work, but that he did not have a written contract, nor did he know if the contractor was licensed. However, all plans had been drawn by an architect and were used by the contractor.

Mr. Hart asked if the garage plans had ever been filed with Fairfax County. Mr. Rhanime responded that they had not been. He explained that the house plans and the garage plans had been drawn at different times. Mr. Rhanime also stated that he had seen the revised language for Development Condition 2, and agreed with it.

Chairman Ribble called for speakers.

Richard Daniels, 4521 Brookside Drive, Alexandria, Virginia, said he was a member of the Pinecrest Community Association. He stated his opposition to the application and asked the Board to deny it. Mr. Daniels wanted to preserve the character of the community, noting that the shed should be reduced to 7 feet in height or removed entirely. He asked the Board not to allow structures to remain 2 feet and 5 feet from the property line.

Rollin Huntington, 6375 Vale Court, Alexandria, Virginia, stated his familiarity with architectural drawings since he constructed swimming pools in Fairfax County. He reviewed the drawings and the problems contained therein. Mr. Huntington asked that the Board deny the application.

In response to questions from Mr. Hammack, Susan Langdon, Chief, Special Permit and Variance Branch, stated that a building permit had been submitted, but not yet been approved. She said the permit application for an addition to the house was dated September 7, 2010, but noted that there was a second application dated February, 2011 for the accessory structure which also had not been approved.

Mr. Beard asked about Buildex@gmail.com on the permit application, and asked who it belonged to. Mr. Rhanime replied that it was the architect's e-mail address.

Mr. Hammack asked that the building permit be placed on the overhead projector, and asked whose name was on the application. Mr. Rhanime replied that it was the architect, who offered to submit it to the County for him.

Leslie Johnson, Deputy Zoning Administrator, clarified that typically an applicant could be a permit runner, a contractor, the owner, or whoever was processing that permit.

In response to a question from Mr. Hammack, Mr. Rhanime said he started construction on the garage between the end of October and mid-November of 2010. He stated that after he had resubmitted the permit application for the addition in September by the architect, he was told that it was not approved because it had an attached garage and that he needed to change the use of it because there was already an existing garage. Mr. Rhanime explained that the original proposed addition was for two stories and an attached two car garage, with the intention to leave the back of the house as a separate structure, which he thought he could use as a workshop.

Ms. Johnson clarified that when Mr. Rhanime applied for a building permit for the house, it was probably noticed that the garage was too close to the lot line. She guessed that size might also have been a factor.

Mr. Hammack asked how the revised language for the development conditions would cure the problem. Ms. Johnson said that the detached garage could not be considered accessory to the dwelling because of its size and bulk. However, after staff met with the applicant and he indicated his plans to increase the size of the house and that the expanded part of the garage would be a craft room, staff recalculated the dwelling size and it was determined that the garage would then meet the definition of an accessory use.

Mr. Hart, Ms. Langdon, Ms. Johnson, and the applicant discussed the building permit application. Ms. Johnson stated that when she originally met with the applicant, the plans did not show a garage for the house. He was advised that since there was a garage in the accessory structure, there should not be a second garage. Ms. Johnson noted that the applicant would need to apply for a new permit for the house addition, and to have the garage inspected. She reiterated that no garage was associated with the addition.

Mr. Hammack, Ms. Langdon, Ms. Horner, and the applicant discussed the building permit applications in September of 2010 and February of 2011, and the Notice of Violation issued in May of 2011. Charles Forshee and Robert Burke, Department of Code Compliance, stated that they inspected the property in November of 2010. Mr. Burke said that when he visited the property in early November, it was under construction, noting that the roof was on, the walls were up, and interior work was being performed.

In response to a question from Mr. Hart, Mr. Burke said that current photos show siding on it, which needed to be done to prevent deterioration, but as far as he knew, the interior was unfinished.

In response to a question from Mr. Hammack, Mr. Burke said he informed the applicant that a building permit was necessary. On inspection of the interior, Mr. Burke noted that the stairs were in; flooring had been laid on the second floor, and a little bit of plumbing work had been done.

Mr. Hammack and Mr. Burke discussed the size of the addition. Mr. Burke said the addition was six to seven feet longer than the original footprint. Following a question about the stone wall, the applicant confirmed that he had demolished part of it because it was damaged.

Chairman Ribble closed the public hearing.

Mr. Hart stated this was a very difficult case, but would be making a motion to approve the application in part and deny it in part. He said the second story addition was problematic and could not conclude that the applicable standards for the garage had been met. However, with respect to the shed, Mr. Hart said it was relatively inconsequential and had been there since 1939 without provoking a complaint. He moved to approve the application in part with revision to proposed Development Conditions 1 and 2 to remove reference to the accessory garage structure.

Mr. Hammack seconded the motion, stating that he wanted the garage structure restored to its original design. He asked if the setback request was not approved, if it would have to be torn down.

Ms. Johnson responded that she could not speak to the existing structure before the modifications. She said there was some concern it could not be restored to its original condition. Ms. Johnson noted that another option would be to lower the garage to a one-and-one-half story structure, then an error in building location could be obtained and the issue of vested rights would not have to be dealt with.

Mr. Hart said he would accept a friendly amendment to defer decision on this application for a week. Mr. Hammack so moved. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Mr. Smith was absent from the meeting.

//

~ ~ ~ January 11, 2012, Scheduled case of:

9:30 A.M. VASELIOS LIMITED LIABILITY COMPANY, A 2011-LE-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has allowed the erection of a sign that does not conform to the approved sign permit and the installation of numerous signs without approved sign permits on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 6701 Franconia Rd., Springfield, 22150, Map 90-2 ((1)) 97. (Continued from 10/5/11)

Chairman Ribble called the case.

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

Jill Cooper, Senior Assistant to the Zoning Administrator, Ordinance Administration Branch, presented the appeal as set forth in a memorandum dated January 4, 2012. She said this was an appeal of the determination that the appellant allowed the erection of a sign that did not conform to its approved sign permit and the installation of numerous signs without approved sign permits. Ms. Cooper said the appeal was the result of a Notice of Violation ("NOV").

In providing a brief history of the site, she noted that a sign permit was issued in 2009 for a single roof-top sign to Athena Custom Framing. Property inspections found that two roof-top signs had been installed, neither of which adhered to the approved sign permit description or layout. Ms. Cooper noted that at the time of the inspection, numerous banner and "popsicle" signs were also present, as well as vehicles displaying advertising which were parked closer than 25 feet to the public street line.

She reminded the Board that the hearing was continued from the October 5, 2011 public hearing, at the request of the appellant so that they could obtain a sign permit for one of the two roof-top signs, indicating that the second roof-top sign would be removed. Although the appellant had submitted renderings and a new building permit for the new roof-top sign, the plans required by the Department of Public Works and Environmental Services demonstrating the sign's proper attachment to the roof, had not been submitted. Further, Ms. Cooper said that the latest site inspection indicated that the second roof-top sign had not been removed and numerous popsicle signs remained on the property. Staff recommended that the BZA uphold the determination of the Zoning Administrator, and deny any additional requests for continuance as the appellant had already had seven months to come into compliance.

Chairman Ribble relinquished the chair to Vice-Chairman Hammack.

In response to a question from Ms. Gibb, Ms. Cooper stated that the banners were gone, but the popsicle signs were present at every inspection. Regarding the location of commercial vehicles, Ms. Cooper said that at one inspection, they were sufficiently away from the road; at another, they were not.

Charles Cohenour, Zoning Inspector, said at the last inspection there were at least two popsicle signs on one of the outside entrances. The one identified commercial vehicle was located at an acceptable distance from the road. The second unapproved sign on the east side of the building was still present.

In response to a question from Ms. Gibb, Al Sanchez, Department of Code Compliance, said the commercial vehicle had to be parked at least 25 feet from the road.

Mr. Cohenour said the current renderings by the appellant showed back-to-back signs on the roof of the building, for which the applicant had submitted a new sign permit.

Mr. Hart and Mr. Cohenour discussed the type of signs permitted by the Zoning Ordinance, with Mr. Cohenour noting that two signs on the building were possible.

Marco Reizakis, son of the property owner, presented the arguments forming the basis for the appeal. He said the sign company that was hired used a different style of sign for the roof-top, noting that it had been on the roof for approximately one year before a problem was noticed. Mr. Reizakis acknowledged that the current sign was too high and that he had not submitted renderings showing the sign's proper attachment to the roof. He said a new sign company had been hired and they were communicating directly with Mr. Cohenour to bring the sign into compliance. Mr. Reizakis said he was waiting for the sign permits to be approved before construction commenced. He thought it should be completed within four to six weeks.

In response to a question from Ms. Gibb, Mr. Reizakis said the popsicle signs had been removed as of the time he was last at the site, which was Monday.

Chairman Ribble resumed the chair.

Ms. Gibb, Mr. Cohenour, Mr. Sanchez, and Mr. Reizakis discussed the procedure for removal of the second sign and the need for a demolition permit. Mr. Sanchez said the appellant should not have a problem getting the permits approved. Mr. Cohenour stated that the applicant could have a new sign permit approved by the end of this week, once he complied with the NOV.

Ms. Gibb asked staff how they felt about another deferral. Mavis Stanfield, Deputy Zoning Administrator, said her preference would be to have the Board uphold the Zoning Administrator's determination and then continue to work with the appellant.

Chairman Ribble called for speakers. There being no response, he closed the public hearing.

Ms. Gibb moved to defer decision on A 2011-LE-022 until February 1, 2013, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-0. Mr. Byers was not present for the vote. Mr. Smith was absent from the meeting.

//

~ ~ ~ January 11, 2012, Scheduled case of:

9:00 A.M. KEYVAN YOUSEFIE, A 2011-MA-038 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a truck rental establishment and a junk yard and storage yard and has installed light structures and signs on property in the C-6 District without sign permit approval, all in violation of the conditions of Special Exception Amendment SEA-83-M-051-1 and Zoning Ordinance provisions. Located at 7604 Little River Tpk., Annandale, 22003 on approx. 32,903 sq. ft. of land zoned C-6. Mason District. Tax Map 71-1 ((2)) 1B.

Chairman Ribble noted that A 2011-MA-038 had been administratively withdrawn.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the Notice of Violation (NOV) had been rescinded and that a new NOV was being filed.

//

~ ~ ~ January 11, 2012, Scheduled case of:

9:00 A.M. ZENGLAI RAYMOND GE AND HONGYAN GUO, A 2011-DR-035 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an existing log cabin structure is not accessory to the proposed principal structure and is, therefore, not permitted to remain on the lot with the new dwelling. Located at 945 Walker Rd., Great Falls, 22066 on approx. 5.13 ac. of land zoned R-E. Dranesville District. Tax Map 13-3 ((7)) 5.

Chairman Ribble noted that A 2011-DR-035 had been administratively moved to March 7, 2012, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ January 11, 2012, Scheduled case of:

9:00 A.M. JOHN DAPOGNY, A 2011-PR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that property located at Tax Map 39-4 ((1)) 146A and 146B in the R-3 District is deemed a corner lot and must meet the minimum required yard requirement as determined based on the configuration of the property. Located at 7703 Virginia Ln., Falls Church, 22043 on approx. 22,198 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 146A and 146B.

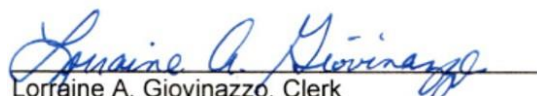
Chairman Ribble noted that A 2011-PR-037 had been administratively moved to June 6, 2012, at 9:00 a.m., at the appellants' request.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:00 P.M.

Minutes by: Suzanne Frazier

Approved on: April 2, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, January 25, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. ROBERT J. CUNNINGHAM, JR./LINDA J. CUNNINGHAM, SP 2011-SP-095 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 1407 Liting Ln., Fairfax Station, 22039, on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-2 ((3)) 29.

Chairman Ribble noted that the Board had received a deferral request on this application.

Mr. Hart moved to defer SP 2011-SP-095 to March 28, 2012, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. of land of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. (Admin. moved from 9/28/11, 11/30/11, and 12/14/11 at appl. req.)

Chairman Ribble noted that SP 2011-SP-069 had been administratively moved to February 29, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. SRIDEVI V. SARMA, SP 2011-DR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 4.8 ft. from one side lot line, 0.8 ft. from other side lot line and 1.6 ft. from rear lot line. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with VC 2011-DR-008). (Decision deferred from 8/3/11, 10/5/11, and 11/30/11)

9:00 A.M. SRIDEVI V. SARMA, VC 2011-DR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with SP 2011-DR-054). (Decision deferred from 8/3/11, 10/5/11, and 11/30/11)

Chairman Ribble reminded the Board that these applications were for decision only.

Mr. Byers moved to approve in part SP 2011-DR-054 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SRIDEVI V. SARMA, SP 2011-DR-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit open deck to remain 4.8 ft. from one side lot line, 0.8 ft. from eastern side lot line and 1.6 ft. from rear lot line. **(THE BZA DID NOT APPROVE THE REQUESTED 4.8 FEET FROM THE WESTERN SIDE LOT LINE FOR THE OPEN DECK.)** Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with VC 2011-DR-008). (Decision deferred from 8/3/11, 10/5/11, and 11/30/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012;

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

1. The applicant is the owner of the property.
2. As passed without the approval of the 4.8 feet from the western side lot line:
 - A. It could not be detrimental to the use and enjoyment of other property in the immediate vicinity.
 - B. It could not create an unsafe condition with respect to both other property and public streets.
 - C. The rest of the standards apply.
3. The Board wanted to be as fair as they could.
4. The building permit dated June 1, 2010, clearly annotates that the stone patio is to be removed, which is on the current plat.
5. The building permit says that the areaway and the stairs are supposed to be removed as well.
6. They were added into the development conditions because if you do not have those there, then the only way you can egress the house is through the deck.
7. It was more reasonable to have the stairs and the areaway.
8. That does not take away any of the stone patio around the spa or the pool.
9. It does reduce the impervious surface from 64 percent to 41.59 percent, which should mitigate some of the water runoff issues from the property, along with the trench which is already at the back end of the property.
10. If the stairs and the areaway are removed, that would take the impervious surface down to around 35 percent.
11. Based on the variance, it makes a variance much more palatable, for example, in the six percent, which the Board can live with.
12. The applicant retains the in-ground swimming pool, the associated decking, and the spa.
13. From the standpoint of cost, which the Board does not usually consider, that portion that the Board is asking to be removed would have been a cost that the applicant would have undergone anyway if the building permit had been followed exactly the way it was submitted. So the Board is not asking for any additional cost on this.
14. If the application is approved this way, then there would be no concern about the site plan and additional run-off issues in the front.
15. The variance request would be reduced to about 12 percent.
16. As indicated on page 2 of the Status Update memorandum dated January 25, 2012, even if you go through all of the additional expense and try to divert everything to the front, there is no guarantee that it will work.
17. The problem is that once those efforts are made and it does not work out, then the Board will have already approved this complete package with 64 percent impervious surface and there would be a bigger issue than there is now.

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

- A. That the error exceeds ten (10) percent of the measurement involved;

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

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

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

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

- 1. This special permit is approved for the location of an open deck (stone patio, and accessory structures (swimming pool, hot tub, barbecue pad, decorative walls and areaways and steps) located 0.8 feet from the eastern side lot line and 1.6 feet from the rear lot line as shown on the plat prepared by GeoEnv Engineers, dated January 17, 2012, as submitted with this application and is not transferable to other land. A portion of the "stone patio" located 4.8 feet from the western side lot line shall be removed as shown on Attachment 1 to these conditions.

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

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

Mr. Byers then moved to approve VC 2011-DR-008 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SRIDEVI V. SARMA, VC 2011-DR-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6510 Chesterfield Ave. on approx. 10,150 sq. ft. of land zoned R-3. Dranesville District. Tax Map 41-1 ((5)) 18 (Concurrent with SP 2011-DR-054). (Decision deferred from 8/3/11, 10/5/11, and 11/30/11) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-3.
3. The area of the lot is 10,150 square feet.
4. It satisfies at least one of the characteristics under Standard 2, specifically the size of the lot itself.
5. Even if the applicant had followed through initially with the approved permit on June 1st, there would still be discussions about 35% rear yard coverage.
6. There still would have been a variance that would have been required.
7. Rather than disapproving the variance and now allow the applicant to have the barbecue, the spa, the stone patio, and the swimming pool, that was an approved building permit, and the Board should go ahead and honor it.
8. It would be a 12% variance as opposed to one that would be 34%.
9. Based on what the Board has seen before from the standpoint of infill situations, when you reduce impervious surface, it does help.
10. That is sensitive to the neighbors and sensitive to trying to maintain as much as possible of what has already been put in place.

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

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

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

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

1. This variance is approved for minimum rear yard coverage of approximately 42% as shown on the plat prepared by GeoEnv Engineers, dated January 17, 2012, submitted with this application, amended as shown on Attachment 1 to these development conditions. This approval is not transferable to other land. A portion of the "stone patio" located 4.8 feet from the western side lot line shall be removed as shown on the attachment within 90 days of the approval of this variance.
2. A revised Infill Lot Grading Plan, which reflects revisions to and/or the reconstruction of the existing infiltration trench located in the rear yard to meet today's standards shall be submitted to the Department of Public Works and Environmental Services within 90 days and all work shall be completed within 9 months of the date of approval of this variance.

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

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

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. MICHAEL WAYNE RUSTEN, MARY CUSTIS RUSTEN, SP 2011-MV-096 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 27.0 ft. from front lot line of a corner lot. Located at 7507 Milway Dr., Alexandria, 22306, on approx. 11,296 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((22)) (2) 10.

Chairman Ribble called the applicants to the podium.

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

Mary Rusten, 7507 Milway Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting a reduction to certain yard requirements to permit the construction of a two-story addition to be located 27.0 feet from the front lot line of Lisbon Lane, a corner lot; therefore, a modification of 3.0 feet, or 10 percent, was requested. Ms. Hedrick noted that staff believed that the addition could be relocated slightly and meet the minimum required front yard without the need of a special permit. However, she said the proposed intrusion was so minor, if the Board believed it met all the required standards, then staff recommends approval.

Mr. Hart asked if the upstairs portion of the application was by right. Ms. Hedrick responded that it appeared to be, noting that it was very close, an approximate three foot extension. Mr. Hart and Ms. Hedrick discussed the dimensions of the garage, with Ms. Hedrick noting that the current configuration, with the location of the chimney in the garage, made it difficult to open the car doors. The applicants wanted more room.

Ms. Rusten presented the special permit request as outlined in the statement of justification submitted with the application. She said she had two vehicles and needed a two-car garage, noting that she lived on a cul-de-sac and could not park in front of her home. Ms. Rusten stated that there had been a large amount of vandalism in their neighborhood, and that her car had been rifled through during the night two weeks previously. Ms. Rusten stated there were only 18 inches between the car door and garage wall. She noted that the neighbors were supportive of the addition.

Mr. Hart and Ms. Rusten discussed the chimney base in the garage and the additional space required for the second car, which was one foot.

Chairman Ribble called for speakers.

Christine Kelly, 2109 Poplar Lane, Alexandria, Virginia, said she was the architect for the application. Ms. Kelly stated she had been working on the project since the previous summer trying to keep the addition compatible with other houses in the neighborhood.

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

Mr. Hart moved to approval SP 2011-MV-096 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL WAYNE RUSTEN, MARY CUSTIS RUSTEN, SP 2011-MV-096 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 27.0 ft. from front lot line of a corner lot. Located at 7507 Milway Dr., Alexandria, 22306, on approx. 11,296 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((22)) (2) 10. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The applicants are the owners of the property.
2. The Board has a staff report where staff is recommending approval with reservations; the Board does not see that very often.
3. It is a close case and a difficult one.
4. The applicant has presented testimony showing compliance with the required standards.
5. The big problem was subsection 9 of 8-922.
6. Ordinarily, the Board would not be approving a garage that was 35 feet long.
7. Although the intrusion into the minimum yard is fairly slight, the Board still has to conclude that all the standards are met.
8. With the explanation about the chimney, the Board is satisfied that the location of the wall that is going to have the garage door has been justified.
9. A further rationale for approval would be, under subsection 9, the Board is allowed to consider preservation of existing vegetation and significant trees.
10. Based on the explanation, even though the whole addition probably could be shifted a few feet to the rear, the closer that gets to the existing tree that is in the photograph could not be helpful to the health of the tree.
11. There have been clearer cases with perhaps more obvious reasons, but the applicants have cleared the hurdle.
12. The Board did not feel that whatever happens with this addition, that there is going to be a significant negative impact on anyone.
13. The problem with the Ordinance is that the front of corner of the garage, which is furthest away from any of the neighbors, based on the photographs, there would not be any significant impact on anyone.
14. From the photographs, you can see there is a conflict between where the chimney is and where the vehicle would be now. So if the applicants are going to have a two-car garage at all, it has got to accommodate that existing chimney in some way.
15. This does not mean the Board will start approving 35-foot long garages, but in an unusual situation, it can exercise its discretion and do so.
16. All of the standards in the Section 8-922 resolution have been met.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size, approximately 1,236 square feet for the proposed addition, as shown on the plat prepared by Alterra Surveys, Inc., and signed by Patrick A. Eckert, Land Surveyor, dated August 10, 2011, as revised through November 1, 2011, 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 (2,538 square feet existing + 3,807 square feet (150%) = 6,345 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural drawings as depicted on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. SOUNIN PHONEMANY, SP 2011-LE-098 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 21.0 ft. from the front lot line and accessory storage structure to remain 1.1 ft. from the rear lot line and 0.6 ft. from the side lot line. Located at 6007 Craig St., Springfield, 22150, on approx. 8,825 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (10) 27 (Concurrent with VC 2011-LE-014).

9:00 A.M. SOUNIN PHONEMANY, VC 2011-LE-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage and accessory storage structure greater than 200 sq. ft. of gross floor area. Located at 6007 Craig St., Springfield, 22150, on approx. 8,825 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (10) 27 (Concurrent with SP 2011-LE-098).

Chairman Ribble called the applicant to the podium.

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

Sounin Phonemany, 6007 Craig Street, Springfield, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting special permit approval for a reduction to the minimum yard requirements based on an error in building location to allow a roofed deck, specifically a portico or covered front stoop with stairs that exceeded 10 feet in width, to remain 21 feet from the front lot line.

The applicant was also requesting variance approval to allow greater than 30 percent minimum rear yard coverage on the application property and an accessory storage structure greater than 200 square feet in gross floor area. The impervious area in the minimum required rear yard on this site measured 682 square feet, or 38.4 percent rear yard coverage. The coverage area included the extension of the concrete driveway which originated from the front of the lot alongside the southern side lot line, creating a concrete patio in the rear yard, in addition to the impervious area calculated for the accessory storage structure. The framed shed measured approximately 290 square feet in size.

In response to a question from Ms. Gibb, Ms. Hedrick said a variance was necessary because the shed was too large for the lot size.

Chairman Ribble, Ms. Gibb, Ms. Hedrick, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the history of the shed on the applicant's property and the County requirements. Ms. Hedrick noted that a smaller shed was previously on the property, but the applicant had taken it down and replaced it in 1997, so it did not meet the vested rights requirements.

Mr. Hart, referring to photo 2, asked about the height of a basketball hoop located in front of the garage. Ms. Hedrick replied that an engineer had certified that it was only 8.4 feet from the lowest point to the highest point. Concerning the shed, she confirmed that there was no building permit on file for the shed, and she did not believe it had ever been taxed.

Mr. Hart asked if the shed was left in place and the concrete portion to the west of the shed was removed, would that negate the need for a variance. Ms. Hedrick said she did not get that calculation from the engineer, but it would probably be very close.

In response to a question from Mr. Hart, Ms. Hedrick stated that she had numerous discussions with the applicant who assured her that the shed was not a garage and was used for storage only. She stated that if it was a garage, it would have to meet the minimum setback requirements. Ms. Hedrick noted that an inspector had not been out to the site to measure the shed. The Notice of Violation was issued because of the failed setback certification by the Department of Public Works and Environmental Services, and then subsequently sent to the Department of Code Compliance. She said an inspector would have to do a follow-up site visit to insure that everything was in compliance.

In response to a question from Mr. Smith, Ms. Hedrick said that if the shed was a garage, a special permit could be applied for as a building in error location since it would not meet the rear or the side yard setback requirements. However, as a garage, it would not have the requirement limiting the gross floor area to 200 square feet. If the variance was not granted, approximately six feet would have to be removed from the shed and the applicant would need to obtain building and electrical permits.

Mr. Byers asked if the placement of the portico was a mistake by the contractor. Ms. Hedrick said the plat was from 1952 and noted that the applicant had made significant renovations to the dwelling. She noted that the plat on record indicated the building restriction line was 35 feet, which was not the case. Ms. Hedrick stated that at the time of the renovations, the applicant was allowed to use the existing 1952 plat.

Ms. Gibb, Mr. Hart, and Ms. Langdon discussed the structure size and location, with Mr. Hart noting that if you rolled down the garage door, no matter what was in it, the impact would be the same for the neighbors. Ms. Langdon stated that the garage option was suggested several times to the applicant, but he did not agree with the change, insisting it was for storage. Mr. Hart asked to have a development condition added which stated that a vehicle could not be parked in the structure. Chairman Ribble noted that butler buildings often have what look like garage doors, but are not used for garages.

Mr. Hart asked if the certified plat from 1952 was measured wrong, about five feet off, or if the front wall of the house had moved. Ms. Langdon said that since the house was constructed, the street may have been widened or some of the front yard may have been taken, but they have no way of knowing what happened in the interim. She said it was possible that the measurements were wrong in 1952.

In response to a question from Mr. Hart, Ms. Langdon said that if the portico was narrower or less than 30-feet from the lot line, it would be in conformance no matter how wide it was. She noted that the portico could extend five feet into the minimum front yard if it is less than 10-feet in width.

Mr. Phonemany presented the special permit and variance requests as outlined in the statement of justification submitted with the application. He said he was willing to remove the garage door if the Board felt it was necessary, again stating that the area was just used for storage. Mr. Phonemany noted that electricity had been installed for lighting and to use the grill on the concrete area out front. He said he added the portico over the stoop to prevent rain and/or snow from getting inside the house. He had obtained a permit for the construction, but did not know about the setback requirements. Mr. Phonemany also did not know that the replacement shed would require a permit.

In response to a question from Ms. Gibb, he said he and his brothers built the portico and added the cement in the back in 1997.

Ms. Gibb and Mr. Hart discussed the difficult standards which have to be met to grant a variance.

In response to a question from Mr. Hart, Mr. Phonemany said that he and his brothers built the shed, noting that it had only electricity, not plumbing.

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

Ms. Gibb moved to approve SP 2011-LE-098 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SOUNIN PHONEMANY, SP 2011-LE-098 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit roofed deck to remain 21.0 ft. from the front lot line. Located at 6007 Craig St., Springfield, 22150, on approx. 8,825 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (10) 27 (Concurrent with VC 2011-LE-014). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The applicant is the owner of the property.
2. Based on his testimony and based on the exhibits in the staff report, there was confusion at the County and by the applicant on the portico as to where it was built.
3. The applicant did make a mistake.
4. The applicant acted in good faith.
5. The applicant obtained a building permit.
6. The Board determined that the applicant met Standards A through G, specifically that the noncompliance was done in good faith and was the result of an error in the location of a building subsequent to the issuance of a building permit.
7. The error did exceed ten percent.

8. The reduction does not impair the intent of the Ordinance, has an impact on the neighbors, and will not create an unsafe condition with respect to the property.
9. To force compliance with the minimum yard requirements would certainly be a financial hardship for the applicant.

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

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

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

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

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

1. This special permit is approved for the location of a roofed deck (portico) as shown on the plat prepared by APEX Surveys, dated August 25, 2011, as revised through December 15, 2011, as submitted with this application and is not transferable to other land.

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

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

Ms. Gibb then moved to deny VC 2011-LE-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SOUNIN PHONEMANY, VC 2011-LE-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage and accessory storage structure greater than 200 sq. ft. of gross floor area. Located at 6007 Craig St., Springfield, 22150, on approx. 8,825 sq. ft. of land zoned

R-4. Lee District. Tax Map 80-3 ((2)) (10) 27 (Concurrent with SP 2011-LE-098). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The applicant is the owner of the property.
2. The applicant has not met the standards for a variance.
3. They are very difficult standards to meet.
4. With respect to the shed, this could be an application for a special permit under the mistake section.
5. As far as the concrete, the Board did not hear any testimony and there was nothing in the report which indicates any compelling reasons or any land reasons as to why the concrete should remain.
6. It seems like it would be fairly easy to remove the portion of the concrete that lies to the north of the framed shed as it shows on the plat and, thereby, bring the property into compliance.
7. With respect to the framed shed, it is a convenience and too large for anywhere on the lot and does not meet the standards that are required for a variance.
8. The property does not meet any of the requirements A through G or standards 5 and 6.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship 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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hart moved to waive the 12-month waiting period for refiling an application. Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. RUSSELL L. BROWN, SP 2011-MV-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 3801 Quisenberry Dr., Alexandria, 22309, on approx. 20,869 sq. ft. of land zoned R-2 and R-3. Mt. Vernon District. Tax Map 101-4 ((23)) 15 and 101-4 ((1)) 55.

Chairman Ribble called the applicant to the podium.

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

Russell L. Brown, 3801 Quisenberry Drive, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. The property owner proposed to add an accessory dwelling unit within a new addition at the rear of the existing dwelling. She said the applicant's mother-in-law would occupy the accessory dwelling unit and was over the age of 55. Ms. Horner stated that the accessory dwelling unit would be approximately 968 square feet, or 28.7 percent of the primary dwelling unit. Staff recommended approval of SP 2011-MV-097 subject to the proposed development conditions.

Mr. Hart referred to the Statement of Justification where it said that there would be a shared driveway off the court with an additional existing driveway and parking space on the Nalls Road property. Ms. Horner said the applicant would be the best person to clarify that statement. Ms. Langdon stated that staff had not noticed the additional driveway and parking space since the application was only for an accessory dwelling unit. Had they seen it, they probably would have asked the applicant to modify the plat.

Mr. Brown presented the special permit request as outlined in the statement of justification submitted with the application. He clarified that the driveway in question on Nalls Road used to be an access road for the Mount Vernon Community Park. Mr. Brown thought he would be able to use it, but later found out he could not, therefore, it has been removed from the plat. Concerning the application, he said that he wanted to provide a residence for his aging mother-in-law since his wife was an only child and the only caregiver.

In response to a question from Mr. Hart, Ms. Brown stated that page 15 of 16 on the plat only represented a modular example of what the residence would look like.

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

Mr. Smith moved to approve SP 2011-MV-097 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RUSSELL L. BROWN, SP 2011-MV-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 3801 Quisenberry Dr., Alexandria, 22309, on approx. 20,869 sq. ft. of land zoned R-2 and R-3. Mt. Vernon District. Tax Map 101-4 ((23)) 15 and 101-4 ((1)) 55. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The owner of the property is Russell L. Brown and Cynthia A. Brown.
2. The present zoning is R-2 and R-3.
3. The total area of the lots is 20,869 square feet.
4. The staff recommended approval, and the Board adopted their conclusions and rationale.
5. This is a one-story addition, 968 square feet, appropriately used as contemplated by the Ordinance for a mother-in-law in this case.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Russell L. Brown and/or Cynthia A. Brown, and is not transferable without further action of this Board, and is for the location indicated on the application, 3801 Quisenberry Drive, (20,869 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Dominion Surveyors, Inc., dated September 28, 2011, revised through November 2, 2011, as signed and sealed by George M. O'Quinn, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 968 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for the construction, including kitchen, in the accessory dwelling unit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the

property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

11. All parking shall be provided on site as shown on the special permit plat.
12. The existing two car garage on the property may not be converted to anything other than parking spaces and must be kept clear of debris at all times in order to accommodate off street parking demands for the subject parcel.
13. The new addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions
14. Three new trees (a mixture of evergreen and deciduous), at a minimum size of 2" caliper at planting, shall be planted east of the proposed addition in order to provide screening of the adjacent dwelling prior to occupancy of the accessory dwelling unit.

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

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

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

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. STEVEN KOSTAKIS, SP 2011-HM-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.8 ft. from a side lot line such that side yards total 29.3 ft. Located at 10403 Silk Oak Dr., Vienna, 22182, on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((4)) 47.

Chairman Ribble called the applicant to the podium.

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

Steven Kostakis, 10403 Silk Oak Drive, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to enlarge an existing garage to be located 10.8 feet from the side lot line, measured from the edge of the eave, such that side yards totaled 30.4 feet. The Zoning Ordinance requires a minimum side yard of 12 feet, therefore, a modification of 1.2 feet, or 10 percent, for the proposed addition was requested. The Zoning Ordinance also requires a total minimum side yards of 40 feet, therefore, a modification of 9.6 feet or 24 percent was requested. Staff recommended approval of SP 2011-HM-099 subject to the proposed development conditions.

Mr. Kostakis presented the special permit request as outlined in the statement of justification submitted with the application. He said the purpose of the project was to put an addition on the house which would enlarge the existing one-car garage to a two car-garage. Mr. Kostakis stated he received approval from the Tamarack Homeowners Association, which was not included in the application package. He asked that the Board approve his application.

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

Mr. Beard moved to approve SP 2011-HM-099 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN KOSTAKIS, SP 2011-HM-099 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 10.8 ft. from a side lot line such that side yards total 29.3 ft. Located at 10403 Silk Oak Dr., Vienna, 22182, on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((4)) 47. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 2012; and

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

1. The owner of the property is the applicant.
2. The Zoning Ordinance provisions are 8-922.
3. Staff has made a recommendation of approval.
4. The application is relatively straightforward.
5. The applicant meets all of the submission requirements set forth in Section 8-922.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 220 square feet) of the addition, as shown on the plat prepared by LS2PC, dated March 12, 2011, as revised through November 1, 2011 signed by Lawrence H. Spilman III, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,872 square feet existing + 4,309 square feet (150%) = 7,182 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. NADEEM P. MALIK, VC 2011-SU-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed lot 1 having a lot width of 137 ft. and proposed lot 2 having a lot width of 89 ft. Located at 3027 Ashburton Ave., Herndon, 20171, on approx. 2.3 ac. of land zoned R-1. Sully District. Tax Map 35-2 ((1)) 4. (Admin. moved from 12/14/11 at appl. req.)

Chairman Ribble noted that VC 2011-SU-013 had been administratively moved to May 29, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. GIOAN V. NGUYEN AND NHAT THUAN NGUYEN, A 2011-MA-040 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a personal service establishment, which is a use not permitted, on property in the C-2 District in violation of Zoning Ordinance provisions. Located at 6051 E Arlington Blvd., Falls Church, 22044 on land zoned C-2, SC, and CRD. Mason District. Tax Map 51-4 ((14)) 5.

Chairman Ribble noted that A 2011-MA-040 had been administratively withdrawn.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. WRNS ASSOCIATES, A 2011-DR-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing two separate businesses to operate without site plan approval, valid Non-Residential Use Permits, valid Building Permits, or approved sign permit applications and that these businesses have established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11 and 10/26/12 at appl. req.)

Chairman Ribble noted that A 2011-DR-017 had been administratively moved to March 14, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. GREAT FALLS EQUIPMENT REPAIR, LLC, A 2011-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses n property in the C-8 District without site plan approval, valid Non-Residential Use

Permits, valid Building Permits, Special Exception approval, or approved sign permit applications, has established accessory outdoor storage that does not meet size or location requirements, and has established a heavy equipment and specialized vehicle sale, rental and service establishment, which is a use not permitted, all in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11 and 10/26/12 at appl. req.)

Chairman Ribble noted that A 2011-DR-019 had been administratively moved to March 14, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11, 6/8/11, 9/14/11, and 9/21/11 and 10/26/12 at appl. req.)

Chairman Ribble noted that A 2011-DR-003 had been administratively moved to March 14, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. RONALD S. FEDERICI, A 2011-SP-041 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established an office, which is a use not permitted, on property in the R-C District and has installed signs without sign and building permit approval in violation of Zoning Ordinance provisions. Located at 13310 Compton Rd., Clifton, 20124 on approx. 5.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24.

Chairman Ribble noted that A 2011-SP-041 had been administratively moved to February 29, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ January 25, 2012, Scheduled case of:

9:00 A.M. GEORGE KARSADI, A 2011-MV-039 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that a fence exceeding four feet in height located in the front yard, a fence exceeding seven feet in height located in the side and rear yards and an accessory storage structure that does not meet size or location requirements all on property in the R-3 District are in violation of Zoning Ordinance provisions. Located at 8356 Wagon Wheel Rd., Alexandria, 22309-2154, on approx. 14,520 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 101-4 ((17)) 68.

Chairman Ribble called the appellant to the podium.

George Karsadi, the appellant, 8356 Wagon Wheel Road, Alexandria, Virginia, came forward.

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

Jill Cooper, Senior Zoning Assistant to the Zoning Administrator for Appeals, presented staff's position as set forth in the staff report. She said this was an appeal of a determination that the appellant has erected a fence exceeding four feet in height in the front yard, a fence exceeding seven feet in height in the side and rear yards, and an accessory storage structure that did not meet the size or location requirements all on property in the R-3 District. The appeal was the result of a Notice of Violation (NOV).

Ms. Cooper said the property was a corner lot which was developed with a split level single family dwelling constructed in 1960, a carport, and a shed located in the rear yard. The appellant did not dispute that there are portions of fencing in the front yard in excess of four feet in height and portions of fence in the side and rear yards in excess of seven feet in height. The appellant stated that the fencing on the property was erected in its current configuration due to topography and safety concerns. She stated that regardless of the topography of the property, the fence height is measured from ground level to the top of the fence and must adhere to the maximum heights set forth in the Zoning Ordinance. The appellant stated that the size of the shed was incorrectly measured by the Department of Code Compliance and was actually only 200 square feet in area. During the May 3, 2011 inspection, the shed was measured to be approximately 250 square feet.

The appellant further stated in the appeal that the shed was permitted in its current location, as it is only 8.5 feet in height at the lower end of its roof. However, pursuant to the Zoning Ordinance, the height of an accessory structure is measured from the highest point of the structure to the lowest point of finished ground level adjacent to the structure. Ms. Cooper noted that the height of the shed was 9.5 feet and therefore must be located a minimum distance of 12 feet from the side lot line and a distance equal to its height from the rear lot line. She stated that to retain both the fencing and the shed, the appellant would need to obtain approval of a special permit and a variance.

Staff recommended that the Board of Appeals uphold the Zoning Administrator's determination as set forth in the NOV dated September 13, 2011.

Mr. Hart asked if applications for a special permit or variance had been received. Ms. Cooper confirmed that neither had been received and noted that the application process had been discussed with the appellant.

Mr. Karsadi presented the arguments forming the basis for the appeal. He said that the staff report referenced a NOV for a trailer parked on his property and an oversized shed. Mr. Karsadi stated that Marsha Ansel, Code Compliance Investigator, indicated that when she was looking for the trailer which was the result of a complaint, she noticed that the fence and shed were not in compliance with the Ordinance. He took issue with the staff report stating that the shed was part of the complaint.

The topography of Mr. Karsadi's property was such that the house sat up high and then dropped back down to the back corner and off to the side. There was an existing fence when he purchased the property. He said some theft happened on the property, which was the main reason he wanted to put up a new fence, which he did outside of the existing fence. Mr. Karsadi said that the place where Ms. Ansel took her measurements from the outside of the fence was not really accurate. He presented photographs showing the topography inside the fence, noting that although the fence was built level, it measured six feet on one side of the photo and eight feet on the other. Mr. Karsadi agreed that the lattice work on top of the fence was outside the scope of the Ordinance and said he would remove it if required.

Regarding the shed, Mr. Karsadi said that Ms. Ansel reported the shed size as being 12 x 20 feet. Upon questioning, Ms. Ansel admitted that she estimated the size of the shed since she could not go on his property to measure it. He invited her onto his property to measure the shed, stating that it measured 10 x 20 feet, which was verified by the plat he submitted to the Board, dated January 18, 2012. Mr. Karsadi stated that Ms. Ansel insisted that her measurements were correct since they were from the eave overhang and not the shed wall. He said this was an incorrect way to measure the shed. Mr. Karsadi pointed out another mistake by Ms. Ansel, including that she alleged that the fence was one foot off of the property line. He stated that at one corner, it was four feet off the property line and 10 feet off on the other corner.

Mr. Karsadi said he pointed out to Ms. Ansel that one of his neighbors had six sheds in his backyard and another had three sheds, with Ms. Ansel stating that no one had complained about those sheds so she did not have to investigate them. Mr. Karsadi noted that no one had complained about his shed, only the height

of the fence. He presented a petition signed by his neighbors which stated their approval of his fence and shed.

Mr. Karsadi felt Ms. Ansel added another violation regarding his front yard fence when he questioned her methodology for measuring the fence height in the rear and side yards.

Mr. Hart explained the appeal process and asked Mr. Karsadi if he wanted the Board to vote on the appeal or if he wanted more time to file a special permit application. He responded he was inclined to fix whatever was necessary and not file for a special permit since it was expensive. He also did not want to file for a special permit based on misinformation by Ms. Ansel contained in the staff report. Mr. Hart stated that there were ways to get a fence in the front yard approved up to six feet under certain circumstances, as well as to have the shed location approved. In response to a question from Mr. Hart, Mr. Karsadi said the shed was drawn to scale on the plat.

Mr. Hart and Mr. Karsadi discussed the various fence heights in different areas on the property compared to the shed height, with Mr. Karsadi noting that the shed was higher than 8.5 feet at certain points and the fence was more than 7 feet in some areas of the yard. However, he said the lattice work could be removed to bring the fence into compliance.

Mr. Beard asked why this had not been worked out at the staff level before the public hearing. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said she had spoken with the appellant at length about his various options, but he had indicated he did not want to apply for a special permit or variance.

In response to a question from Chairman Ribble, Ms. Ansel said that fences are measured from wherever the lowest point is to the highest point of the fence. She said that wherever you measured in the appellant's yard, it was consistently 7.0 to 7.5 feet. Ms. Ansel said she discussed removing the lattice with Mr. Karsadi, but he said he did not want to remove the lattice. She further noted that the original complaint was for commercial vehicles with logos on the property, running a business out of the house, and an oversized shed.

Chairman Ribble asked Ms. Ansel how the shed was measured. She replied that she may have estimated its size. Mr. Hart asked if roof overhang of the shed affected its area, to which Ms. Ansel said it did not. In response to a question from Ms. Gibb, Ms. Ansel confirmed that the front yard was measured from the point furthest back of the front of the house.

Chairman Ribble called for speakers.

Mark Miller, 3005 Sevor Lane, Alexandria, Virginia, came forward to speak. He said he was representing the Riverside Estates Community Association Board of Directors. Mr. Miller stated that the Board of Directors had discussed the issue and were unanimous in their opposition of the shed and fencing, noting that they were also in violation of their bylaws.

In rebuttal, Mr. Karsadi said he had never received anything from the Riverside Estates Association stating he was in violation of the bylaws, except for their request that the trailer be removed from the property, which he did. He said that day was the first time he had heard any opposition to the shed and fencing, noting that they had been in place and visible for five years.

Ms. Cooper stated that the appellant acknowledged that the portions of the fence in the front yard were higher than 4 feet and portions of the side and rear yard exceeded 7 feet. She also noted that the appellant agreed that points of the shed were greater than 8.5 feet in height. Ms. Cooper believed that the NOV was correct and should be upheld.

Responding to a question from Mr. Hart, Ms. Cooper stated that the shed was in the side yard and the front yard was measured straight from the front of the carport.

Chairman Ribble closed the public hearing.

Mr. Byers moved to uphold the determination of the Zoning Administrator. He said as staff noted, the appellant did not dispute that portions of fencing in the front, side, and rear yards exceeded the maximum fence heights permitted by the Zoning Ordinance. In addition, the height of the shed when measured in

accordance with Zoning Ordinance requirements required that the structure be located at least 12 feet from the side lot line. He held in abeyance obtaining a building permit because the Board did not know whether the shed was in excess of 200 square feet or not. From the standpoint of when the determination was made and the NOV issued on September 13, 2011, he saw no reason why the Zoning Administrator was not correct. Mr. Byers said there were ways that this could have been worked out, via a non-appeal route, and the issues looked at individually from the standpoint of a mistake in building location. He said the Board had approved in the past fences as high as 6 feet in the front yard when there are no sight distance issues. Mr. Byers noted that the Board did not enforce covenants.

Mr. Hart seconded the motion.

Chairman Ribble noted that the Board had received one letter in support of the appellant.

Mr. Hart generally agreed with Mr. Byers' motion. The Board could not do anything about covenants, noting that the covenants were not really before the Board. That would be something for a judge to decide, and the association or neighbors were going to have to take that action themselves. Mr. Hart felt it was a close call in some respects, but although the violation letter was generally correct, the appellant had satisfactorily rebutted the issue of the size of footprint of the shed. He said the appellant had conceded the height of the fence and the location of the shed, although there were disagreements about whether it was one foot or four feet from the side line. Mr. Hart noted that the testimony about the measurement of the footprint of the shed for the purposes of the violation letter was somewhat uncertain. He offered a friendly amendment to uphold in part and overturn in part; to uphold everything in the letter except for the size of the shed, since he did not believe the shed was necessarily as large as the violation letter said it was. Mr. Hart suggested that the Board overturn on the issue of the size of the footprint of the shed and uphold on everything else.

Chairman Ribble asked Mr. Byers if he accepted Mr. Hart's amendment to the motion. Mr. Byers said he thought he included that in his motion, because if the shed was 200 square feet or more, then it required a building permit, and he said that was an issue. He felt there were other issues with regard to the shed, but if it was excluded, it would be fine.

Chairman Ribble called for the vote on the amended motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Ms. Stanfield felt it should be clarified that the Zoning Administrator was overturned only on the footprint of the shed, since the size was clearly too high. Mr. Hart and Mr. Beard agreed with that clarification.

//

~ ~ ~ January 25, 2012, After Agenda Item:

Request for Additional Time
Harco III, Inc., T/A Fast Eddies, SPA 95-Y-069-3


Ms. Gibb moved to approve 24 months of additional time. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. The new expiration date was May 3, 2012.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:03 p.m.

Minutes by: Suzanne Frazier

Approved on: April 23, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, February 1, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Paul W. Hammack, Jr., was absent from the meeting.

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

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. LUIS AND CARLA MARTY, SP 2011-HM-094, Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit home child care facility. Located at 1307 Deep Run Ln., Reston, 20190, on approx. 19,744 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((4)) (6) 46. (Decision deferred from 12/14/11)

Chairman Ribble noted that a request for a deferral to February 29, 2012, had been received regarding SP 2011-HM-094.

Susan C. Langdon, Chief, Special Permit and Variance Branch, said the applicants were working on issues that had been raised at the prior public hearing.

Mr. Beard moved to defer decision on SP 2011-HM-094 to February 29, 2012, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Hammack was absent from the meeting.

//

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. JAMES A. MADISON, JR., SP 2011-PR-100 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 4.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 22.3 ft. from front lot line. Located at 2903 Adams Pl. on approx. 11,246 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (6A) 35.

Chairman Ribble called the applicant to the podium.

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

James A. Madison, Jr., 2903 Adams Place, Falls Church, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of two special permits. The first was to permit a reduction of minimum yard requirements based on an error in building location to allow a shed to remain 4.0 feet from the northern side lot line. The existing shed measured 9.1 feet in height and approximately 144 square feet in area. The second request was to permit a reduction of certain yard requirements for construction of a roofed deck/covered porch 22.3 feet from the front lot line. The roofed deck at the front of the house would measure six feet in width and approximately 30 feet in length. A minimum side yard of 10 feet and a minimum front yard of 30 are required; therefore, reductions of 6.0 feet and 7.7 feet, respectively, were requested. Staff recommended approval of SP 2011-PR-100 subject to the proposed development conditions.

Mr. Madison presented the special permit request as outlined in the statement of justification submitted with the application. He said the neighborhood was approximately 55 years old, and there had been a lot of renovations, particularly in the prior few years. The addition of the covered porch with stairs leading down to the driveway would be in keeping with the architectural changes that had occurred in the neighborhood. He said he had found out there was an issue with the shed when he had brought the application in for the covered porch.

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

Mr. Hart moved to approve SP 2011-PR-100 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES A. MADISON, JR., SP 2011-PR-100 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 4.0 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of roofed deck 22.3 ft. from front lot line. Located at 2903 Adams Pl. on approx. 11,246 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (6A) 35. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 1, 2012; and

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

1. The applicant is the owner of the land.
2. With respect to the front porch, the Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. Based on the drawings in the staff report, it appears that the porch would be architecturally compatible with the house and the other homes in the neighborhood.
5. There would not be any significant negative impact on anyone with respect to the front porch.
6. With respect to the shed, the Board does not have a staff recommendation.
7. The shed appears to have been in its current location for a while, and it has not seemed to have caused any problems.
8. The shed is relatively inconsequential.
9. The shed is consistent with other sheds in the neighborhood.
10. There would not be any significant negative impact on anyone with respect to the shed.
11. The application meets all the submission requirements set forth in Sect. 8-922 and the standard motion.

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

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

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

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

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

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

1. This special permit is approved for the location and size of the roofed deck and shed, as shown on the plat prepared by Walter L. Phillips, Inc., dated April 15, 2011, revised through January 4, 2012, as submitted with this application and is not transferable to other land.
2. The roofed deck shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. WILLIAM HAIGHT, VC 2011-BR-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.1 ft. from side lot line. Located at 9119 Saranac Ct., Fairfax, 22032, on approx. 16,887 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 23. (Decision deferred from 11/16/11)

Chairman Ribble noted that VC 2011-BR-011 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. WAYNE MOTICKA, SP 2011-MA-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.0 ft. from rear lot line and 0.7 ft. from side lot line. Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with VC 2011-MA-009). (Decision deferred from 9/21/11 and 11/30/11 at appl. req.)

9:00 A.M. WAYNE MOTICKA, VC 2011-MA-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 7.0 ft. in height to remain in rear and side yards. Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason

District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with SP 2011-MA-055). (Decision deferred from 9/21/11 and 11/30/11 at appl. req.)

Chairman Ribble noted that SP 2011-MA-055 and VC 2011-MA-009 had been deferred for decision only from a prior meeting.

Mr. Byers moved to approve-in-part SP 2011-MA-055 for the reasons stated in the Resolution.

Mr. Beard seconded the motion. He said he understood the additions existed at the time the applicant purchased the property and was sympathetic for the applicant's situation, but he had viewed the property and felt it was an egregious situation. Mr. Beard said he had looked over into the yard from a neighbor's adjoining property.

Mr. Hart said he had also visited the property and agreed that it was too much in the context of the neighborhood. He said he was particularly concerned about the fence height in the rear, but understood the fence in the rear was not a part of the application. Mr. Hart said that even though it was beyond the building restriction lines, he thought the Board should leave what appeared to be the garage, which later became a room and was internally separate from the shed surrounding it. He said the problem with the shed was not just the amount of coverage of the yard, but also whether, even if the special permit was approved, a building permit could properly be issued for the shed. If the roof structure was tied into the retaining wall and there was not a separate foundation, those components were at least partially offsite, and a permit could not be issued for a structure straddling the lot line. Mr. Hart said he did not think the Board could approve something where the structural members were located on an adjacent property.

Mr. Hart said this was a horrible situation for the purchaser, and based on the chain of correspondence in the file, it was clear the seller had lied. The seller had written a letter to the Zoning Administrator to find out if the structure was legal, and the correspondence was clear that it was not. Regardless, it went to settlement and became the purchaser's problem. He said that instead of taking the whole thing down, a compromise would be to leave the square in the middle and take the shed down around it. Mr. Hart suggested the applicant be given extra time beyond 120 days to figure out how to disengage and remove the shed from the garage because it was not the applicant's fault.

Susan C. Langdon, Chief, Special Permit and Variance Branch, stated that Condition 2 proposed by staff gave the applicant nine months for permits and final inspections.

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

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE MOTICKA, SP 2011-MA-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 0.0 ft. from rear lot line and 0.7 ft. from side lot line. **(THE BZA DID NOT APPROVE THE EXISTING 519-SQUARE-FOOT ONE-STORY VINYL STORAGE AREA.)** Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with VC 2011-MA-009). (Decision deferred from 9/21/11 and 11/30/11 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 1, 2012; and

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

1. The applicant is the owner of the land.
2. With respect to the 519-square-foot one-story vinyl storage area:
 - A. The applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of a Reduction to Minimum Yard Requirements Based on Error in Building Location.
 - B. The storage area does not meet Determinations A through G.
 - C. The granting of the special permit will impair the intent and purpose of the Zoning Ordinance and will be detrimental to the use and enjoyment of other property in the immediate vicinity.
 - D. The granting of the special permit will create an unsafe condition with respect to both other properties and public streets, and to force compliance with setback requirements would not cause unreasonable hardship upon the owner.
 - E. The support beams are actually moving through the shed to the retaining wall.
 - F. The retaining wall is not on the applicant's property.
 - G. The retaining wall was put up by the prior owner.
 - H. The BZA is not able to approve the shed based on the fact that not only is the applicant in violation of the side yard requirements, but the side beams are not on the applicant's property. That is a violation in and of itself.
 - I. The property owner to the rear would be impacted. The applicant will have to work that out with the other property owner.
3. The shed needs to come out, but the rest can remain.

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

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

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

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

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

1. This special permit is approved only for the location of the addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated January 6, 2011, submitted with this application and is not transferable to other land. **(THE BZA DID NOT APPROVE THE EXISTING 519-SQUARE-FOOT ONE-STORY VINYL STORAGE AREA.)**

2. All applicable permits and final inspections shall be obtained for the addition within nine months of approval of this special permit.

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

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

//

Mr. Byers moved to deny VC 2011-MA-009 for the reasons stated in the Resolution. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Mr. Hart asked whether anything was going on with respect to the wall in the rear with the other neighbor. Ms. Langdon said the Zoning Administrator had seen the case, and because there had been no building permit found for the wall, it would have to be addressed. She said she believed there would be some action taken, but because the wall was all attached as one structure which had been put up by the previous owner of the application property, she did not know whether the action would involve the applicant or the owner of the other property.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE MOTICKA, VC 2011-MA-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence greater than 7.0 ft. in height to remain in rear and side yards. Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with SP 2011-MA-055). (Decision deferred from 9/21/11 and 11/30/11 at appl. req.) Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 1, 2012; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,200 square feet.
4. The variance application does not meet Standards 6A, 6B, 7, 8, or 9.
5. This relates only to the portion of the fence that is on the applicant's property.
6. This is a very difficult situation from the standpoint of the purchaser.
7. Based on the correspondence from the prior owner, looking at the timeframe of 2009 and what the prior owner had said in her letter, this could have been done in a much more ethical way or with disclosure to the purchaser.
8. From that standpoint, the Board is very sympathetic to the purchaser.
9. From the standpoint of the Zoning Ordinance, the Board has to enforce, and this simply needs to come into compliance.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

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

//

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. SJD-ZP, LLC DBA ZPIZZA, A 2011-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hwy., Fairfax, 22031, on approx. 1.2 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((15)) 2. (Admin. moved from 9/28/11 and 11/30/11 at appl. req.)

Chairman Ribble noted that A 2011-PR-028 had been administratively moved to April 18, 2012, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ February 1, 2012, Scheduled case of:

9:00 A.M. VASELIIOUS LIMITED LIABILITY COMPANY, A 2011-LE-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has allowed the erection of a sign that does not conform to the approved sign permit and the installation of numerous signs without approved sign permits on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 6701 Franconia Rd., Springfield, 22150, on approx. 16,015 sq. ft. of land zoned C-8, H-C and SC. Lee District. Tax Map 90-2 ((1)) 97. (Continued from 10/5/11) (Decision deferred from 1/11/12)

Jill Cooper, Staff Coordinator, Zoning Administration Division, stated that the appeal had previously been heard on January 11, 2012, with the decision being deferred to give the appellant more time to remove the signs on the property. She reported that the property had been inspected the prior morning, and the signs had been removed, including both of the rooftop signs. Ms. Cooper said the inspector had indicated that the violations had been cleared, and the zoning case was being closed. She said the appellant had been asked to send in a withdrawal request, and although he had verbally indicated the day before the hearing that he would do so, his request had not yet been received. She said staff requested that the Board dismiss the appeal based on the fact that the violations had been cleared.

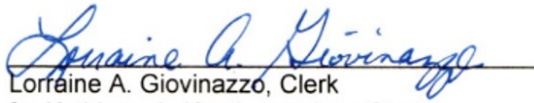
Ms. Gibb moved to dismiss A 2011-LE-022. Mr. Beard seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

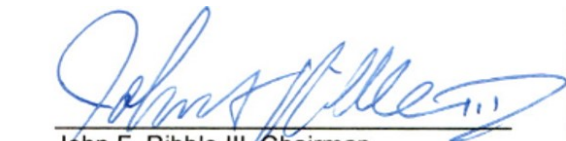
//

As there was no other business to come before the Board, the meeting was adjourned at 9:28 a.m.

Minutes by: Kathleen A. Knoth

Approved on: October 3, 2012


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, February 15, 2012. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr., Nancy E. Gibb; James R. Hart; Norman P. Byers; and Thomas Smith. V. Max Beard was absent from the meeting.

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

During Board Matters, Chairman Ribble noted that Mr. Smith's term would be ending on April 9, 2012. He said he would like to entertain a motion that a letter be sent to the Chief Judge of the Circuit Court to reappoint him to another term. Mr. Hart so moved. Mr. Hammack seconded the motion, and it carried by a vote of 6-0. Mr. Beard was absent from the meeting.

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

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. ROBERT DUNN, SP 2011-MV-104 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 addition to remain 8.0 ft. from side lot line and accessory storage structure to remain 4.0 ft. from side lot line and 2.4 ft. from rear lot line. Located at 8514 Culver Place, Alexandria, 22308, on approx. 10,641 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (11) 14.

Chairman Ribble called the applicant to the podium.

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

Robert Dunn, 8514 Culver Place, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant was requesting approval for a reduction of minimum yard requirements based on an error in building location to permit an addition to remain 8.0 feet from a side lot line and an accessory storage structure to remain 4.0 feet from a side lot line and 2.4 feet from the rear lot line. Ms. Cho said this would result in a reduction of 33 percent for the garage addition side yard, and a reduction of 67 percent for the side yard and 90 percent in the rear yard for the shed.

Mr. Dunn presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing to add to the staff report.

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

Mr. Hammack moved to approve SP 2011-MV-104 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT DUNN, SP 2011-MV-104 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 addition to remain 8.0 ft. from side lot line and accessory storage structure to remain 4.0 ft. from side lot line and 2.4 ft. from rear lot line. Located at 8514 Culver Place, Alexandria, 22308, on approx. 10,641 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (11) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

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

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

1. The applicant is the owner of the property.
2. According to the staff report, the applicant bought the property with these revisions already in place, somehow done by a prior owner, which brings him under the statute.
3. Only a small triangular section of the garage requires a setback.
4. Only the very peak of the shed requires that it be offset.
5. If the shed roof was a little flatter, the shed would not be in violation.
6. The applicant has satisfied the seven required standards set forth under Section 8-914, specifically that the noncompliance was done in good faith and through no fault of the property owner.
7. The reductions will not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate vicinity.

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

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

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

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

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

1. This special permit is approved for the location and size of the garage addition and accessory storage structure as shown on the plat prepared by Larry N. Scartz, dated August 29, 2003 and revised and sealed though January 20, 2012 by Rebecca L.G. Bostick, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the garage addition shall be diligently pursued and obtained within six months of final approval of this application.

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

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

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. WAIS OMARI, MALALY ZAFAR, JAWID OMARI, NABI G. OMARI, SP 2011-SP-102 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11817 Washington St., Fairfax, 22030, on approx. 3.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 8.

Chairman Ribble called the applicants to the podium.

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

Wais Omari, 11817 Washington Street, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report, noting that the application sought to locate an accessory dwelling unit within a proposed by-right two-story addition to the existing dwelling. The proposed two-story addition would consist of one master bedroom suite, a family room, office area, dining room, full kitchen, and a one-bay garage. She said it would comprise 22.4 percent of the total living space and be occupied by two of the property owners who were over 55 years in age. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Omari presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing to add to the staff report.

Mr. Hammack asked Mr. Omari if he had read and understood the proposed development conditions. Mr. Omari said he did.

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

Mr. Byers moved to approve SP 2011-SP-102 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAIS OMARI, MALALY ZAFAR, JAWID OMARI, NABI G. OMARI, SP 2011-SP-102 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11817 Washington St., Fairfax, 22030, on approx. 3.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 8. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 2012; and

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

1. The applicants are the owners of the property.
2. The present zoning is R-C and WS.
3. The area of the lot is 3.27 acres.

4. The staff recommended approval, and the Board adopted the staff's rationale.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Wais Omari, Malaly Zafar, Jawid Omari and Nabi G. Omari, and is not transferable without further action of this Board, and is for the location indicated on the application, 11817 Washington Street (3.27 acres), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared Dominion Surveyors Inc., dated February 22, 2011, as revised through January 3, 2012, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,747 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. Parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time

is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. DANIEL J. GERKIN AND ALLYSON G. BLOOM, SP 2011-DR-105

Chairman Ribble noted that SP 2011-DR-105 had been indefinitely deferred at the applicants' request.

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. EULIE M. CAMPBELL, SP 2011-LE-101 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 6.3 ft. from rear lot line and to permit accessory dwelling unit within an existing dwelling. Located at 2812 Poag St., Alexandria, 22303, on approx. 14,002 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 83-3 ((35)) 1.

Chairman Ribble noted that SP 2011-LE-101 had been administratively moved to March 14, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. SUSAN P. DELLER & WILLIAM M. DELLER, SP 2011-MV-103 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2806 Holland Ct., Alexandria, 22306, on approx. 10,935 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((43)) 4.

Chairman Ribble called the applicants to the podium.

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

William and Susan Deller, 2806 Holland Court, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The application proposed to establish an accessory dwelling unit within a portion the basement of the existing dwelling. No exterior changes were proposed. Ms. Horner said the proposed dwelling unit would be occupied by the applicants' parents who were over the age of 55, and comprised 28 percent of the primary dwelling unit. Staff recommended approval of the application subject to the proposed development conditions.

Mr. Hart said the property looked like a through-lot with streets in the front and in the back, yet there had been talk about a pool in the rear yard and photos showing fencing. He asked if this was indeed a through-lot or a rear yard. Ms. Horner responded that it was a rear yard, noting there was an outlot which abutted the rear property line. Mr. Hart and Chairman Ribble pointed out that an outlot was not indicated on the plat submitted with the application. Ms. Horner said there had been a previous vested rights determination, noting that the Zoning Administration Division called it a rear lot. In response to a question from Mr. Hart, Ms. Horner said that Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, who was in attendance at the meeting, was looking into why it had been deemed a rear lot.

Susan Deller presented the special permit request as outlined in the statement of justification submitted with the application. She said that they had been surprised to see that a road was indicated behind their house as well since one did not exist. Ms. Deller noted that the area was heavily treed. She stated that, on paper, it appeared that the owner of the outlot had a road that might be constructed in the future. Ms. Deller said it would be accessed from Holland Road.

In response to a question by Chairman Ribble, Ms. Deller stated that the outlot was not a part of the Holland Court subdivision. It was just a piece of land that sat behind Holland Road, not Holland Court, and was not developed.

Ms. Deller said the special permit request was to allow her parents to move into an apartment within their basement. She stated her agreement with the proposed development conditions. Ms. Deller also noted several letters of support from her neighbors.

Chairman Ribble called for speakers. There was no response. He said he was going to wait a couple of minutes before closing the public hearing to see if the Board could get an answer regarding the outlot.

Susan Langdon, Chief, Special Permit and Variance Branch, pointed out that the tax map showed a lot C which pointed down to the area, although she was uncertain if it referenced the outlot or a proposed outlot.

In response to a question from Chairman Ribble, Ms. Langdon said that lot A was intended to be an outlot and that lot B also showed an outlot. She stated it may have been that outlots were purposefully created so that the adjacent lots would not have other front yards. Ms. Langdon noted that a rezoning had been approved and platted, whether it has been constructed yet or not.

Chairman Ribble again questioned whether these outlots were part of the Holland Court subdivision. Ms. Deller stated that they were not according to their homeowner documents. The subdivision consisted of only the ten parcels on Holland Court.

Since the Board had not heard back about the status of the outlot, Chairman Ribble kept the public hearing open and moved onto the next case.

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. ABDERRAHMAN RHANIME, SP 2011-MA-093 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 structure to remain 4.8 ft. from side lot line and accessory storage structure to remain 2.0 ft. from side lot line. Located at 4508 Brookside Dr., Alexandria, 22312, on approx. 28,718 sq. ft. of land zoned R-1. Mason District. Tax Map 72-1 ((6)) 51. (Decision deferred from 1/11/12)

Chairman Ribble reminded the Board that this application was for decision only.

Rebecca Horner, Senior Staff Coordinator, noted the outstanding issues from the public hearing, including clarification of the vested rights of the existing structure and a proposed development condition which would contemplate the existing structure being restored to its original condition. She also stated that a letter of support had recently been received.

Ms. Horner said that further investigation showed that the shed had been in the same location since at least 1984, and that aerial photographs confirmed that the detached accessory garage had been of the same size and architectural form with dormers since it was constructed in 1939. She said a site visit revealed that the detached accessory garage had not been enlarged.

In response to a question from Ms. Gibb, Ms. Horner said the general size of the building was the same. Some of the stone had been removed, which was why it was five inches shorter, and the dormers had been removed to provide more interior space.

Ms. Gibb and Ms. Horner discussed an e-mail which had been received from the applicant confirming that if he restored the structure to its original condition, then he would not also have to construct the home addition.

Ms. Gibb, Mr. Hammack, Susan Langdon, Chief, Special Permit and Variance Branch, and Ms. Horner discussed revising the proposed development conditions if the structure was restored to its original condition.

In response to a question from Ms. Gibb, Ms. Langdon said the applicant chose not to revise their plat or to submit any type of architectural detail for the changes to the garage. However, she noted that a new plat could be requested in the resolution language.

Mr. Hart was concerned about the use of the garage and suggested language be added to exclude a kitchen or functional use of the bedrooms without prior approval of the Zoning Administrator. Chairman Ribble said he would like the application to come back to the Board if any other uses were contemplated. Mr. Hammack suggested that language be inserted stating that the garage would not be converted to any other use not permitted by right.

Ms. Gibb moved to approve SP 2011-MA-093 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ABDERRAHMAN RHANIME, SP 2011-MA-093 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 structure to remain 4.8 ft. from side lot line and accessory storage structure to remain 2.0 ft. from side lot line. Located at 4508 Brookside Dr., Alexandria, 22312, on approx. 28,718 sq. ft. of land zoned R-1. Mason District. Tax Map 72-1 ((6)) 51. (Decision deferred from 1/11/12) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 2012; and

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

1. The applicant is the owner of the property.
2. There has been a lot of testimony.
3. Staff has done several reports and investigations.
4. The Board has found that a garage that was built many years ago and had vested rights in its location lost those vested rights when the applicant enlarged it in height and created much more bulk and interior space.
5. It would not be entitled to stay there in its present location by right.
6. The only way it would be entitled to remain in its present location would be by a special permit.
7. The applicant has withdrawn its application to keep the structure as it is in its enlarged fashion and has agreed to restore the garage to its pre-renovation size, which means taking out the upstairs enlarged area.
8. With that agreement, it is entitled to a special permit for the garage.
9. As far as the shed, it has been in its present location since 1984, and it is two feet from the side lot line.
10. There has not been any testimony that it has had an impact on the neighbor or has been a problem for anyone.
11. The applicant has presented testimony indicating partial compliance when the applicant restores the garage to its pre-reconstructed standards.
12. The Board determined that the applicant has met Standards A through G of Sect. 8-914, as indicated.

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

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

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

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

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

1. This special permit is approved only for the location of the accessory storage structure and accessory garage structure, as shown on the plat prepared Dominion Surveyors, Inc., dated September 14, 2011, revised through December 15, 2011, submitted with this application and is not transferable to other land as noted in Condition 2 and subject to the following:
 - a. Restoration of the detached accessory garage to its original height, as evidenced by the flashing remaining from the original garage found inside the existing structure, and to its original architectural form, similar to the detached garage structure depicted in Attachment 1 and located at 4505 Brookside Drive. The garage shall be used primarily for the storage of cars and shall not be converted to any other use not permitted by right.
2. The applicant shall submit and obtain approval of a building permit within six months of the approval of this special permit, and renovation of the detached garage shall be complete and final building inspections approved within eighteen months of this special permit.

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

Mr. Smith seconded the motion, which carried by a vote of 5-0. Mr. Hart abstained from the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. SUSAN P. DELLER & WILLIAM M. DELLER, SP 2011-MV-103 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2806 Holland Ct., Alexandria, 22306, on approx. 10,935 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((43)) 4.

Chairman Ribble returned to this application and asked if any information had been obtained.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said it appeared, when looking at the subdivision behind the subject property, that a very small outlot had been created, so small that it did not appear on the tax map. She confirmed that the property did not abut the street and had a rear yard.

Mr. Hart noted that the property did abut Hinkle Way on the plat and did not show an outlot. Ms. Stanfield said she reviewed the Hinkle Way subdivision and it did show the outlot. She stated she could not explain the discrepancy.

In response to a question from Mr. Hart, Ms. Stanfield confirmed that the outlot abutted Lot 4 and went across the entire frontage of the property. She said it was either part of another lot or an outlot, or a combination thereof.

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

Mr. Hart moved to defer decision on SP 2011-MV-103 until the Board could receive verification regarding the outlot. Ms. Langdon suggested February 29, 2012, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.

//

~ ~ ~ February 15, 2012, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La., Annandale, 22003, on approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, 2/16/11, 7/27/11, 10/26/11, 11/30/11, and 12/14/11 at appl. req.)

Chairman Ribble noted that A 2007-MA-011 had been administratively moved to March 28, 2012, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ February 15, 2012, After Agenda Item:

Request for Intent to Defer Decision
Luis and Carla Marty, SP 2011-HM-094.

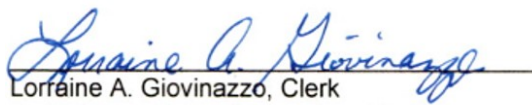
Mr. Hart moved to approve the request for an intent to defer decision to March 28, 2012, at 9:00 a.m. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Beard was absent from the meeting.


//

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

Minutes by: Suzanne Frazier

Approved on: April 23, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, February 29, 2012. 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 9:05 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. LUIS AND CARLA MARTY, SP 2011-HM-094, Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit home child care facility. Located at 1307 Deep Run Ln., Reston, 20190, on approx. 19,744 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((4)) (6) 46. (Decision deferred from 12/14/11 and 2/1/12)

Chairman Ribble noted that the Board had approved an intent to defer the decision on this application to March 28, 2012.

Susan Langdon, Chief, Special Permit and Variance Branch, said that since the Board had approved an intent to defer, a final motion needed to be made.

Mr. Hart moved to defer SP 2011-HM-094 to March 28, 2012, at 9:00 a.m., at the applicants' request. Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. ALBERT TOBIN, SP 2011-SP-106 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 6.7 ft. from side lot line. Located at 6626 Reynard Dr., Springfield, 22152, on approx. 10,667 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((5)) 85.

Chairman Ribble called the applicant to the podium.

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

Albert A. Tobin, 6626 Reynard Drive, Springfield, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction in minimum yard requirements based on an error in building location to permit an addition to remain 6.7 feet from the side lot line. The applicant had received a building permit for the addition, and the error was found during the setback certification process. She noted that the Zoning Ordinance requires a minimum side yard of 8.0 feet; therefore, a modification of 1.3 feet was requested for the addition.

Mr. Tobin presented the special permit request as outlined in the statement of justification submitted with the application. He said he read the staff report and had nothing more to add, noting that he was aware of the conditions for the relocation of the shed in the back yard away from the easement.

Mr. Hammack, Ms. Langdon, and Ms. Horner discussed the setback requirement for eaves in the Zoning Ordinance. Ms. Langdon stated that although only part of the eave extended into the setback, the corner of the house was also closer than 10.0 feet to the side lot line.

Mr. Hart questioned the north view photograph of the house, noting that it appeared the patio and part of the steps were closer to the lot line than allowable. Ms. Horner explained that the applicant had received an administrative approval for them, so they were not part of this application.

Mr. Hart and Mr. Tobin discussed the grading on the property and the presence of a rain gutter in the photo. Mr. Tobin explained that the gutter went underground and routed stormwater toward the back of his property.

Mr. Beard complimented the applicant on the architectural integrity of the addition, noting that the Board had received numerous letters of support from his neighbors.

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

Mr. Hammack moved to approve SP 2011-SP-106 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALBERT TOBIN, SP 2011-SP-106 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 6.7 ft. from side lot line. Located at 6626 Reynard Dr., Springfield, 22152, on approx. 10,667 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((5)) 85. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 29, 2012; and

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

1. The applicant is the owner of the property.
2. The applicant has met the standards set forth in Subsections A through G under Sect. 8-914, in particular, the non-compliance was done in good faith or through no fault of the property owner.
3. Given the neighborhood and the testimony indicating the architectural conformity with the neighborhood, the reduction will not impair the purpose or intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate area.

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

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

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

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

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

1. This special permit is approved only for the location of an addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated November 14, 2011, by George M. O'Quinn, submitted with this application and is not transferable to other land.
2. The existing shed shall be relocated outside of the storm sewer easement within 120 days of approval of this special permit.

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

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

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. THOMAS E. 3RD. AND JUDITH HARDESTY, SP 2011-MA-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.2 ft. from side lot line. Located at 4412 Roberts Ave., Annandale, 22003, on approx. 21,780 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((5)) 9A.

Chairman Ribble called the applicants to the podium.

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

Judith Hardesty, 4412 Roberts Avenue, Annandale, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants wished to add a sunroom onto the north side of the existing dwelling, located 12.2 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 15 feet, a modification of 2.8 feet or 18.6 percent was requested. Ms. Horner noted an existing deck off the north side of the dwelling, which the applicants proposed to enclose. She said staff recommended approval of SP 2011-MA-111, subject to the proposed development conditions.

Ms. Hardesty presented the special permit request as outlined in the statement of justification submitted with the application. She said the proposed enclosure of the deck, which was in need of repair, would be an improvement to the house. Ms. Hardesty stated the positioning of the deck on the north side was preferable since it was less noisy and further away from Lee Highway.

In response to a question from Mr. Hart, Ms. Hardesty said the letter in opposition which had been received by the Board was from a neighbor who lived across the street.

Mr. Hammack asked if the applicant could build the structure by right if it were not for the setback requirements. Ms. Horner answered in the affirmative.

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

Mr. Byers moved to approve SP 2011-MA-111 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS E. 3RD. AND JUDITH HARDESTY, SP 2011-MA-111 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.2 ft. from side lot line. Located at 4412 Roberts Ave., Annandale, 22003, on approx. 21,780 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((5)) 9A. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 29, 2012; and

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

1. The applicants are the owners of the property.
2. The Board determined that the application meets all the submission requirements set forth in Section 8-922.
3. The staff recommends approval, and the Board adopts its rationale.
4. This is a minimal reduction of 18.6 percent.
5. The enclosure of the sunroom is on the same footprint.
6. It makes sense to have it on the north side as opposed to someplace else from the standpoint of Little River Turnpike.
7. The nearest house on the side is 200 feet away, which is almost 70 yards, and that is 7/10ths of a football field away.
8. It looks like there is plenty of room.
9. For all those reasons, it makes eminently good sense from the standpoint of something that is in disrepair right now.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 130 square feet) of the addition, as shown on the plat prepared by Harold A. Logan Associates P.C., dated December 6, 2011, signed by Harold A. Logan, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,450 square feet existing + 3,675 square feet (150%) = 6,125 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. NADEEM P. MALIK, VC 2011-SU-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed lot 2 having a lot width of 76 ft. Located at 3027 Ashburton Ave., Herndon, 20171, on approx. 2.3 ac. of land zoned R-1. Sully District. Tax Map 35-2 ((1)) 4. (Admin. moved from 12/14/11 and 1/25/12 at appl. req.)

Chairman Ribble noted that the Board had received a request from the applicant to defer this public hearing until March 28, 2012, at 9:00 a.m.

Mr. Hart made a disclosure and indicated that he would not vote on the deferral request and would recuse himself from the public hearing.

Ms. Gibb moved to defer VC 2011-SU-013 to March 28, 2012, at 9:00 a.m., at the applicant's request. Mr. Smith seconded the motion, which carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. SUSAN P. DELLER & WILLIAM M. DELLER, SP 2011-MV-103 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2806 Holland Ct., Alexandria, 22306, on approx. 10,935 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((43)) 4. (Decision deferred from 2/15/12)

Chairman Ribble reminded the Board that the case was for decision only.

Mr. Hart moved to approve SP 2011-MV-103 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN P. DELLER & WILLIAM M. DELLER, SP 2011-MV-103 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 2806 Holland Ct., Alexandria, 22306, on approx. 10,935 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((43)) 4. (Decision deferred from 2/15/12) 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 February 29, 2012; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation, and adopts the rationale in the staff report.
3. There is correspondence in support from the civic association.
4. The reason for the deferral had to do with some confusion over the plat.
5. The Board has been given a satisfactory explanation, that what had been treated as the rear yard actually is the rear yard.
6. The plat in the staff report did not depict the outlot between this lot and the street in the back.
7. Because of the intervening outlot, there is a rear yard in the back, and everything is fine.
8. It does not appear that there would be any significant negative impact on the neighbors from the accessory dwelling unit.
9. There did not seem to be any opposition to it.
10. With the imposition of the development conditions, the application meets the applicable standards.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Susan P. and William M. Deller, and is not transferable without further action of this Board, and is for the location indicated on the application, 2806 Holland Court, (10,935 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Scartz Surveys., dated September 12, 2011, revised through February 16, 2012, as signed and sealed by Larry N. Scartz, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 874 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for the construction, including kitchen, in the accessory dwelling unit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.
12. All play equipment shall be subject to the use limitations of Sect. 10-103 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.

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

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

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. DAVID GUGLIELMI, SP 2011-SP-107 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6300 Little Ox Rd., Fairfax Station, 22039, on approx. 2.25 ac. of land zoned R-1 (Cluster). Springfield District. Tax Map 77-3 ((10)) C2.

Chairman Ribble noted that the public hearing for this case had been administratively moved to March 28, 2012, due to notices.

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. of land of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. (Admin. moved from 9/28/11, 11/30/11, 12/14/11, and 1/25/12 at appl. req.)

Chairman Ribble noted that the public hearing for this case had been administratively moved to March 14, 2012, at the applicant's request.

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. LORENA P. MALTEZ, A 2011-PR-044 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established accessory outdoor storage and an accessory storage structure that do not meet size or location requirements, all on property in the R-2 and H-C Districts in violation of Zoning Ordinance provisions. Located at 8518 Spartan Rd, Fairfax, 22031, on approx. 23,275 sq. ft. of land zoned R-2 and H-C. Providence District. Tax Map 49-3 ((17)) 7.

Chairman Ribble noted that the public hearing for this case had been administratively moved to July 11, 2012, at the applicant's request.

//

~ ~ ~ February 29, 2012, Scheduled case of:

9:00 A.M. RONALD S. FEDERICI, A 2011-SP-041 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established an office, which is a use not permitted, on property in the R-C District and has installed signs without sign and building permit approval in violation of Zoning Ordinance provisions. Located at 13310 Compton Rd., Clifton, 20124 on approx. 5.62 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-1 ((1)) 24. (Admin. moved from 1/25/12 at appl. req.)

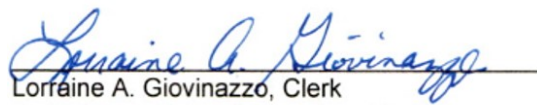
Chairman Ribble noted that this application had been withdrawn.

//

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

Minutes by: Suzanne Frazier

Approved on: April 23, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, March 14, 2012. 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.

During Board Matters, Chairman Ribble congratulated Mr. Smith on his reappointment to the Board. He then discussed the policies and procedures of the Board of Zoning Appeals and called for the first scheduled case.

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. MARIA ARRIETA, SP 2011-MA-109 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of certain yard requirements based on error in building location to permit accessory structure to remain 0.0 ft. from side lot line. Located at 6323 Everglades Dr., Alexandria, 22312. on approx. 11,465 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (J) 21.

Chairman Ribble called the applicant to the podium.

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

David Shindle, the applicant's agent, 6300 Stevenson Avenue, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements to allow a detached garage to remain 0.0 feet from the side lot line. The applicant did not receive a building permit for the addition and was given a Notice of Violation (NOV) as a result. She said the applicant subsequently filed for a special permit. Ms. Horner noted that the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 12 feet, or 100 percent, was being requested.

Mr. Hart asked why staff was recommending major changes to the garage, including chopping off part of the eave at the back corner, and reducing the size of the garage instead of just starting over. Ms. Horner replied that the applicant did not want to take the structure down; he wanted to make the modifications.

In response to a question from Mr. Hart, Susan Langdon, Chief, Special Permit and Variance Branch, said a structure this large has not typically been approved, noting that it was extremely oversized.

Mr. Hart asked if there were fire code issues with the structure being closer than five feet to the lot line. Norm Carlson from Residential Plan Review, DPWES, said the exterior walls would have to have a fire rating, as would the eaves and roof.

Mr. Shindle, who stated that he was the son-in-law of the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He said that when the house was purchased in January of 1997, two identical metal prefabricated garages existed on the property. The applicant's husband, who was now deceased, moved his race car and vintage show car from his shop to his home to store them. Mr. Shindle noted that go-carts had also been stored on the property. In 2010, a blizzard damaged both of the garages, and the applicant decided to rebuild a new single replacement garage on the same platform that the metal garages were built on. Mr. Shindle said he could not explain why permits were not obtained, but it may have been a cultural misunderstanding. He pointed out that the NOV was for the lack of a building permit, not that the garage was too close to the lot line. Following receipt of the NOV, the applicant's husband applied for a special permit, but while it was being processed, he died. Mr. Shindle felt the location chosen by the former owner was suitable, and he showed photos of other two-car garages in the neighborhood, some right on the property line, some twice as tall as the house, and some having new additions as large as the house. Mr. Shindle took issue with some of the proposed development conditions, such as vacating the drainage easement and reducing the structure to 600 feet.

In response to a question from Mr. Byers, Mr. Shindle said the garage was built by his late father-in-law and his son.

Chairman Ribble called for speakers. There was no response.

Given the revisions that staff was suggesting, Mr. Hart asked if Mr. Shindle believed the changes could be made. Mr. Shindle replied that the eave was only four inches into the setback and could be easily removed. He continued that he planned on adding a gutter, but would remove enough of the structure so that it would not encroach into the setback.

In response to a question from Mr. Hart, Mr. Shindle said the garage could not be shifted away from the property line and turned slightly. He added that he had a letter from the abutting neighbor stating that he did not have an issue with the garage.

Mr. Hart and Mr. Shindle discussed the interior of the garage, with Mr. Shindle noting that it currently had only an extension cord which provided electricity. They intended to install electricity, but the inspector said to stop all construction.

In response to a question from Chairman Ribble, Mr. Shindle said that the two metal sheds had housed several toolboxes and the two cars.

Mr. Byers asked if the new garage was built on the same foundation and if it was larger than the original structures. Ms. Horner responded that staff did not have very much information about the original structures, but noted that aerial photography showed it to be approximately the same size. She added that depending on how the applicant reduced and/or reconfigured the garage, it theoretically could meet the side yard requirements.

In response to a question from Ms. Gibb, Robert Burke from the Department of Code Compliance said the original complaint dealt with the lack of a building permit.

Mr. Hart pointed out that Note 8 on the plat stated that the property was in the RPA district and asked staff to verify that notation. Ms. Horner said it was not located in the RPA district and did not know why it was noted on the plat as such. Mr. Shindle said he did not know anything about the plat.

Chairman Ribble again asked for speakers. Hearing no response, he closed the public hearing.

Mr. Byers moved to deny SP 2011-MA-109 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARIA ARRIETA, SP 2011-MA-109 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of certain yard requirements based on error in building location to permit accessory structure to remain 0.0 ft. from side lot line. Located at 6323 Everglades Dr., Alexandria, 22312. on approx. 11,465 sq. ft. of land zoned R-3. Mason District. Tax Map 61-3 ((7)) (J) 21. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 2012; and

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

1. The applicant is owner of the property.

2. The applicant has not presented testimony indicating compliance with Sect. 8-006, specifically paragraphs 1, 2, and 3, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Side Yard Requirements based on error in building location.
3. These cases are always tough.
4. The Board specifically asked the question with regard to whether a contractor did this or not, or whether the individual did it because there is no building permit.
5. One of the criteria the Board has to look at is whether the non-compliance was done in good faith.
6. Based on the record before the Board, it cannot be said that it was.
7. The non-compliance was not done in good faith, and it was the fault of the property owner.
8. There was no issuance of a building permit.
9. Such reduction will impair the purpose and the intent of the Zoning Ordinance.
10. It will be detrimental to the use and enjoyment of other property in the immediate vicinity.
11. This came to the Board as a result of a specific complaint from the standpoint of not having a building permit.
12. The granting of this special permit will create an unsafe condition with respect to both other properties and public streets.
13. To force compliance with setback requirements would not cause unreasonable hardship upon the owner.
14. The Board heard testimony that even if the structure is reduced to 600 square feet in size, it still, in all probability, is not going to meet the side yard requirements.
15. The Board saw that the existing structure does not have a concrete slab foundation for footings.
16. The existing framing also needs to be reinforced.
17. There are additional fire code standards that would have to be met.
18. The Board is sympathetic to the applicant from the standpoint of the income considerations.
19. In this case, it looks like this would have to be almost completely rebuilt anyway.
20. That is why it is recommended that the subject application is denied.

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

THAT the applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance.

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

Mr. Hart seconded the motion, which carried by a vote of 7-0. Mr. Byers moved to waive the 12-month waiting period for refileing an application. Ms. Gibb seconded the motion, which carried unanimously.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. CHRIS ROBBINS, SP 2011-MA-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 7859 Thor Dr., Annandale, 22003, on approx. 15,563 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 59-4 ((17)) 45. (Admin. moved from 3/14/12 at appl. req.)

Chairman Ribble noted that SP 2011-MA-110 had been administratively moved to March 28, 2012 at the applicant's request.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. EULIE M. CAMPBELL, SP 2011-LE-101 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 6.3 ft. from rear lot line and to permit accessory dwelling unit within an existing dwelling. Located at 2812 Poag St., Alexandria, 22303, on approx. 14,002 sq. ft. of land zoned R-4 and HC. Lee District.

Chairman Ribble noted that SP 2011-LE-101 had been administratively moved to April 18, 2012 at the applicant's request.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. LA IGLESIA DE SANTA MARIA EPISCOPAL CHURCH AND NEW BUILDING BLOCKS PRE-SCHOOL, LLC, AND DIALOGUE RUSSIAN CENTER FOR CULTURAL DEVELOPMENT(DIALOGUE RCCD, LLC,) D/B/A METAPHOR RUSSIAN LANGUAGE SCHOOL, SPA 76-S-109-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 76 S-109 previously approved for church with child care center to permit the addition of a nursery school, school of special education and increase in land area. Located at 6928 and 7000 Arlington Blvd., Falls Church, 22042, on approx. 3.98 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183, 184 and 50-3 ((6)) 185. (Admin. moved from 3/14/12 at appl. req.)

Chairman Ribble noted that SPA 76-S-109-02 had been administratively moved to March 28, 2012 at the applicant's request.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. THE VINE UNITED METHODIST CHURCH AND BOARD OF TRUSTEES OF THE ARLINGTON DISTRICT OF THE VIRGINIA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, SP 2011-PR-108 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit an existing church to add a nursery school. Located at 2501 Gallows Rd., Dunn Loring, 22027, on approx. 4.24 ac. of land zoned R-3. Providence District. Tax Map 39-4-((1)) 31.

Chairman Ribble called the applicants to the podium.

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

David Schlechty, pastor of the church, 8707 Litwalton Court, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed to bring an existing church with 260 seats under special permit and add a nursery school with a maximum enrollment of 60 students daily. Twelve employees would work on site for the proposed nursery school use, with six each scheduled for the morning and afternoon shifts. The proposed nursery school use would utilize the lower level space inside the existing church building. The space was currently used for Bible studies and other church related activities and would continue to be used by the church and the community outside of the proposed nursery school hours of operation. Interior renovations were proposed to include the removal of interior walls between smaller classrooms to create two larger classroom spaces. The applicant indicated that in the future an existing window, located on the eastern side of the church building, would be replaced with a doorway and a small four to six foot wide sidewalk/walkway built to provide accessibility from the front sidewalk of the building into the lower level of the church building where the classroom space would be located. The only other exterior modifications included the addition of a 3,200-square-foot play area to be located in an existing open grassy area directly to the east of the church building. A 42-inch high fence was proposed around the perimeter of the 40 x 80 play area. Staff recommended approval of SP 2011-PR-108, subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Hedrick said that no transitional screening would be added to the south side of the property.

Pastor Schlechty presented the special permit request as outlined in the statement of justification submitted with the application. He provided some history of the church, noting that it was established almost 100 years ago, but moved to the present location in 1966-67. Pastor Schlechty said he came to the ministry three years

ago to start a revitalization of the congregation. After talking to hundreds of people in the Dunn Loring area, their primary statement of need was for daytime Christian education for preschoolers. He introduced Abby Forrester, youth pastor of the church, 2002 Nordly Place, Falls Church.

Pastor Forrester thanked Susan Langdon, Chief, Special Permit and Variance Branch, and her staff for their assistance with the application. She agreed with all the proposed development conditions except for Number 11, stating that they would prefer to install a permanent pole instead of a gate to block the old site entrance. Pastor Forrester felt it would allow pedestrian access and still adequately block traffic. She presented a statement of support from the Dunn Loring Redevelopment Corporation. Pastor Forrester asked for the Board's approval of their application, noting that approximately 40 families had expressed interest in the preschool.

In response to a question from Mr. Hammack, Alan Kessler from the Fairfax County Department of Transportation said that a pole would work just as well as the proposed gate to inhibit traffic. Mr. Hammack, Mr. Hart, Mr. Byers and Mr. Kessler discussed limiting access to the church and proposed preschool to only one entrance. Mr. Kessler stated that one point of access was safer.

Chairman Ribble called for speakers.

Elio Londero, 8104 Revatom Court, Dunn Loring, Virginia, stated his opposition to the application noting his concern with water runoff from the church onto his property. He provided photographs of standing water on his property.

In response to questions from Mr. Hart, Mr. Londero pointed out the location of his house and noted that the adjacent parking lot was bordered by a ditch which was built to redirect stormwater towards Sandburg Street.

Patricia Vanstory, 2459 Sandburg Street, Dunn Loring, Virginia, came forward to speak and asked staff to verify that there would be no ingress or egress from Sandburg Street. Ms. Hedrick confirmed her statement.

Thomas Darrow, 5640 Gresham Lane, Centreville, Virginia, came forward to speak. He stated that as a child, his Boy Scout troop built a memorial garden on the property, and he was concerned that the playground would interfere with it. He also commented on the flooding, noting that over the years the drainage behind the memorial garden was a significant issue.

In view of Mr. Darrow's testimony, Mr. Hammack asked if there was another potential location for the playground. Ms. Hedrick said that staff had addressed the issue with Pastor Forrester and, in rebuttal, she would address it.

In response to a question from Mr. Byers, Ms. Hedrick said the playground would not add to the impervious surface. It would remain a grassy area surrounded by a 42-inch fence.

In rebuttal, Pastor Forrester said the church looked at multiple locations for the playground and ascertained that the proposed area was the safest, driest, and best place for it. She stated that the playground would never affect the memorial garden, which was a sacred place.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-PR-108 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE VINE UNITED METHODIST CHURCH AND BOARD OF TRUSTEES OF THE ARLINGTON DISTRICT OF THE VIRGINIA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, SP 2011-PR-108 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit an existing church to add a nursery school. Located at 2501 Gallows Rd., Dunn Loring, 22027, on approx. 4.24 ac. of land zoned R-3. Providence District. Tax Map 39-4-((1)) 31. Mr. Hammack moved that the Board of Zoning Appeals adopt the following

resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 14, 2012; and

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

1. The applicants are the owners of the property.
2. The staff makes a favorable recommendation with respect to this application.
3. After the pastor's explanation concerning the playground, it is non-impervious.
4. It would be hard to really move it to any other location which would be any better.
5. If it is a non-impervious surface, it should not exacerbate the existing water that collects on the property.
6. There are quite a number of letters in support of the application.
7. The church has been before the Board before.
8. It is a site that is well suited to the enlargement with the addition of a preschool.

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

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

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

1. This approval is granted to the applicant only, The Vine United Methodist Church and Board of Trustees of the Arlington District of the Virginia Annual Conference of the United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 2501 Gallows Road (4.24 acres), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Cole & Denny Incorporated, dated October 20, 2011, as revised through November 29, 2011, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The seating capacity in the main area of worship shall not exceed 260.
6. The total maximum daily enrollment of students in the nursery school shall not exceed 60.
7. The maximum number of employees on site at any one time for the nursery school shall be limited to 12.
8. The maximum hours of operation for the nursery school shall be limited to 8:45 a.m. to 4:00 p.m. (which includes drop off and pick up), Monday through Friday.
9. The ages of the children shall be limited to between 30 months and 5 years.

10. Prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the nursery school, the applicant shall establish a 40 x 80 play area surrounded by a 42" high fence as shown on the special permit plat.
11. Prior to the issuance of a Non-RUP for the nursery school, a pole blocking vehicular access or a permanent gate shall be installed at the entrance on Gallows Road, a minimum distance of 15 to 20 feet from the edge of the roadway.
12. Parking shall be provided as depicted on the special permit plat. All parking shall be on site.
13. All lighting on site shall be in accordance with the Performance Standards contained in Part 9 of Article 14 of the Zoning Ordinance.
14. The barrier requirement shall be waived along all lot lines.
15. The transitional screening requirement shall be modified along all lot lines to permit existing vegetation on site to meet the requirements of Transitional Screening 1 (TS1). All vegetation shall be maintained in good condition, and any dead or dying vegetation shall be replaced as determined necessary by Urban Forest Management Division (UFMD), DPWES.
16. All signs on the property shall be in accordance with the requirements of Article 12 of the Zoning Ordinance.
17. The applicant shall install a minimum of two bicycle racks in a location next to the sidewalk and around the perimeter of the church building.

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 6-0. Ms. Gibb was not present for the vote.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. CENTREVILLE ENGLISH CONGREGATION OF JEHOVAH'S WITNESSES, INC., SP 2011-SP-069 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12901 Braddock Rd., Clifton, 20124, on approx. 4.18 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((2)) 3. (Admin. moved from 9/28/11, 11/30/11, 12/14/11, 1/25/12, and 2/29/12 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Lloyd A. Ntuk, the applicant's agent, 12163 Penderview Terrace, Fairfax, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She noted that the land was currently vacant and forested. The applicant proposed a place of worship with a maximum of 360 seats in a new two-story building, 13,160 square feet in size, with approximately 146 parking spaces provided on site. Services would be held every day. Ms. Cho stated that 50 percent of the site would be preserved as undisturbed open space with entry to the site provided through an access point along Doyle

Road. Frontage improvements, including right-of-way dedication and a new sidewalk along Doyle Road, were proposed. Painted turn lanes on Doyle Road were also planned. Staff recommended approval of SP 2011-SP-069 subject to the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

In response to a question from Mr. Hart, Ms. Cho confirmed that there would be no interparcel access between Lot 2, Lot 2A, and the subject property.

Mr. Hart stated his concern for the future development of Lot 2, since if the application was approved, Lot 2 would be boxed in between two churches with the only access onto Braddock Road. He asked staff if they considered consolidation of the lots.

Chairman Ribble resumed the Chair.

Ms. Cho said that the applicant's representative had spoken to the owner of Lot 2 who stated they were not interested in consolidation.

In response to a question from Mr. Hart, Ms. Cho stated she could not say with full confidence that Lot 2 would not have interparcel access since the particular situation on Lot 2 had not been studied by staff.

Mr. Hart and Ms. Cho discussed the construction progress on Lot 2A, Kings Chapel Church, with Ms. Cho noting that phase II had not yet been built. She also noted that the state water violations had largely been addressed and that the property should come off bond soon. Mr. Hart asked how water runoff would be handled on the subject property. Ms. Cho said that an underground box would be constructed to hold the water for a length of time and then percolated to a naturally incised channel which led to a pipe under the driveway and eventually down to a farm pond via a culvert which had been built for it.

Mr. Hart and Ms. Cho discussed the traffic ramifications of the proposed church, including left-hand turns from Doyle Road onto Braddock Road. Ms. Cho said staff had expressed concern about that intersection and asked the applicant to submit a traffic signal warrant study to the Virginia Department of Transportation (VDOT). However, she noted that the County Department of Transportation had not identified this left-hand turn as a major issue.

Mr. Hart, Mr. Smith, and Ms. Cho discussed the stormwater management issues on the property, including the necessity for a stormwater pond and/or a detention facility on site. Ms. Cho pointed out that the site plan would also have to satisfy Public Facility Manual requirements.

Mr. Ntuk presented the special permit request as outlined in the statement of justification submitted with the application. He said he was aware of past concerns with stormwater management on the site, but noted that a 25,000-cubic-foot detention facility was proposed that would reduce stormwater runoff by 50 percent. He added that this facility would be built before any church construction took place. With regard to the traffic signal, Mr. Ntuk said that VDOT had refused to conduct a signal warrant study based on the volume of traffic. He estimated that there was space for 10 to 15 stacked cars awaiting the left turn onto Doyle Road.

In response to a question from Mr. Hart, Mr. Ntuk said that VDOT would determine their total contribution towards design and construction of a traffic signal, if deemed necessary, based on their future projections for that development.

Mr. Hart reiterated his concern with the stormwater runoff from the property, noting that development of the adjacent Kings Chapel property had exacerbated downstream drainage problems. Elfatih Salim, Stormwater Engineer with the Department of Public Works, stated easements had been created to resolve inadequate outfall of stormwater from upstream properties. To his knowledge, there had been no further problems with stormwater runoff since that time.

Mr. Hart asked whether the sewer extension would be within the 400-foot rule. Susan Langdon, Chief, Special Permit and Variance Branch, stated that if it was not within the 400-foot requirement, it would not be approved.

Mr. Hammack, Mr. Ntuk, and Ms. Langdon discussed the applicant's request for two apartments to be located in the church. Mr. Ntuk stated that they would be used as a rectory or parsonage. Ms. Langdon said that as long as the apartments were used by someone connected with the church, staff was amenable. She noted that other churches had requested and been granted similar requests.

Chairman Ribble called for speakers.

Carol Koehne, 13135 Pelfrey Lane, Fairfax, Virginia, came forward to speak. She was opposed to the construction of a church on the property. Ms. Konen said she and her mother, owners of Lots 13 and 14, respectively, still experienced frequent flooding from the Kings Chapel Church even though they were promised that post-development runoff would be less than pre-development flow. She asked that the Board defer decision on the application until further studies could be done.

In response to a question from Mr. Beard, Ms. Koehne acknowledged that creeks periodically overflowed prior to the development of Kings Chapel Church. However, she said that it was now much worse, noting that 19 violations had been issued regarding stormwater runoff problems.

Deborah Rood, 5728 Doyle Road, Clifton, Virginia, came forward to speak. She stated that she and her mother resided on Lot 14 and had hired attorneys and engineers after their property was impacted by the development of Kings Chapel Church. Ms. Rood said that Fairfax County was not maintaining the area, noting that a neighbor had lost the use of almost three acres due to flooding. She questioned the accuracy of the engineering firm which conducted the original stormwater study, stating that if proper studies had been done, the church probably would not have been built. Ms. Rood asked for further studies to be done on the area.

In rebuttal, Mr. Ntuk said he was sensitive to the complaints of the neighbors. He acknowledged that maintenance of the area was an issue, but stated that when the proposed stormwater facility was constructed, it would reduce the amount of runoff. Mr. Ntuk said that if the application was denied, the flooding would remain the same.

Mr. Smith asked the applicant to describe the proposed underground stormwater storage facility. Mr. Ntuk said that a 48-inch pipe, or possibly multiple pipes, would be installed under the parking lot. The runoff would drain from the pipe(s) into a holding tank. The amount of water subsequently released from the holding tank would be controlled by them. He said their target was for a 50 percent reduction, so the drainage holes would be made only big enough to reduce the cubic feet per second that would fix this condition. Regarding property maintenance, Mr. Ntuk said there would be detailed maintenance scheduled.

In response to a question from Mr. Smith, Mr. Ntuk said the system was built for a 10-year storm. He stated that if a storm exceeded the outfall capacity, the overflow would go to the conservation area.

Mr. Beard and Mr. Ntuk discussed stormwater runoff on impervious surfaces. Mr. Ntuk stated that the proposed system would catch the stormwater in the detention holding box before it left the site.

Mr. Smith, Mr. Byers, Ms. Langdon, and Ms. Cho discussed the by-right possibilities for the property and the size of the impervious surface which would be allowed. Ms. Cho and Ms. Langdon noted that a house with a fairly large asphalt area could be built by right.

Mr. Smith stated his concern with the drainage on the Kings Chapel property, asking if their drainage facility was finished. Ms. Cho said the Kings Chapel stormwater management facility had to be built in phase 1. Mr. Ntuk stated that during the site plan review phase, their engineers would perform outfall analysis for maximum flow on both properties.

In response to a question from Mr. Hart, Mr. Ntuk stated that the stormwater retention facility was designed to handle a 10-year storm since that was the County policy. He also noted that the hydraulic study measured the amount of rainwater runoff in feet per second.

Chairman Ribble closed the public hearing.

Mr. Hart moved to defer decision on SP 2011-SP-069 to August 1, 2012, at 9:00 a.m. Mr. Beard seconded the motion, which carried by a vote of 5-1. Mr. Byers voted against the motion. Ms. Gibb was not present for the vote.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. WRNS ASSOCIATES, A 2011-DR-017, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing two separate businesses to operate without site plan approval, valid Non-Residential Use Permits, valid Building Permits, or approved sign permit applications and that these businesses have established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11, 10/26/12, and 1/25/12 at appl. req.)

Chairman Ribble noted that A 2011-DR-017 had been withdrawn.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. GREAT FALLS EQUIPMENT REPAIR, LLC, A 2011-DR-019, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established uses on property in the C-8 District without site plan approval, valid Non-Residential Use Permits, valid Building Permits, Special Exception approval, or approved sign permit applications, has established accessory outdoor storage that does not meet size or location requirements, and has established a heavy equipment and specialized vehicle sale, rental and service establishment, which is a use not permitted, all in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 9/21/11, 10/26/12, and 1/25/12 at appl. req.)

Chairman Ribble noted that A 2011-DR-019 had been withdrawn.

//

~ ~ ~ March 14, 2012, Scheduled case of:

9:00 A.M. CLS LAWN & LANDSCAPE, A 2011-DR-003, Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating a contractor's offices and shops and a storage yard without site plan approval, a valid Non-Residential Use Permit, valid Building Permits, or approved sign permit applications and that this business has established accessory outdoor storage that does not meet size or location requirements, all on property in the C-8 District in violation of Zoning Ordinance provisions. Located at 721 Walker Rd., Great Falls, 22066, on approx. 37,947 sq. ft. of land zoned C-8. Dranesville District. Tax Map 13-1 ((2)) 1A2. (Admin. moved from 4/20/11, 6/8/11, 9/14/11, 9/21/11, 10/26/12, and 1/25/12 at appl. req.)


Chairman Ribble noted that A 2011-DR-003 had been withdrawn.

//

As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Minutes by: Suzanne Frazier

Approved on: May 7, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, March 28, 2012. The following Board Members were present: Chairman John F. Ribble III; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. V. Max Beard was absent from the meeting.

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

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. LUIS AND CARLA MARTY, SP 2011-HM-094, Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit home child care facility. Located at 1307 Deep Run Ln., Reston, 20190, on approx. 19,744 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((4)) (6) 46. *(Decision deferred from 12/14/11, 2/1/12, and 2/29/12)*

Chairman Ribble called the applicants to the podium.

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

Luis and Carla Marty, 1307 Deep Run Lane, Reston, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, noted that SP 2011-HM-094 had been deferred for decision only, and revised development conditions had been submitted to the Board for its consideration.

Mr. Hart asked whether there were any differences in the new conditions between Attachment A and B for landscaping or the size of the driveway. Kelli Goddard-Sobers, Staff Coordinator, replied that there were no differences between the two attachments other than Attachment A showed where the vehicles would park in the driveway.

Mr. Hart asked whether the DRB referenced towards the bottom of the attachments referred to the Reston Design Review Board, and whether they were requiring the exact species of vegetation shown on the exhibits. Ms. Goddard-Sobers replied affirmatively to the first question, and said she would defer the second question to the applicants, because it had been the applicants who had met with the Design Review Board. Mr. Marty said those specific plants were not required. What was required were similar ones, like arborvitae, holly, Leland cypress or similar type trees, or evergreens that would provide the screening for the driveway.

Mr. Hart said problems had arisen in Mount Vernon with snow damage to arborvitae, but since similar types were allowed, the urban forester would be able to find something appropriate. He asked whether the applicants agreed with the revised conditions. Mr. Marty said they did.

Mr. Hart said there had been previous discussion regarding the screening at the corner of the backyard toward the easement where neighbors could see toys. He asked whether staff believed modifications were not needed to the screening or fencing in that area. Ms. Goddard-Sobers said staff did not believe any additional screening was required. She understood the play equipment was movable and could be moved closer toward the house.

Mr. Byers moved to approve SP 2011-HM-094 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LUIS AND CARLA MARTY, SP 2011-HM-094, Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit home child care facility. Located at 1307 Deep Run Ln., Reston, 20190, on approx. 19,744 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 12-3 ((4)) (6) 46. *(Decision deferred from 12/14/11, 2/1/12, and 2/29/12)* Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 2012;

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

1. The applicants are the owners of the property.
2. The present zoning is PRC.
3. The area of the lot is 19,744 square feet.
4. The opposition was read in detail as well as the seven letters of support from folks who had used the daycare facility.
5. Staff recommended approval, and its rationale was adopted.

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

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

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

1. This special permit approval is granted to the applicants only, Luis and Carla Marty, and is not transferable without further action of this Board, and is for the location indicated on the application, 1307 Deep Run Lane, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the house location survey plat prepared by B.W. Smith and Associates, Inc., dated September 22, 2010, approved with this application, as qualified by these development conditions.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum number of children permitted at the home child care facility at any one time shall not exceed ten (10) children.
5. The maximum hours of operation of the home child care facility shall be limited to 6:45 a.m. to 5:00 p.m., Monday through Friday.
6. The maximum number of employees shall be limited to two (2) on site at any one time in addition to the provider.
7. A solid 6-foot tall wooden fence shall be installed along the northern property line or around the outdoor play area
8. The dwelling that contains the home child care facility shall be the primary residence of the provider.
9. There shall be no signage associated with the home child care facility.
10. The second kitchen located in the basement shall only be used for the home child care facility. All applicable permits and final inspections for the kitchen shall be obtained within 120 days. If the home child care facility is discontinued or the single family dwelling is rented or sold, an approved County demolition permit shall be obtained, and the second kitchen shall be demolished.
11. All loading and unloading of children shall occur on-site. Parking for the use shall be in the garage and /or driveway as shown on the attached exhibit (Attachment A). Any conversion of the garage that precludes the parking of vehicles within the garage is prohibited.

12. The driveway shall be expanded as shown in the attached exhibit (Attachment B) within 180 days of the approval of this special permit.
13. The arrival and departure times of children who are being picked up and/or dropped off by automobile shall be staggered at intervals of a minimum of 10 minutes.
14. Any proposed or future accessory structures shall be located in accordance with all Zoning Ordinance requirements.
15. Trees or plantings will be planted in accordance with Attachments A and B of these development conditions subject to the approval in coordination with the Urban Forester.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. ROBERT J. CUNNINGHAM, JR./LINDA J. CUNNINGHAM, SP 2011-SP-095 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11407 Lilting Ln., Fairfax Station, 22039, on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-2 ((3)) 29. (*Deferred from 1/25/12.*)

Chairman Ribble called the applicants to the podium.

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

Robert J. Cunningham, Jr., 11407 Lilting Lane, Fairfax Station, Virginia, reaffirmed the affidavit, and introduced his wife, Linda Cunningham.

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

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-095, subject to the proposed development conditions.

Mr. Cunningham presented the special permit request as outlined in the statement of justification submitted with the application. He thanked staff for their hard work, responsiveness, and diligence in working with his application. He introduced his 88-year-old mother-in-law, Minna Hamner, who had been living in the accessory dwelling unit since 2001 when the applicants had moved in. Mr. Cunningham said the living area was 728 square feet, and the accessory dwelling unit did not have separate utilities. He said that although they had thought their builder had complied with all the necessary permit applications in 2001, a notice of violation had been received in 2010, which indicated the kitchen in the accessory unit had not been approved in 2001. Mr. Cunningham said the application fell within the parameters of the Zoning Ordinance, because a freestanding dwelling was allowed on a five-acre lot, the resident was over 55 years of age, it was well below the allowable square footage ratio, and although two bedrooms were allowed, it only consisted of one bedroom. The dwelling had existed in its current condition for 11 years, and no modifications were proposed.

Mr. Cunningham said the health department had imposed a condition of adding two additional septic lines because of the kitchen. The house had been approved for five bedrooms, and it only had four, so the one bedroom in the accessory dwelling unit did not exceed that criteria, but it had not been approved for two kitchens. He said he had contacted a septic company who was ready to install the lines. Mr. Cunningham said the accessory dwelling unit had no negative impact on the community, and his neighbors constantly commented on the beauty of his home. He said the community had been kept apprised throughout the application process through written correspondence, as well as an informational meeting held at his home at which all of the meeting attendees expressed support.

Mr. Cunningham said that they intended to fully abide by the development conditions included in the staff report, but he requested one modification. He asked that his mother-in-law be allowed to occupy the accessory dwelling unit during the septic modification, and proposed a condition to cap off the kitchen sink until the septic system modification was completed.

Mr. Cunningham said he knew the Board did not involve itself in matters of covenants and homeowners association restrictions, but a complaint about the subject structure had been made by a handful of residents when his house had been built. In 2004, an agreement had been reached with the homeowners association to approve the structure with one slight modification. He said that a few residents had again contacted the homeowners association, and requested it become involved in the current process. The association had declined, because it was not proper for it to be involved in the current process, and it had reached an agreement in 2004 concerning the structure. Mr. Cunningham submitted documents regarding the association's current position and the 2004 agreement to the Board.

Mr. Hart asked whether Mr. Cunningham had seen a letter from his next-door neighbor objecting to the drain field modification not having yet been engineered. Mr. Cunningham said he had not. A copy was provided to Mr. Cunningham, and Mr. Hart asked for his response. Mr. Cunningham said he had contacted a licensed septic and construction company that was well versed in County requirements, and had a long history with the County. They had forwarded to the company the Health Department permit application and requirements, and were sure the company would abide by all the requirements of the Health Department. Mr. Cunningham said there was a substantial area where the additional lines could be installed, which would consist of two 50-foot long trenches with gravel.

Mr. Hart asked whether the development condition was sufficiently worded without saying anything about the drain field modification being engineered. Ms. Gumkowski indicated the condition was sufficient.

Mr. Hart asked whether the permit for finishing the garage in the past, which was Appendix 5 from the staff report, was approved, since it did not appear to show anyone from Zoning signing off. Ms. Gumkowski said she was unsure why there had been no signature.

Mr. Hart asked for confirmation that the only difference between what was reflected on the permit and what was built was the kitchen, and that everything else was okay. Ms. Gumkowski said that was correct.

Mr. Hart asked questions about the remarks section of the permit, and whether the permit had been issued and closed out with all inspections. Ms. Gumkowski said she thought the reference to GP in file referred to the grading plan in the file. She said the permit had been issued, and she assumed it had been closed out.

Mr. Hart asked whether it had been the builder who had obtained the permit. Mr. Cunningham said the builder obtained the permit, and they had purchased the property from the builder upon completion and the issuance of the residential use permit.

Mr. Hart asked whether there had been any complaints received from 2001 to 2010. Charles Fitzhugh, Department of Code Compliance, said there had been no prior complaint.

Chairman Ribble called for speakers.

James Franklin Maclin, Jr., 11568 Liting Lane, Fairfax Station, Virginia, came forward to speak. He said he believed zoning was one of the most important aspects of protecting the value and use of property in Fairfax County. He said he built his first house at his property in 1970, lived there for 39 years, and in 2009 he applied for and received permission to tear it down and build a new house within zoning which included all the proper permits. He said that at the time of construction, the applicants submitted a plan for a single-

dwelling residence on five acres with a detached garage. Mr. Maclin said he was not trying to put Mr. Cunningham's mother out of a house, but when the applicants authorized and funded the kitchen, the law was violated, and has continued to be violated for 11 years, which jeopardized the health and safety of the neighborhood, and the value of Mr. Maclin's property. Mr. Maclin said that since Mr. Cunningham was an attorney specializing in estates, he was fully aware of the laws, and the fact that he was in violation of zoning and health. He should not be rewarded, unless stringent requirements were added regarding what had to be done to make the property legal.

Mr. Hammack asked whether the provisions for inspections addressed in Condition 10 would be adequate to cover the kitchen and the facilities which were installed that were not inspected ten years prior.

Ms. Gumkowski said Condition 9 talked about the permits for the kitchen.

With respect to Condition 5 and in light of Mr. Cunningham's testimony, Mr. Hammack asked whether staff still felt that no one shall occupy the accessory dwelling unit until after the septic improvements had been made or, in the alternative, would staff have a problem with a change that said the kitchen in the accessory dwelling unit shall not be used until after the County Health Department requirements had been satisfied, since the bedroom and other facilities were covered under the Ordinance. Susan Langdon, Chief, Special Permit and Variance Branch, said that if the Board chose to make the change, wording should be added that the closing off of the kitchen sink should be inspected to ensure it happened until the changes were made to the septic field. She said that the assumption with the wording no one shall occupy was that no one would be using the kitchen, the bathroom, or the laundry facilities.

Mr. Hart asked why there would be a problem with the bathroom when one and a half bathrooms had been approved on the permit 11 years prior. Ms. Langdon said the Health Department looks at the number of bathrooms, number of kitchens, number of laundry facilities, and number of bedrooms when they are determining the septic fields.

Mr. Hart asked whether there would be a safety or health problem with the mother-in-law staying in the garage until the septic field was completed if the kitchen was inoperable. Ms. Langdon said she was not aware of any problem, but if that was the way the Board wanted to change the conditions, an inspection should be made to ensure the kitchen sink had been closed off.

In his rebuttal, Mr. Cunningham stated that the bathroom had been approved, and it was only the kitchen where there was contention with the Health Department. He said the kitchen sink, which was the source of the waster that necessitated the additional two lines, would be sealed off. Mr. Cunningham said that when he had been advised of the technical violation, he had immediately undertaken expensive steps to resolve the issue. He said he intended to comply with the law, and the Zoning Ordinance allowed for the use for which he applied.

Chairman Ribble closed the public hearing.

Mr. Byers asked whether Condition 9 meant that the resident of the accessory dwelling unit would not be able to use the microwave, the oven, or any of the other appliances. Ms. Gumkowski said the items in the kitchen had never been inspected, which was why an electrical inspection was needed.

Mr. Byers stated that in a prior case concerning a child care, there had been a second kitchen downstairs that had not been inspected, and it had not been closed down because the inspector made a determination that it did not pose a danger until the inspections had been completed. Mr. Byers asked whether the current case was the same kind of situation, because the kitchen in the accessory dwelling unit had been used for ten years. He said the sink was precluded from being used until the septic field issue was resolved, but the laundry and bathroom could be used. Ms. Langdon said the kitchen with the stove had special electrical needs and had not been inspected, so staff wanted it inspected because there was concern. She said it was possible that in the child care case the inspector had already looked and determined it was okay, but that assurance did not exist in the current case.

Mr. Hammack suggested that wording be added to the development conditions which stated that no one shall occupy the accessory dwelling unit until the County Health Department requirements and final inspections had been completed, rather than just being concerned that the occupant might turn the water on in the sink. He said the fact that the stove and other electrical items had not been inspected was a more hazardous condition than the potential septic problem.

Chairman Ribble stated that the Board could add whatever conditions it wanted. He asked Mr. Fitzhugh whether any kind of electrical inspections had taken place. Mr. Fitzhugh said that when he and another staff member went out to meet with the applicants, a building inspector accompanied them, who walked through, looked at everything briefly, and did not seem to have any issues at the time, although an in-depth inspection was probably needed.

Mr. Hart said that based on the paperwork in the file, it appeared that in 2001 someone processed a building permit for a garage with one and one half bathrooms, living, dining, bedroom, and storage room. He understood the permit had been issued and probably closed out. He said he did not believe the permit would have remained open for 11 years without anything happening if there had not been final inspections. Although there was not much in the file regarding whether the permit was closed out, he said he did not think it reasonable to deny occupancy of the entire unit. The problem was the possible impact of the kitchen with a garbage disposal on the drain field.

Mr. Hammack moved to approve SP 2011-SP-095 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT J. CUNNINGHAM, JR./LINDA J. CUNNINGHAM, SP 2011-SP-095 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11407 Lilting Ln., Fairfax Station, 22039, on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-2 ((3)) 29. (Deferred from 1/25/12) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 2012; and

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

1. The applicants are the owners of the property.
2. Staff recommends approval of this permit subject to development conditions.
3. The applicant has presented testimony indicating compliance with the conditions.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Robert J. Cunningham and/or Linda J. Cunningham, and is not transferable without further action of this Board, and is for the location indicated on the application, 11407 Lilting Lane (5.0 acres) and is not transferable to other land.

3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The applicant shall upgrade the existing onsite sewage disposal system as per the requirements in a letter from the Division of Environmental Health, Fairfax County Health Department, dated February 7, 2012, and included as Attachment 1 to these conditions. These requirements shall be installed by a licensed contractor and within three months of the approval of the Special Permit.
5. No one shall occupy the Accessory Dwelling Unit until the Division of Environmental Health of the Fairfax County Health Department requirements pertaining to the onsite sewage disposal system have been satisfied. In the alternative, the kitchen sink shall be closed off and inspected by the appropriate Fairfax County personnel, until such time as the Fairfax County Health Department requirements have been satisfied.
6. The occupants of the accessory dwelling unit shall be limited to the applicants' immediate family members.
7. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
8. The accessory dwelling unit shall contain a maximum of 1,176 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 2 to these conditions. The unit shall only occupy the first floor of the structure.
9. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.
10. 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.
11. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Sect. 8-012 of the Zoning Ordinance.
12. If the use of the accessory dwelling unit ceases for the applicants' immediate family members 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.
13. All parking shall be provided on site as shown on the special permit plat.
14. The playset shall meet the locational guidelines outlined in Sect. 10-104.12 of the Zoning Ordinance and shall be located outside of the Resource Protection Area.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (*Admin. moved from 12/1/10 and 5/4/11 for ads*) (*Admin. moved from 1/26/11 at appl. req.*) (*Decision deferred from 6/22/11, 9/28/11, 10/26/11, and 1/11/12.*)

9:00 A.M. ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (*Admin. moved from 12/1/10 and 5/4/11 for ads.*) (*Admin. moved from 1/26/11 at appl. req.*) (*Decision deferred from 6/22/11, 9/28/11, 10/26/11, and 1/11/12.*)

Chairman Ribble noted that these applications had been deferred for decision only.

Shelby Johnson, Staff Coordinator, referred to her memo to the Board dated March 21, 2012, which gave a brief history of the case, and delineated the reasons for the numerous deferrals.

Ashley Nicole M. Le, 8116 Martha Street, Alexandria, Virginia, and Ron Mineones, legal services, no address given, came forward. Mr. Mineones explained the applicant had not come into compliance due to financial hardship. He had found a charitable organization which would do the necessary work for free, but the existing road block hindered that possibility. Mr. Mineones was still in the process of finding financial assistance for the applicant in order to prevent foreclosure of her property. He requested additional time to gather the necessary funds.

Discussion ensued regarding the removal costs, the group willing to do the removal at no cost, the fences on the subject and adjacent property, the probable need for a demolition permit, and whether the Board should take partial action or defer all present issues.

The Chairman directed the clerk to administer the oath to Andrew Lawrence, representative for the property adjacent to the applicant, 10619 Jones Street, Fairfax, Virginia, who swore or affirmed that his testimony would be the truth.

Mr. Lawrence explained his client wanted the encroaching buildings to be removed, and the dumpsters located on the adjacent property were dedicated to the apartment tenants.

There was discussion regarding the potential cooperation of the neighboring apartment complex with the applicant, given the financial situation.

Chairman Ribble closed the public hearing.

Mr. Hart moved to deny VC 2010-LE-006 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ASHLEY NICOLE M. LE, VC 2010-LE-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent rear yard coverage and accessory structures greater than 200 square feet in size. Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5))10 (Concurrent with SP 2010 LE-053). (*Admin. moved from 12/1/10 and 5/4/11 for ads*) (*Admin. moved from 1/26/11 at appl. req.*) (*Decision deferred from 6/22/11, 9/28/11, 10/26/11, and 1/11/12*) 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 March 28, 2012; and

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

1. The applicant is the owner of the property.
2. With respect to the variance application, the applicant has not produced evidence satisfying the required standards for a variance.
3. As was discussed over the past few months, the variance standards are much more severe than a special permit.
4. There were a lot of problems with how this situation came about.
5. Under the circumstances, the Board is not procedurally empowered to approve a variance for the size of structures that are partially located on a lot different from the application property. For that reason alone, there is a problem.
6. There is really nothing unusual about this lot.
7. It is a flat, rectangular lot.
8. There did not seem to be any topographic issues.
9. It is pretty ordinary except that the fences seem to be off a little bit and the accessory structures are encroaching.
10. Without some unusual condition, the Board is unsure where it is empowered to go forward.

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

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

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

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

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

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

//

Mr. Hart moved to approve-in-part SP 2010-LE-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ASHLEY NICOLE M. LE, SP 2010-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building locations to permit addition to remain 20.0 feet from front lot line and accessory storage structures to remain 0.0 feet from rear lot line and 1.2 feet from the side lot line. **(THE BZA APPROVED THE FRONT PORCH ADDITION ONLY.)** Located at 8116 Martha St. on approx. 7,259 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 10 (Concurrent with VC 2010-LE-006). (Admin. moved from 12/1/10 and 5/4/11 for ads) (Admin. moved from 1/26/11 at appl. req.) (Decision deferred from 6/22/11, 9/28/11, 10/26/11, and 1/11/12) 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 March 28, 2012; and

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

1. The applicant is the owner of the land.
2. The applicant has in part satisfied the required standards for the special permit.
3. The porch in the front is not going to have a significant negative impact on anyone.
4. The Board can approve the addition in the front of the dwelling. The rest of it, as was discussed, there are problems.
5. There were objections from the neighbor in the back.
6. This approval also does nothing about the fence situation in the back, which is confusing some of this.
7. The issue of the fence in the back is going to be between the two property owners and not something that the Board is resolving.
8. Given the explanations that the Board has heard, some additional time would be appropriate, for which conditions will be added.
9. At least with respect to the addition in the front of the dwelling, the applicable mistake section resolutions have been satisfied.

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

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

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

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

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

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

1. This special permit is approved for the location of the existing 10 foot high addition as shown on the plat prepared by Stephen L. Moore Land Surveying, Inc., dated September 25, 2007, as revised through January 5, 2012, 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 addition shall be diligently pursued and obtained or the structure shall be removed or brought into compliance with Zoning Ordinance Requirements.
3. No accessory structures/storage structures on site shall be used as living space.
4. Within six months of approval of this application, the accessory storage structures (sheds) as shown on the plat shall be removed and the amount of minimum rear yard coverage be reduced to no more than 30 percent.

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

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

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. ANDRE DE MEGRET, SP 2011-SP-112 Appl. under Sect(s). 8-918 and 8-923 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling and a fence greater than 4.0 ft. in height to remain in a front yard. Located at 6800 Dante Ct., West Springfield, 22152 on approx. 16,111 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((7)) 58.

Chairman Ribble called the applicant to the podium.

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

Andre De Megret, 6800 Dante Court, Springfield, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-112, subject to the proposed development conditions.

Vice Chairman Hammack assumed the Chair.

Staff responded to Board questions regarding the chronology of relevant permit issuances, inspections, and on-site construction, and the nature of the original complaint.

Mr. De Megret presented the special permit request as outlined in the statement of justification submitted with the application. He commented on the aesthetic, traffic, and safety concerns raised by his neighbors, and the specific design of the subject fence. In addition, he explained he had worked with the neighbor who had concerns regarding the fence, and had since painted it and gifted a shrub as means of screening to said neighbor.

Discussion ensued regarding the purpose and design of the fence as a means of providing privacy and a sound barrier which could not be provided by shrubs alone, the contracting company that installed the kitchen in the accessory dwelling unit (ADU), when and why the kitchen was installed, the specifics of the written contract between the applicant and the contracting company, and whether similar fences were installed elsewhere in the neighborhood.

Chairman Hammack called for speakers.

Terrence Brown, 6801 Dante Court, Springfield, Virginia, came forward in opposition of the fence. He distributed a written letter. Mr. Brown explained how the fence was not in harmony with the surrounding environment, and the impact on neighborhood consistency and security.

Lou Rosen, 6802 Dante Court, Springfield, Virginia, came forward in opposition. He explained the safety concerns and the disruptive visual impact of the fence on the rest of the neighborhood. Mr. Rosen felt the existing shrubs sufficed as a means of providing privacy.

In response to Board questions, Mr. Rosen explained the potential impact of an additional approved ADU in the subject cul-de-sac.

Mr. De Megret came forward to offer his rebuttal regarding his neighbors' views into his home, and the outdated status of photographs presented by those in opposition.

Chairman Ribble resumed the chair.

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

Ms. Gibb moved to approve-in-part SP 2011-SP-112 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDRE DE MEGRET, SP 2011-SP-112 Appl. under Sect(s). 8-918 and 8-923 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling and a fence greater than 4.0 ft. in height to remain in a front yard. **(THE BZA DID NOT APPROVE THE FENCE.)** Located at 6800 Dante Ct., West Springfield, 22152 on approx. 16,111 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 89-1 ((7)) 58. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 28, 2012; and

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

1. The applicant is the owner of the property.
2. With respect to the accessory dwelling unit, the staff report is adopted, which recommends approval.
3. Both neighbors testified that they did not really have a problem with the end result being the one occupant of the property in the downstairs of the unit.
4. It seems to comply with all the required standards.
5. With respect to the fence, based on the photographs and the testimony, the application for special permit is denied.
6. The applicant has not met the required Standard 8-923.4, that the fence will be in character with the existing on-site development.
7. The Board heard testimony that there are no other fences of this character in the neighborhood.
8. The fence will not be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale, and any historic designations.
9. The fence does not fit into the neighborhood.
10. The fence is too tall, and even if it is scaled down, it is out of character with the existing homes and the neighborhood.
11. As the fence exists, it blocks sightlines from the neighbors and from the street unnecessarily.
12. The fence does not meet Standard 5, that the BZA shall determine that the proposed fence and/or wall increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
13. The Board had testimony from neighbors that the fence does impact their use and enjoyment. Based on the photographs presented, the Board agrees with their assessment, which is aesthetic and subjective in nature.
14. With respect to the fence, the applicant has not presented testimony indicating compliance with the general standards for special permit uses as set forth in Sect. 8-006 and the standards for this use, the fence, as contained in the appropriate section of the Zoning Ordinance.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen in the accessory unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Andre de Megret, and is not transferable without further action of this Board, and is for the location indicated on the application, 6800 Dante Court (16,111 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Merestone Land Surveying PLLC, dated March 30, 2010, revised through August 11, 2011, and approved with this application, as qualified by these development conditions. Notwithstanding what is shown on the plat, the fence is not approved.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.

6. The accessory dwelling unit shall contain a maximum of 558.44 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
7. All applicable building permits and final inspections shall be obtained for construction of the kitchen in the accessory dwelling unit prior to occupancy.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. The existing fence shall be either reduced in height to 4.0 feet or less or removed within three months of approval of this special permit.
12. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. LA IGLESIA DE SANTA MARIA EPISCOPAL CHURCH AND NEW BUILDING BLOCKS PRE-SCHOOL, LLC, AND DIALOGUE RUSSIAN CENTER FOR CULTURAL DEVELOPMENT(DIALOGUE RCCD, LLC,) D/B/A METAPHOR RUSSIAN LANGUAGE SCHOOL, SPA 76-S-109-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 76 S-109 previously approved for church with child care center to permit the addition of a nursery school, school of special education and increase in land area. Located at 6928 and 7000 Arlington Blvd., Falls Church, 22042, on approx. 3.98 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183, 184 and 50-3 ((6)) 185. (*Admin. moved from 3/14/12 at appl. req.*)

Chairman Ribble noted that SPA 76-S-109-02 had been administratively moved to April 25, 2012, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. CHRIS ROBBINS, SP 2011-MA-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 7859 Thor Dr., Annandale, 22003, on approx. 15,563 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 59-4 ((17)) 45. (*Admin. moved from 3/14/12 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Chris Robbins, 7859 Thor Dr., Annandale, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-MA-110, subject to the proposed development conditions.

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

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

Mr. Hammack moved to approve SP 2011-MA-110 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRIS ROBBINS, SP 2011-MA-110 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.7 ft. from rear lot line. Located at 7859 Thor Dr., Annandale, 22003, on approx. 15,563 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 59-4 ((17)) 45. (*Admin. moved from 3/14/12 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 March 28, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has determined that the applicant has satisfied the six required subsections set forth under Sect. 8-922 of the Zoning Ordinance.
3. The Board has a favorable staff recommendation.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 130 square feet) of the addition, as shown on the plat prepared by Harold A. Logan Associates P.C., dated December 6, 2011, signed by Harold A. Logan, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,450 square feet existing + 3,675 square feet (150%) = 6,125 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. NADEEM P. MALIK, VC 2011-SU-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed lot 2 having a lot width of 76 ft. Located at 3027 Ashburton Ave., Herndon, 20171, on approx. 2.3 ac. of land zoned R-1. Sully District. Tax Map 35-2 ((1)) 4. (*Admin. moved from 12/14/11 and 1/25/12 at appl. req.*) (*Deferred from 2/29/12 at appl. req.*)

Chairman Ribble noted that VC 2011-SU-013 was in the process of being converted to a special exception application.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. ROSS OTTO MILLER, SP 2012-PR-001 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 8.0 ft. from rear lot line. Located at 6722 Chestnut Ave., Falls Church, 22042, on approx. 8,256 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (7) 6.

Chairman Ribble noted that SP 2012-PR-001 had been administratively moved to April 25, 2012, at 9:00 a.m., for notices.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. DAVID GUGLIELMI, SP 2011-SP-107 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6300 Little Ox Rd., Fairfax Station, 22039, on approx. 2.25 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((10)) C2. (*Admin. moved from 2/29/12 for notices.*)

Chairman Ribble noted that the Board had received a request from the applicant's agent for a deferral of the public hearing for two months.

Mr. Hart made a disclosure that his firm had one case in the past year where the applicant was the adverse party, and indicated that he would recuse himself.

Mr. Hammack moved to defer SP 2011-SP-107 to June 6, 2012, at 9:00 a.m. Mr. Byers seconded the motion, which carried by a vote of 4-0-1. Mr. Hart recused himself from the hearing. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2011-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an existing horse boarding operation and associated buildings and storage may continue on property in the R-C and WS Districts without special permit approval. Located at 10810, 10810A, 10812, 10814, and 10816 Henderson Rd., 22039-2226 on approx. 27.8 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((15)) 1, 2, 3, 4, and 5. (*Admin. moved from 9/14/11 at appl. req.*)

Chairman Ribble noted that A 2011-SP-013 had been administratively moved to May 16, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ March 28, 2012, Scheduled case of:

9:00 A.M. 4300 EVERGREEN LANE CORPORATION AND WASHINGTON BAPTIST SEMINARY, A 2007-MA-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants have established a college/university use on property in the C-3 District without special exception approval and without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 4300 Evergreen La., Annandale, 22003, on approx. 38,885 sq. ft. of land zoned C-3. Mason District. Tax Map 71-2 ((2)) 13. (*Admin. moved from 7/10/07, 9/18/07, 11/27/07, 2/12/08, 4/1/08, 6/10/08, 11/4/08, 2/24/09, 7/14/09, 1/13/10, 3/10/10, 5/26/10, 7/28/10, 12/15/10, 2/16/11, 7/27/11, 10/26/11, 11/30/11, 12/14/11, and 2/15/12 at appl. req.*)

Chairman Ribble noted that A 2007-MA-011 had been withdrawn.

//

~ ~ ~ March 28, 2012, After Agenda Item:

Approval of May 16, 2006 Minutes

Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Mr. Beard was absent from the meeting.

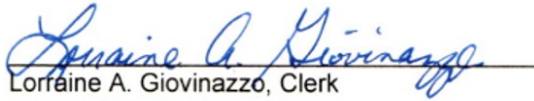
//

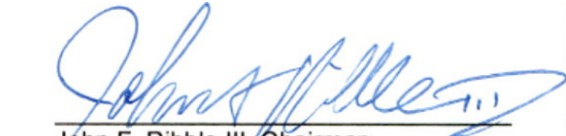
Mr. Byers commented on the age requirement for accessory dwelling units, and whether this was a policy question which the Board needed to address at some future point.

As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

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

Approved on: February 28, 2018


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, April 18, 2012. The following Board Members were present: Chairman John F. Ribble III; James R. Hart; Norman P. Byers; Paul W. Hammack, Jr.; and V. Max Beard. Ms. Gibb and Mr. Smith were absent from the meeting.

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

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. SILVIA M. ALBERT, SP 2012-MA-003 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on keeping of animals. Located at 3334 Nevius St., Falls Church, 22041, on approx. 12,500 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 12.

Chairman Ribble called the applicant to the podium.

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

Silvia Albert, 3334 Nevius Street, Falls Church, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a modification to the limitations on the keeping of animals to allow five adult dogs. Ms. Cho noted that paragraph 2A of Section 2-512 of the Zoning Ordinance limits three to four dogs to a residential lot size between 12,500 square feet and 20,000 square feet.

In response to a question by Mr. Hammack, Victoria Dzierzek, Inspector with the Department of Code Compliance, stated that a complaint had been received regarding a dog boarding facility at this property. Although there was no indication of this business, a Notice of Violation was issued for the number of dogs housed on the property.

Ms. Albert presented the special permit request as outlined in the statement of justification submitted with the application. She said she was unaware there was a restriction on the number of dogs per household. Ms. Albert stated that two of the dogs actually belonged to her daughter who, along with her husband who was in the military, had been transferred to Hawaii and were not allowed to take the dogs with them. She said she was actually allergic to dogs and had to take shots every two weeks in order to keep them.

Mr. Hammack asked if she agreed with the proposed development conditions. Ms. Albert said she did.

Chairman Ribble called for speakers.

Anthony Albert, 3334 Nevius Street, Falls Church, Virginia, came forward to speak. He stated that he was the husband of the applicant. Mr. Albert said both he and his wife were retired and took very good care of the dogs.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-MA-003 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIA M. ALBERT, SP 2012-MA-003 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on keeping of animals. Located at 3334 Nevius St., Falls Church, 22041, on

approx. 12,500 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 18, 2012; and

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

1. The applicant is the owner of the property.

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

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

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

1. This approval is granted to the applicant only, Silvia M. Albert, and is not transferable without further action of this Board, and is for the location indicated on the application, 3334 Nevius Street (12,500 square feet) and is not transferable to other land.
2. The applicant shall make this special permit property available for inspection to County officials during reasonable hours of the day.
3. This approval shall be for the applicant's existing five dogs. If any of these animals die, are sold or given away, they shall not be replaced, except that four dogs may be kept on the property in accordance with the Zoning Ordinance
4. The yard area where the dogs are kept shall be cleaned of dog waste every day, in a method which prevents odors from reaching adjacent properties, and in a method approved by the Health Department.
5. At no time shall the dogs be left outdoors unattended for continuous periods of longer than 30 minutes.

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

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

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. MARGARETHA CARROLL MCGRAIL, TRUSTEE, SP 2012-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.3 ft. from rear lot line and 0.1 ft. from side lot line. Located at 743 Lawton St., McLean, 22101, on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 30.

Chairman Ribble called the applicant to the podium.

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

Margaretha McGrail, 743 Lawton Street, McLean, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested special permit approval for an error in building location to permit an accessory storage structure to remain 0.3 feet from the rear lot line and 0.1 feet from the side lot line. The minimum required rear yard is 11.5 feet which was equal to the height of the shed, and the minimum required side yard is 20 feet in the R-1 District. The applicant requested a reduction of 11.2 feet for the rear yard and 19.9 feet for the side yard.

In response to a question from Mr. Hart, Mike Caudle, Inspector with the Department of Code Compliance, said they had received a complaint regarding the size of the shed and the proximity of it to the lot lines.

Mr. Hart noted that photos of the property showed a neighbor's shed which appeared to be larger and taller than the applicant's. Ms. Cho said it was larger, but the County had not received a complaint regarding its size.

Mr. Hart referenced a Complaint of Declaratory Judgment and Injunctive Relief contained in the staff report. Mr. Hammack questioned whether the Board had jurisdiction to grant a special permit in these circumstances. Mr. Caudle said it was his understanding that the Court action was pending the outcome of this hearing. Mr. Hammack was not comfortable hearing the case since it was not referred to the Board from the Court. He wanted to know what the County Attorney thought about this matter.

Chairman Ribble thought the applicant might be able to shed light on the situation. However, he said the Board could defer the outcome until they get an opinion from the County Attorney.

Ms. McGrail said she did not understand a lot of what happened. She submitted a special permit application, but it was rejected four or five different times because it was missing documentation. Ms. McGrail said the County Attorney took issue with the length of time it was taking to process the special permit. She said it did not make sense to her.

Mr. Hart said it appeared that the violation was issued in August, that it was not appealed, and that the Zoning Administrator went to court in September. He said it was not really clear what happened in the court case. Mr. Hart noted that the special permit application appeared to have been accepted in February. He asked the applicant what happened with the court case. Ms. McGrail said she did not know. She had heard from the County Attorney who had wanted to set up a meeting, but she informed them that she would be out of the country during that period of time. Ms. McGrail continued that the County then sent a letter to her home with a deadline to comply within 21 days, but they knew she was out of town. She then contacted an attorney, Barnes Lawson.

Susan Langdon, Chief, Special Permit and Variance Branch, suggested that the case be moved to the end of the agenda so that staff could contact the County Attorney's Office and ask them to come down to the hearing.

Chairman Ribble stated that the case would be continued to the end of the agenda and asked staff to attempt to contact the County Attorney.

//

~ ~ ~ April 18, 2012, Scheduled case of:

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

Chairman Ribble noted that SPA 77-V-247-02 had been administratively moved to September 26, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. IFTIKHAR KHAN, SPA 2009-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 2009-MA-097 previously approved for accessory dwelling unit to permit modification of development conditions. Located at 3321 Wilkins Dr., Falls Church, 22041, on approx. 13,274 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 24.

Chairman Ribble noted that SPA 2009-MA-097 had been administratively moved to May 23, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CATHOLIC CHURCH AND SCHOOL), SPA 82-V-059-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-059 previously approved for a place of worship and private school of general education to permit the addition of a nursery school. Located at 2901 Popkins La., Alexandria, 22306, on approx. 15.63 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 6. (Admin. moved from 4/25/12 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Lynne Strobel, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 82-V-059, which was previously approved for a church with 1,000 seats and a private school of general education for a maximum of 434 students daily, to allow the addition of a nursery school use with a maximum of 80 students daily. No exterior site modifications were proposed with the application. Staff recommended approval of the application subject to the proposed development conditions.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She said the nursery school would have morning and afternoon sessions, but a maximum of 474 children, including the children in attendance at the private school, would be on site at one time. Ms. Strobel stated her agreement with the proposed development conditions.

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

Mr. Byers moved to approve SPA 82-V-059-03 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CATHOLIC CHURCH AND SCHOOL), SPA 82-V-059-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-059 previously approved for a place of worship and private school of general education to permit the addition of a nursery school. Located at 2901 Popkins La., Alexandria, 22306, on approx. 15.63 ac. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 6. (Admin. moved from 4/25/12 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 April 18, 2012; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-2 and H-C.
3. The area of the lot is 15.63 acres.
4. The staff recommends approval.
5. The applicant agrees with the development conditions.
6. The Board supports the staff's recommendations and adopts its rationale.

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

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

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

1. This approval is granted to the applicant only (The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his successors in office) (St. Louis Catholic Church and School) and is not transferable without further action of this Board, and is for the location indicated on the application, 2901 Popkins Lane, Alexandria, 22306 (15.63 acres) and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the special permit plat prepared by BC Consulting, dated December, 2011, as signed and sealed on December 22, 2011 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. The maximum number of seats in the sanctuary shall be limited to one thousand (1,000).
6. The maximum number of employees for the private school of general education and nursery school shall be limited to 43.
7. The maximum daily enrollment of the private school of general education shall be limited to 434 students.
8. The maximum daily enrollment of the nursery school shall be limited to 80 students.
9. The maximum hours of operation of the private school of general education shall be limited to 8:00 a.m. until 5:00 p.m., Monday through Friday.
10. The maximum hours of operation for the nursery school shall be limited to 8:15 a.m. to 3:00 p.m., Monday through Friday.

11. The applicant 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 peak hours as a mechanism to minimize daily vehicular trips. The name of the carpool coordinator shall be provided to Fairfax County Department of Transportation (FCDOT) within 30 days after the approval of this application and at any such time as the coordinator changes. A carpool program shall be submitted to FCDOT within 90 days after the approval of this application. An annual report shall be submitted to FCDOT in October of each year that shows how the number of vehicle trips to and from the school have been reduced. After the first three years of annual reports, these reports may be provided every two or three years, or not at all if mutually agreed to by the applicant and FCDOT.
12. Ringing of the bell on site shall be limited to 9:00 a.m. Monday through Friday; 9:00 a.m. and 5:30 p.m. on Saturday; and 9:00 a.m., 10:30 a.m., 12:00 p.m., and 5:00 p.m. on Sunday.
13. Parking shall be provided as shown on the special permit plat. All parking shall be on site.
14. Any new lighting on the site shall be in accordance with the performance standards for outdoor lighting contained in Part 9 of Article 14 of the Zoning Ordinance except that the maximum height of the light poles shall be 12.0 feet.
15. Transitional screening shall be modified as shown on the special permit plat. The barrier requirement shall be waived along all lot lines.
16. All vegetation shall be maintained in good condition and any dead or dying vegetation shall be replaced as determined necessary by Urban Forest Management Division (UFMD), DPWES.
17. The applicant shall provide onsite storm water detention and best management practices in accordance with the requirements of the Public Facilities Manual unless waived or modified by DPWES. Notwithstanding what is shown on the plat, the applicant may meet the requirements through the provision of Low Impact Development (LID) techniques as determined appropriate by DPWES.
18. Right-of-way of 68 feet from the centerline of Richmond Highway and ancillary easements of 15 feet in width, or to top of slope, whichever is greater, shall be dedicated to the Board of Supervisors, in fee simple, along the entire Richmond Highway frontage of the site within sixty (60) days upon demand by the Fairfax County and/or the Virginia Department of Transportation (VDOT).

These conditions incorporate and supersede all previous conditions.

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

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

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

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. CHERYL A. KARCIC, SP 2012-MV-005 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 9032 Harrover

Pl., Lorton, 22079, on approx. 4,200 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-2 ((4)) (E) 59.

Chairman Ribble called the applicant to the podium.

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

Cheryl Karcic, 9032 Harrover Place, Lorton, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting permission to allow an accessory dwelling unit (ADU) within the primary dwelling which would be occupied by her mother, who was over 55, and a non-relative tenant. The ADU would consist of two bedrooms, a kitchen, and living spaces. No exterior changes were proposed. Staff recommended approval of the application subject to the proposed development conditions.

In response to a question from Mr. Hart, Wayne Bass, Inspector, Department of Code Compliance, said there was currently no permit for the kitchen. The Department had received an anonymous complaint regarding unpermitted construction.

Ms. Karcic presented the special permit request as outlined in the statement of justification submitted with the application. She said her 83-year-old mother had health problems and needed her assistance as her health declined. Ms. Karcic noted that her mother and son currently lived in the basement, but she may need to hire a caregiver as her mother aged and/or her condition worsened.

Mr. Hart asked about the parking situation. Ms. Karcic stated that she had two cars. One was kept in the garage and one in the driveway.

In response to a question from Mr. Hart, Ms. Karcic said that licensed contractors had installed the basement kitchen. They had told her that obtaining a building permit would take additional time and she did not want to wait, so no building permit was obtained.

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

Mr. Beard moved to approve SP 2012-MV-005 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHERYL A. KARCIC, SP 2012-MV-005 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 9032 Harrover Pl., Lorton, 22079, on approx. 4,200 sq. ft. of land zoned PDH-5. Mt. Vernon District. Tax Map 107-2 ((4)) (E) 59. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 18, 2012; and

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

1. The owner of the property is the applicant.
2. The present zoning is PDH-5.
3. The area of the lot is 4,200 square feet.
4. The staff has recommended approval of the application.
5. One of the residents meets the criteria by being over the age of 55 years old.

6. There will be a lot more of this in the future with an aging population, present company excluded.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Cheryl A. Karcic, and is not transferable without further action of this Board, and is for the location indicated on the application, 9032 Harrover Place, (4,200 square feet), and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 1,600 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit within 120 days of approval of this special permit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on site as shown on the special permit plat.

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

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

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. EULIE M. CAMPBELL, SP 2011-LE-101 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 6.3 ft. from rear lot line and to permit accessory dwelling unit within an existing dwelling. Located at 2812 Poag St., Alexandria, 22303, on approx. 14,002 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 83-3 ((35)) 1. (Admin. moved from 2/15/12 and 3/14/12 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Richard Campbell, 1907 Joliet Court, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. There were two requests: one to allow a shed to remain 6.3 feet from rear lot line, a modification of 44.2 percent; and, the other to permit an accessory dwelling unit (ADU) within the basement of the primary home. It would consist of a bedroom, study, kitchen, bathroom, and a living space. Besides the addition of a window within the bedroom, no other exterior changes were proposed. Staff recommended approval of the ADU subject to the proposed development conditions.

In response to a question from Mr. Byers, Ms. Horner said the violation was originally for multiple dwelling units in the basement. The shed violation was found during the acceptance process for the ADU.

Mr. Campbell presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant, his mother, was 77 years old and applied for the ADU because she needed to supplement her income following the death of her husband. Mr. Campbell said the shed was built by a contractor who mistakenly positioned the shed close to the lot line.

In response to a question from Mr. Hart, Mr. Campbell said the kitchen in the basement was existing when his mother purchased the property. He also noted there was no plumbing or electricity in the shed.

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

Mr. Hammack moved to approve SP 2011-LE-101 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EULIE M. CAMPBELL, SP 2011-LE-101 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 6.3 ft. from rear lot line and to permit accessory dwelling unit within an existing dwelling. Located at 2812 Poag St., Alexandria, 22303, on approx. 14,002 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 83-3 ((35)) 1. (Admin. moved from 2/15/12 and 3/14/12 at appl. req.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 18, 2012; and

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

1. The applicant is the owner of the property.

2. The staff recommends approval of the accessory dwelling unit.
3. Based on the testimony of Mr. Campbell, he has provided a reasonable explanation to allow the storage unit to remain.
4. The Board has determined that the applicant has satisfied subsections A through G under Section 8-914, and in particular B, that the noncompliance was done in good faith or through no fault of the property owner and D, that it will not be detrimental to the use and enjoyment of other property in the area.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Eulie M. Campbell, and is not transferable without further action of this Board, and is for the location indicated on the application, 2812 Poag Street, Alexandria, (14,002 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Dominion, dated July 11, 2011, signed by George M. O'Quinn, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 750 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions with the following modification:
 - a. The door on the study/storage area shall be removed; or
 - b. The wall between the study/storage and the living room or the bedroom shall be removed so that the area is incorporated into one of those two rooms.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components, and if needed for the demolition required per condition #6, in the accessory dwelling unit within 180 days of approval.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.

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

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

//

9:00 A.M. MARGARETHA CARROLL MCGRAIL, TRUSTEE, SP 2012-DR-006 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.3 ft. from rear lot line and 0.1 ft. from side lot line. Located at 743 Lawton St., McLean, 22101, on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 30.

Chairman Ribble announced that the Board would continue hearing SP 2012-DR-006 since an Assistant County Attorney, Beth Teare, was now present.

Ms. Teare gave a brief background on the application and provided the Board with copies of the Default Judgment which had been entered previously in Circuit Court. She directed their attention to paragraphs 3, 4, and 5 which allowed the applicant to come through the special permit process.

Mr. Hart, Mr. Hammack, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the timing of the special permit filing. Ms. Langdon noted that it sometimes took the Application Acceptance Branch up to a week or more to review a submission.

Ms. Teare said the County was looking for a resolution through the special permit process. She noted that since a default judgment had been rendered, they would have an immediate avenue for action if the Board denied the special permit application.

Mr. Hammack and Mr. Beard stated their belief that the Board did not have the authority to modify a court order. Mr. Hart read Judge Smith's order, noting that if the applicant submitted the required special permit documentation between the dates specified, the Board may be able to proceed. Mr. Hammack said the Board needed verification from staff or the County Attorney that the special permit application was complete within the allowed timeframe. Otherwise, he felt the court order would need to be amended by the judge. Mr. Byers stated his agreement with Mr. Hammack's position. Mr. Hart concurred that once deadlines were contained in a court order, they are set in stone. He noted that the applicant's documentation was not complete by the required date and would, therefore, not comply with the court order.

Ms. Teare stated that the applicant told her there was a subsequent order from the court, but could not find it in her file. She asked to go to her office to locate it.

Chairman Ribble stated that the public hearing would be continued until the end of the meeting.

//

~ ~ ~ April 18, 2012, Scheduled case of:

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

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to September 12, 2012, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. SJD-ZP, LLC DBA ZPIZZA, A 2011-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hwy., Fairfax, 22031, on approx. 1.2 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((15)) 2. (Admin. moved from 9/28/11, 11/30/11, and 2/1/12 at appl. req.)

Chairman Ribble noted that A 2011-PR-028 had been administratively moved to June 6, 2012, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. GIOAN V. NGUYEN AND NHAT THUAN NGUYEN, A 2012-MA-001 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have allowed the establishment of a personal service establishment, which is a use not permitted, on property in the C-2 District in violation of Zoning Ordinance provisions. Located at 6051 E Arlington Blvd., Falls Church, VA 22044 on land zoned C-2, SC, and CRD. Mason District. Tax Map 51-4 ((14)) 5.

Chairman Ribble called the appellants to the podium.

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

Gioan Nguyen, 9122 Lucky Estates Drive, Vienna, Virginia, came forward.

Getachew Tedesse, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. He stated that a tattoo parlor was not allowed in the C-2 District and further noted that the subject property was surrounded by residential properties. Mr. Tedesse said that although a tattoo parlor had been deemed a personal service establishment by the Zoning Administrator, it still had to be in a location permissible by the Zoning Ordinance. He asked that the Board uphold the determination of the Zoning Administrator.

In response to a question from Mr. Hart, Mr. Tedesse said that the appellants never obtained a non-RUP and could not get one now because a tattoo parlor is not allowed in the C-2 district.

Mr. Hart asked if there had been a complaint about the property. Peggy DeLean, Inspector with the Department of Code Compliance, stated that a complaint had been received about numerous business signs posted in the area, so an investigation was made.

Mr. Hart, Mr. Tedesse, and Mavis Stanfield, Assistant Zoning Administrator for Appeals, discussed a building permit which had been sought by a prior tenant, but under the same owner. Ms. Stanfield noted that the owner was aware of the permit requirements but still chose not to comply.

Mr. Nguyen presented the arguments forming the basis for the appeal. He noted that he moved to the County in 1982 and paid approximately \$50,000 per year in real estate taxes. Mr. Nguyen felt the zoning regulations, particularly applicable to a tattoo business in this location, were unclear, out of date, and discriminatory. He gave a history of the tattoo, noting that it was founded 4000 years ago in Asia. Mr. Nguyen said it was not only a skin art but had cosmetic implications and gave the example of having lips and eyebrows tattooed. Mr. Nguyen addressed the issue of the previous tenant who applied for a building permit, noting that there were parking problems at the time and the tenant chose not to pursue it. He reiterated that the regulations were unclear and did not address tattoo parlors specifically. Mr. Nguyen stated his desire to stay in the current location and would follow any restrictions placed on the tattoo parlor by the Board.

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

Mr. Tedesse said research of the Ordinance showed that a tattoo parlor was closest to the definition of a personal services establishment. He asked the Board to uphold the determination of the Zoning Administrator.

In response to a question by Mr. Beard, Ms. Stanfield stated that notice was given to both the owner and the tenant. The owner chose to appeal; the tenant did not want to.

Chairman Ribble closed the public hearing.

Mr. Hart moved to uphold the determination of the Zoning Administrator, and adopted the staff rationale. He said that the record did not show anything being pointed out that the Zoning Administrator was plainly wrong. Mr. Hart stated it was un rebutted that whatever this establishment was, it never got a non-RUP, and any business establishment in the County would be required to get a non-residential use permit in order to operate. It was also un rebutted that if a tattoo parlor came in to get a non-RUP, it would not be issued in the C-2 district because this type of establishment is not a permitted use in that district. It had been the Board's view that the definitions in the Ordinance are either unclear or outdated, but Mr. Hart did not believe it was the Board's function to invalidate provisions in the Ordinance. It was for a judge to do, if anyone.

As Mr. Hart read the definition of personal service establishment, he thought it was big enough that this type of enterprise would be within that definition. A personal service establishment included any building wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Mr. Hart said the list of uses, which included barber shops and beauty salons, was not an exclusive list. He noted that under Section 18-103, the Zoning Administrator gets to make the call on uses that are close to the line as to what side of the line the use falls on. Based on the record before the Board and the examples cited in the staff report, Mr. Hart said it appeared to be a longstanding interpretation of the Zoning Administrator that a tattoo establishment is a personal service establishment, and he felt it was a correct interpretation. He did not believe it had been challenged in court.

Mr. Hart noted the appellant's argument that the interpretation was unfair or discriminatory in nature because it did not seem to apply to dentists, but in the last paragraph of the definition, dentists are expressly excluded. Mr. Hart said there may be some reason for the Board of Supervisors to revisit in which districts personal service establishments should or should not be authorized, but that was a legislative issue and not for the Board of Zoning Appeals to undertake. He explained that the Board was only empowered to determine whether the Zoning Administrator's determination was correct or not. They did not have the authority to change the rule or grant permission for the tenant to stay notwithstanding the Ordinance provision.

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

//

~ ~ ~ April 18, 2012, Scheduled case of:

9:00 A.M. MARGARETHA CARROLL MCGRAIL, TRUSTEE, SP 2012-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.3 ft. from rear lot line and 0.1 ft. from side lot line. Located at 743 Lawton St., McLean, 22101, on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 30.

Chairman Ribble announced that the Board would continue the public hearing on SP 2012-DR-006.

Elizabeth Teare, Assistant County Attorney, said the Court had issued a letter dated December 7, 2011, stating that the Default Judgment was still in effect. She distributed copies of the Court's letter to the Board. Ms. Teare asked that the Board defer the public hearing until this matter could be straightened out.

Susan Langdon, Chief, Special Permit and Variance Branch, suggested May 23, 2012. Mr. Hammack did not feel this allowed enough time. Ms. Langdon proposed June 27, 2012, which was approximately 60 days away.


Mr. Byers moved to continue the public hearing to June 27, 2012, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Ms. Gibb and Mr. Smith were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:41 a.m.

Minutes by: Suzanne Frazier

Approved on: May 7, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, April 25, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Nancy E. Gibb was absent from the meeting.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board. Chairman Ribble stated that the Board would address the action item on the after agenda prior to hearing the applications on the regular agenda.

~ ~ ~ April 25, 2012, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by McGuireWoods on behalf of Kettler, Inc.

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

David Gill, McGuireWoods, 1750 Tysons Boulevard, Suite 1800, McLean, Virginia, came forward to speak. He said his goal was to work out the matters with staff, and he requested the consideration of the item be deferred until the appellants had an opportunity to meet with staff to attempt to resolve the issue.

Mavis E. Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said staff believed the issue was clearly related to the implementation of a proffer, and, additionally, the appeal had not been filed with the Clerk to the Board of Zoning Appeals, thereby resulting in it being improperly filed.

Mr. Hart asked whether staff was opposing the deferral. Ms. Stanfield replied affirmatively and said she did not think it was necessary.

Mr. Hart said that in reading the documents, it appeared there was a parallel or alternative appeal filed with the Board of Supervisors, and regardless of what action would be taken currently by the Board of Zoning Appeals, it would go to court. The appeal with the Board of Supervisors may resolve the issue, and if so, the Board of Zoning Appeals may not have to take any action. Mr. Hart said it may make sense to defer decision to wait and see what happened with the Board of Supervisors.

Mr. Hammack asked how much time the appellant was requesting for a deferral. Mr. Gill said less than 30 days.

Mr. Hart asked Mr. Gill to confirm that the appellant had also filed an appeal with the Board of Supervisors. Mr. Gill said they had and were in discussions with staff as to whether that appeal had been officially accepted, but it had not yet been scheduled.

Mr. Hart asked whether it would be more than 30 days out if the appeal was scheduled with the Board of Supervisors. Ms. Stanfield said she assumed it would because it would have to be advertised.

Chairman Ribble called for speakers to address the question of a deferral; there was no response.

Mr. Hammack moved to continue the consideration of acceptance to May 23, 2012, due to the complexity of the issue, the short length of the requested deferral, and the possibility that the issue presented to the Board of Zoning Appeals may be resolved by granting a deferral. He requested the Board be given a report of the status of the appeal at that time. Mr. Byers seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. JAMES E. KANDUL, SP 2012-LE-008 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 22.5 ft. from front lot line of a corner lot and to permit fence greater than 4.0 ft. in

height to remain in a front yard. Located at 6218 Blossom Ln., Alexandria, 22310, on approx. 17,650 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((13)) 44.

Chairman Ribble called the applicant to the podium.

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

James E. Kandul, 6218 Blossom Lane, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a reduction of certain yard requirements for the construction of a one-story garage, a one-story covered patio, and a two-story addition to be located, at its closest point, 22.5 feet from the front lot line facing Blossom Lane. A minimum front yard of 30 feet is required; therefore, a modification of 7.5 feet or 25 percent was requested. The applicant also requested an existing fence greater than 4.0 feet in height to remain in the front yard of a corner lot. The 5.5-foot high board fence surrounded an existing aboveground swimming pool and was located in the front yard facing Blossom Lane. The maximum allowable fence height in a front yard is 4.0 feet; therefore, a modification of 1.5 feet was requested. Staff recommended approval of SP 2012-LE-008 for the addition subject to the proposed development conditions. Ms. Hedrick noted that the cover of the staff report reflected an incorrect distance of 15 feet from the front lot line; however, the application had been notified and advertised correctly to be 22.5 feet from the front lot line, which was subsequent to the applicant changing the application request.

Mr. Hart said that as he understood from the staff report, if the addition was approved, the fence was no longer an issue. Ms. Hedrick said it appeared so because the proposed addition appeared to go beyond the front plane of the current fence location.

Mr. Hart asked about what appeared to be a Quonset hut in the photographs. Ms. Hedrick said it was a detached approximately 340-square-foot workshop/shed for which the applicant had previously obtained an approved building permit.

Mr. Hart asked whether it was correct that the figures on the cover of the staff report were for a larger addition than what the applicant currently was requesting. Ms. Hedrick said that was correct.

Mr. Kandul presented the special permit request as outlined in the statement of justification submitted with the application. He said he and his wife, who were currently retired, had resided at the subject property for approximately 34 years and planned to remain there. In 2007 their son had been unable to continue working on his own due to the economy, and he and his four children had needed a place to live. The inside of the house was rearranged to accommodate the family with three of the children sharing a room. The addition would allow the applicant's son and grandchildren to each have individual bedrooms. Because the applicant and his wife were advancing in age, they planned to put a bathroom on the main level and eventually have a bedroom on that level to reduce the difficulties navigating the stairs.

Mr. Byers asked whether the applicant had read and agreed with the development conditions. Mr. Kandul said he and his wife had read and understood the development conditions and limitations. He said they had relocated the front of the house back farther than their initial plan so it would be located farther from the road and were trying to keep the appearance of the house in conformance with the neighborhood by only going up two stories because that was what most of the homes in the area had done. He said they had spoken with and showed the plans to all the neighbors, and everyone was comfortable with the plans for the addition.

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

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

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. KANDUL, SP 2012-LE-008 Appl. under Sect(s). 8-922 and 8-923 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 22.5 ft. from front lot line of a corner lot and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 6218 Blossom Ln., Alexandria, 22310, on approx. 17,650 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((13)) 44. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 2012; and

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

1. The applicant is the owner of the property.
2. The application meets all of the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval.
4. Staff's rationale is adopted.
5. The applicant has indicated he understands and concurs with the development conditions.
6. The Board received several letters of support.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 1,787 square feet) of additions, as shown on the plat prepared and sealed by Tom Nyein, Architect, dated February 4, 2012, as revised through March 23, 2012, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,200 square feet existing + 3,300 square feet (150%) = 5,500 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. ROSS OTTO MILLER, SP 2012-PR-001 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory structure 8.0 ft. from rear lot line. Located at 6722 Chestnut Ave., Falls Church, 22042, on approx. 8,256 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (7) 6. (Admin. moved from 3/28/12 for notices)

Chairman Ribble noted that SP 2012-PR-001 had been withdrawn.

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE (ST. LOUIS CATHOLIC CHURCH AND SCHOOL), SPA 82-V-059-03

Chairman Ribble noted that SPA 82-V-059-03 had been administratively moved to April 18, 2012, at 9:00 a.m., at the applicant's request, and had been approved on that date.

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. CRAIG W. & VERONICA M. FLOYD, SP 2012-LE-007 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit in an existing dwelling. Located at 5906 Ashby Manor Pl., Alexandria, 22310, on approx. 17,080 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((40)) 2.

Chairman Ribble called the applicants to the podium.

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

Louis V. Genuario, Jr., the applicants' agent, Genuario Construction Co., 8400 Radford Avenue, Suite 200, Alexandria, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow an accessory dwelling unit in the basement of an existing dwelling. The unit could be accessed through the principal dwelling and a separate ingress and egress point to the outside. The accessory dwelling unit would consist of a bathroom, a kitchen area, and a shared living and sleeping area, in which a family member over 55 years of age would reside. Staff recommended approval of SP 2012-LE-007 subject to the proposed development conditions.

Mr. Genuario presented the special permit request as outlined in the statement of justification submitted with the application. He said he and the applicants were in concurrence with staff's presentation, staff's recommendation of approval, and the development conditions.

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

Mr. Hart moved to approve SP 2012-LE-007 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG W. & VERONICA M. FLOYD, SP 2012-LE-007 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit in an existing dwelling. Located at 5906 Ashby Manor Pl., Alexandria, 22310, on approx. 17,080 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((40)) 2. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 2012; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation.
3. The rationale in the staff report is adopted.
4. This is consistent with a number of others that the Board has granted.
5. With the imposition of the development conditions, there will not be any significant negative impact on anyone.
6. The approval is only for a five-year period, so there will be another opportunity to revisit this.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of the building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicants only, Craig W. and/or Veronica M. Floyd, and is not transferable without further action of this Board, and is for the location indicated on the application, 5906 Ashby Manor Place (17,080 square feet), and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 1,322 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.

6. All applicable trade permits and final inspections shall be obtained for the kitchen components and the window/emergency escape opening, if required, in the accessory dwelling unit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. LA IGLESIA DE SANTA MARIA EPISCOPAL CHURCH AND NEW BUILDING BLOCKS PRE-SCHOOL, LLC, AND DIALOGUE RUSSIAN CENTER FOR CULTURAL DEVELOPMENT(DIALOGUE RCCD, LLC,) D/B/A METAPHOR RUSSIAN LANGUAGE SCHOOL, SPA 76-S-109-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 76 S-109 previously approved for church with child care center to permit the addition of a nursery school, school of special education and increase in land area. Located at 6928 and 7000 Arlington Blvd., Falls Church, 22042, on approx. 3.98 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183, 184 and 50-3 ((6)) 185. (Admin. moved from 3/14/12 and 3/28/12 at appl. req.)

Chairman Ribble noted that SPA 76-S-109-02 had been administratively moved to June 27, 2012, at 9:00 a.m., at the applicants' request.

//

~ ~ ~ April 25, 2012, Scheduled case of:

9:00 A.M. CENTRAL SIKH MISSION OF AMERICA, SP 2012-SP-002 Appl. under Sect(s). 8-302 of the Zoning Ordinance to permit a place of worship. Located at 7800 Ox Road, Fairfax Station, 22039 on approx. 8.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 96-2 ((1)) 21.

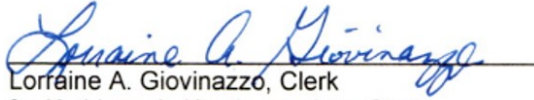
Chairman Ribble noted that SP 2012-SP-002 had been administratively moved to June 27, 2012, at 9:00 a.m., at the applicant's request.

//

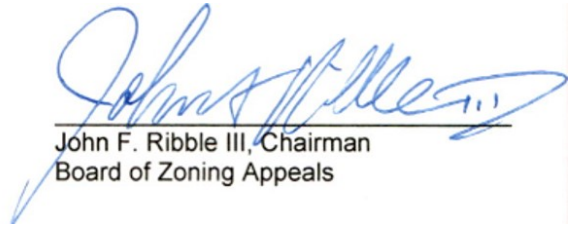
As there was no other business to come before the Board, the meeting was adjourned at 9:27 a.m.

Minutes by: Kathleen A. Knoth

Approved on: October 24, 2012



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



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, May 23, 2012. 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 an After-Agenda item before the first scheduled case.

~ ~ ~ May 23, 2012, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by McGuireWoods on behalf of Kettler, Inc.
(Continued from 4/25/12)

Mr. Byers made a motion to continue to June 27, 2012. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.

//

~ ~ ~ May 23, 2012, Scheduled case of:

9:00 A.M. CLAUDIA BORKE, SP 2012-SP-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit dwelling to remain 34.4 ft. from front lot line. Located at 11679 Havenner Rd., Fairfax Station, 22039, on approx. 2.31 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((9)) 886.

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.

Claudia Borke and Eric Pohlmann, the applicant's husband, both at 11679 Havenner Road, Fairfax Station, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart asked about the plat and how it was determined what the front yard would be. Ms. Cho that since it was a pipe-stem lot, she believed they took the closest corner of the house to what was determined to be the front lot line. Susan Langdon, Chief, Special Permit and Variance Branch, said the determination was generally made by the Zoning Administration Division.

Mr. Pohlmann presented the special permit request as outlined in the statement of justification submitted with the application. He said they thought the side lot line was a front lot line. The entire construction project had begun in September 2010 when an oak tree took out the second floor of their house. He said they had to abandon the house, fix it, and decided to add the addition at the same time. They trusted their contractor to do the right thing in the permitting process. He said it was all approved by the County, and they got final inspection approval on May 26. Mr. Pohlmann said that on June 22 the County sent a letter rescinding the approval. He said since they had numerous problems with their contractor, they decided not to continue with him.

The applicant said at no time did they actually know a setback certification was required. She said the building permit copy was never shown to them by their contractor. She said they only saw the plat which was approved and thought it was correct. Mr. Pohlmann said the original building permit they hung in their window did not have a stamp indicating that a setback certification was required, which apparently was an automation glitch.

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

Mr. Byers moved to approve SP 2012-SP-011 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CLAUDIA BORKE, SP 2012-SP-011 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit dwelling to remain 34.4 ft. from front lot line. Located at 11679 Havenner Rd., Fairfax Station, 22039, on approx. 2.31 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-4 ((9)) 886. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 2012; 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 all of the criteria A through G have been satisfied from the standpoint of this application.

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

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

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

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

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

1. This special permit is approved for the location and size of the addition as shown on the plat prepared by Jeff Warner Land Surveying, Inc., dated June 13, 2011 and revised and sealed through April 6, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the addition shall be diligently pursued and obtained within six months of final approval of this application.

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

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

//

~ ~ ~ May 23, 2012, Scheduled case of:

9:00 A.M. DARYL B. SETTLE, SP 2012-MA-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 4114 Faith Ct., Alexandria, 22311, on approx. 8,750 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 61-4 ((38)) 11.

Chairman Ribble called the applicant to the podium.

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

Daryl B. Settle, 4114 Faith Court, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-MA-009 subject to the proposed development conditions.

The applicant presented the special permit request as outlined in the statement of justification submitted with the application. He said they were the original owners of the house, and had moved there in August 1987. He said the downstairs was finished except for the kitchen, which was installed in 1990. He said their original intent was to have an in-law suite in case their aging parents ever came to live with them, but that never came about.

The applicant said they first learned there was a potential violation with a zoning law when they were in the process of refinancing. The applicant said at that point he got in touch with the County and started this process.

Mr. Hart asked the applicant if he reviewed the development conditions (DCs) in the staff report, and the applicant said yes.

Mr. Hart questioned the applicant about the wet bar, and it was determined that the wet bar was put in when the house was built. Cabinet Discounters came in later and built the rest of the kitchen, and had said there was no permit needed. The original builder put in many of the circuits, but there were some additional circuits installed.

Mr. Hart said in the development conditions, they were requiring all the parking to be onsite, and asked if that was okay with the applicant. The applicant said yes.

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

Mr. Hart moved to approve SP 2012-MA-009 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DARYL B. SETTLE, SP 2012-MA-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 4114 Faith Ct., Alexandria, 22311, on approx. 8,750 sq. ft. of land zoned R-3 (Cluster). Mason District. Tax Map 61-4 ((38)) 11. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 2012; and

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

1. The applicant is the owner of the land.
2. The Board has a staff report recommending approval.
3. There is no opposition to it.
4. The Board has two sets, a proposed development condition set and an alternative proposed development set. Staff is recommending the set which is Appendix 1, which is only slightly different from what the Board usually does.
5. Given the limitations in the development conditions, that this is only going to be for a five-year period, that whoever has the house, whether it is Mr. Settle or its purchasers or someone living in the apartment, one or the other is going to have to be over 55 or disabled.
6. The parking all has to be onsite.
7. The Board has not done it before this way, but is comfortable with, at least on these facts and the explanation the Board has gotten, with going with letting the permit run with the land for five years instead of just this applicant or family members.
8. With the imposition of the development conditions, the potential impacts on the neighborhood have been mitigated.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen components of the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
3. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
4. The accessory dwelling unit shall contain a maximum of 1,471 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.

5. The accessory dwelling unit shall contain a maximum of two bedrooms for a maximum of two persons.
6. All applicable permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit within 120 days of approval of this special permit application.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. All parking shall be provided on site as shown on the special permit plat.

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

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

//

~ ~ ~ May 23, 2012, Scheduled case of:

9:00 A.M. IFTIKHAR KHAN, SPA 2009-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 2009-MA-097 previously approved for accessory dwelling unit to permit modification of development conditions. Located at 3321 Wilkins Dr., Falls Church, 22041, on approx. 13,274 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 24. (*Admin. moved from 4/18/12 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.

Iftikhar Khan, 3321 Wilkins Drive, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SPA 2009-MA-097 subject to the proposed development conditions.

Mr. Hart said what he understood was, there could be a big family, and there could be the accessory dwelling unit (ADU), but there could not be boarders or renters on top of that. Ms. Hedrick said that was correct. They could have the family and the apartment or the family and renters. She said they could not have the ADU and renters within the principal dwelling as well.

Mr. Hart asked whether it was Mr. Khan, his wife, four children, his sister-in-law, her husband, their four children, and then two boarders in the basement. Ms. Hedrick said there were two renters in the basement, and they had two children, making it four additional people in the basement.

In response to questions by Mr. Hart, Charles Forshee, Department of Code Compliance, said anyone who was related by blood and/or marriage was considered family. He said 12 could live in the house, no matter how many cars, plus two tenants, which was a by right use. Mr. Forshee said parking did not affect the by right use.

Ms. Hedrick said staff did not believe the application site could handle parking for the special permit use, in addition to the by right use of 12 people in the house. Ms. Langdon, Chief, Special Permit and Variance Branch, said they had to find that it met all the standards, not just for the ADU, but also for the general standards for special permits. Mr. Hart asked whether parking could be a reason for the denial, and

Ms. Langdon said yes. Ms. Hedrick said there were people in opposition that stated there could be upwards of 12 vehicles on the site. Ms. Hedrick said at the last public hearing in 2009, the applicant contended that they did not belong to his property. She said the driveway could only accommodate two cars. Mr. Hart asked whether trying to accommodate parking for all these people onsite would be inconsistent with the appearance of the neighborhood, and Ms. Hedrick said that was correct.

Mr. Byers asked whether the Board was in compliance approving the original application. Ms. Hedrick said at the time, staff believed the application property met the requirements. She said the applicant presently has renters and additional family members. Ms. Hedrick said staff knew of 8 adults residing in the home, in addition to between 8 and 12 children.

Ms. Gibb asked if their question at this hearing was whether they amend the special permit to allow someone else to live in the ADU. Ms. Hedrick said Mr. Khan had requested the development condition be deleted in its entirety, so that he is not restricted to one specific person residing within the unit. Ms. Hedrick said if the special permit would be denied, it would be denied in its entirety and go away, and Mr. Khan would be required to remove the components of the kitchen within the ADU. The applicant was approved by building permit to have the addition with a wet bar, so it would just be the stove component which would have to be removed. Mr. Forshee said a wet bar is a sink which could have a refrigerator, but they would ask for no cooking appliances. Mr. Forshee said they could still have as many people who were related by blood and/or marriage, plus two tenants.

Mr. Khan presented the special permit request as outlined in the statement of justification submitted with the application. He said he only had five cars, and the rest of the cars were from the neighborhood. Mr. Khan said his sister-in-law would be moving out of the home after school closed, and then it would be himself, his wife and their four children. He said his 12-year-old daughter studied in Pakistan, and she was only there for two months. In responding to more questions, he said he had two tenants and there were two children with them. Mr. Khan said his father-in-law did not drive, that he had two cars, the tenants had two cars and his sister-in-law had one car. He said two cars could be in his driveway, and one car in the front of his house.

Mr. Hart asked how many children and adults were in the house now. Mr. Khan said there were nine children and seven adults. Mr. Hart asked how old the children were, and Mr. Khan said 12 and under and five adults were drivers.

There was discussion about renters and other occupants if the ADU were approved. Mr. Forshee said the tenants would have to vacate the house. Ms. Hedrick said the applicant was claiming there were only two people in the ADU, his father-in-law and sister. She said the other sister, husband and children moved into the principal dwelling. Mr. Forshee said they were allowed one family, plus two tenants. Mr. Hart asked if they denied it, they could have the family plus two boarders, but not two boarders with kids. Mr. Forshee said he believed it was two, but he would have to check on the children.

Ms. Gibb asked if we were clear that everyone was living where they said they were. Ms. Hedrick said in the photographs that Mr. Forshee took, it showed there were bunk beds located within the one bedroom of the ADU, which was supposed to contain a maximum of two persons. She said Mr. Khan indicated that he would remove the bunk beds if he could get approval.

Mr. Smith asked if they approved or denied this, did it have any impact on the number of people who could live in the house. Ms. Hedrick said the only thing that would change is whether they would count the children of the renters as tenants, because the rest of the people in the house were family. She said if it was determined the children counted as tenants, then they would have too many people in the tenant field of the by right principal. Mr. Smith asked whether they had the same issue if it was approved. Ms. Hedrick said if you approved it, then the tenants go away completely.

Mr. Smith asked if they approved it, then why could not the tenants move into the ADU. Ms. Langdon said they could only have two tenants. She said if they approved it, but did not delete the condition or did not restrict the ADU at all, they could have two people in the ADU, but not two people and two children.

Ms. Langdon read from the Zoning Ordinance which said one family, which may consist of one or two persons or more persons related by blood or marriage, with any number of natural children, foster children, step children or adopted children, and not to exceed two roomers or boarders. She said she would assume they could not have the four in the basement. Mr. Smith said it seemed awfully similar as far as who could

live there. Ms. Langdon said you could not have tenants in the basement and tenants in the accessory dwelling unit, so it was slightly more restrictive under 8-918. She said depending on what conditions were imposed, it could become more restrictive.

Mr. Hart asked how many people slept in the ADU's bedroom. Ms. Hedrick said she was not sure. She said during the original inspection, the person who was residing in the unit, which was the applicant's sister-in-law, met the inspector at the door, and told him it was her, her husband, and their children who lived there. She said that was when he wrote the violation. Ms. Hedrick said that presently, Mr. Khan indicated it was just his father-in-law who lived there, and sometimes the children slept there with their grandfather.

Mr. Hart asked how many total bedrooms were in the house. Mr. Khan said there were seven bedrooms and four bathrooms, which included the ADU. Mr. Hart asked if four people slept in the bedroom of the ADU. Mr. Khan said it was his father-in-law, his sister, and two children. Mr. Hart asked if anyone slept in the big room in front of it, and Mr. Khan said no.

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

Ms. Gibb moved to deny SPA 2009-MA-097 for the reasons stated in the Resolution.

Discussion ensued by Mr. Hart regarding the Zoning Ordinance and citing the requirements, which he believed were not met by the applicant.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IFTIKHAR KHAN, SPA 2009-MA-097 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 2009-MA-097 previously approved for accessory dwelling unit to permit modification of development conditions. Located at 3321 Wilkins Dr., Falls Church, 22041, on approx. 13,274 sq. ft. of land zoned R-3. Mason District. Tax Map 61-1 ((13)) 24. (Admin. moved from 4/18/12 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 2012; and

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

1. The applicant is the owner of the land.
2. This is difficult because it is unsure if we are better off in this case. After listening to staff and trying to untangle the factual circumstances here, it is recommended the Board go along with staff's recommendation.
3. When this was granted, there was neighborhood concern about the possible cars, too many cars, and the impact on the neighborhood.
4. The attempt was made by the Board through Mr. Smith's development condition that he added to limit the tenant, the occupant of the accessory dwelling unit, to one person.
5. When the tenant died, Mr. Khan went ahead and had a number of occupants.
6. The Board received a number of letters from neighbors talking about cars.
7. Based on the testimony of the applicant and the letters from neighbors, it can be seen that there is a lot of people in the home.
8. The testimony is that they are family members, and that is perfectly legal, but the Board has to look at the whole picture, the impact on the neighborhood, and the standards that have to be met in order to have a special permit granted.
9. It does not appear that the applicant can meet the required standards as set forth in the staff report.
10. Limiting it again to just one person, one non-driver, was considered, which was what was tried last time, but it did not work.

11. The community is better served by denying this.
12. The applicant can still have his family members, and he can have his two tenants.
13. It will be clear to anyone trying to enforce the Ordinances as to who is allowed to be in there and why.

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

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

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

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

//

~ ~ ~ May 23, 2012, Scheduled case of:

9:00 A.M. ANTHONY MARTOCCIA AND GWEN YANDALL, SP 2012-DR-010 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 9459 Deramus Farm Ct., Vienna, 22182, on approx. 19,597 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-3 ((17)) 24.

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.

Anthony Martoccia and Gwen Yandall, 9459 Deramus Farm Court, Vienna, Virginia, both reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-DR-010 subject to the proposed development conditions.

Mr. Hart asked what the drawing was for. Ms. Horner said the applicant submitted it to show the area of the accessory dwelling unit. Ms. Horner said there was a wet bar, which was approved with the original building permit. She said the kitchen was directly below it, which was converted from the area which was indicated as storage. Mr. Hart asked if his understanding was correct, that the applicant had installed this without a permit. Ms. Horner said that was her understanding.

Mr. Martoccia presented the special permit request as outlined in the statement of justification submitted with the application. He read a statement, saying the purpose was for the potential use of their children, or to receive income from a renter. He said they met all the criteria for an accessory dwelling unit (ADU), and they thought the contractor had complied with all the permits and requirements for the second kitchen addition. They learned later the contractor had not. They were requesting approval in order to be in compliance. He said their renter was a Naval Academy graduate and a retired Navy Commander. He said they have tried to work with the Homeowners Association (HOA) to mitigate their concerns. He said it would not change the appearance or character of the neighborhood. He said they assured the HOA that any potential renters would be fully vetted, and parking would be provided in their driveway.

Mr. Byers asked staff whether at the time the Board of Supervisors approved ADUs, if it was their intent to have commercial renting in what was zoned as single-family homes, or were there other rationales. Ms. Langdon said she did not know specifically, but there were no restrictions in the standards for renters. She said she would assume based on that, they anticipated there could be renters. She said in the past when they talked about it, the genesis was aging in the home as far as the homeowners, allowing them to have some income and help as they got older. Ms. Langdon said they did not restrict it to the main homeowner having to be 55 or older.

Mr. Smith asked whether it was by right that you could have two renters, but you would not be able to have a separate kitchen. Ms. Langdon said that was correct. He asked if the ADU was locked off with a separate entrance. Mr. Martoccia said it was a separate entrance, and separate from the house. He said they had a locked door between the basement and their floor.

Mr. Smith asked if they were to deny the application, whether they could no longer lock off the downstairs or have a separate kitchen, but the tenant could still have a bedroom downstairs. Ms. Langdon said that was correct, they could not have a separate kitchen, although she did not know if there was any restriction about locking off the connection. Mr. Smith said there would be no development conditions if it were not approved, so they could park on the street, and Ms. Langdon said that was correct.

Mr. Hart asked the applicant if he was over 55, and the applicant said he was 63. Referencing the basement drawing, Mr. Hart asked about a door. The applicant said the door went into the apartment, and the whole basement area was the dwelling.

Ms. Gibb assumed the Chair.

In response to questions from Mr. Hart, the applicant said Baker Electric (phonetic) put in the stove, and then the main contractor, Albert (phonetic), had done other work. He said had a written contract with both, and thought Albert said he would be responsible for all permitting requirements. The applicant said he had two different modernizations, one which was done many years ago, and the other was a year and a month ago. He said permits were obtained for the earlier one, but that one did not involve the kitchen. The applicant said he called Albert up and asked him why he did not get the permit, and Albert had told him he did not know he needed any. The applicant said Albert was a licensed contractor, and Mr. Hart said a licensed contractor should know he needed permits. The applicant said they already had plumbing down there, and Albert did not do the electricity work, and Baker Electric had done it.

Chairman Ribble resumed the Chair.

Mr. Hart asked about cars, and the applicant said they each had a car, but they only used one 99 percent of the time. He said they parked both of their cars in the garage, and the tenant parked his car in the driveway. Mr. Hart said in the draft of DCs, there might be a second tenant in the apartment. He said with a second tenant there could be four cars, and asked whether it would still work with all the cars having to be in the garage or driveway. The applicant said they did not ever plan to rent to more than one person, but if they had to, they could park in the driveway.

Ms. Langdon said Condition 6, was because the Ordinance allowed up to two tenants, and they did not object, because they thought there was enough parking. They put in a maximum of one bedroom with a maximum of two occupants, because it could be a husband and wife.

Mr. Hart asked the applicant if he was okay with everything else in the development conditions, and the applicant said yes. Mr. Hart asked if they wanted any boarders upstairs and if any of their adult children lived in the house, and the applicant said no. The applicant said if the children came back, they would not have a renter, and that would eliminate that car.

Chairman Ribble called for speakers in support of the application.

Tom Gerowitz (Phonetic), the applicant's tenant, 9459 Deramus Farm Court, Vienna, Virginia, came forward and spoke.

Chairman Ribble called for speakers in opposition of the application, and the following people came forward and spoke:

William Gray, 9463 Deramus Farm Court, Vienna, Virginia, who had a petition from neighbors;
John Nelson, 9461 Deramus Farm Court, Vienna, Virginia, President of the Homeowners Association;
Sara Ross, attorney with Chadwick, Washington, Moriarty, Elmore & Bunn P.C., 3201 Jermantown Road, Suite 600, Fairfax, Virginia, represented the Ciarra Estates Homeowners Association;
Stephen Knowles, 9455 Deramus Farm Court, Vienna, Virginia;
Su Tsung Lee, 9477 Deramus Farm Court, Vienna, Virginia;
Jackie Gravell, 9482 deramus Farm Court, Vienna, Virginia;

Mr. Hart made a disclosure in regards to Ms. Ross' firm, but indicated he did not believe his ability to participate in the case would be affected. He also said the Board did not get into the enforcement of covenants for homeowners associations (HOA), but it did not change what obligations exist between the HOA and the owners.

In Mr. Martoccia's rebuttal he said he did not think anything addressed were issues. He said security and property values would not be affected. He said he thought people over 55 being allowed to have a renter was to help with payments for mortgages.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2012-DR-010 for the reasons stated in the Resolution.

Discussion ensued regarding renting out the upstairs to boarders. Mr. Hart asked if they had the ADU, whether they could not have any more boarders, and Ms. Langdon said that was correct.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY MARTOCCIA AND GWEN YANDALL, SP 2012-DR-010 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 9459 Deramus Farm Ct., Vienna, 22182, on approx. 19,597 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-3 ((17)) 24. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 2012; 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 Cluster.
3. The area of the lot is 19,597 square feet.
4. The Board is sympathetic to the concerns of the neighbors.
5. These are tough cases.
6. It is particularly a low impact for a house this size.
7. There are two people living in the primary dwelling, one tenant, and an agreement to limit the development condition to one tenant.
8. It would not be unusual to have far more people and more cars at a house of this size.
9. This will not set a precedent. The Board looks at these on a case-by-case basis.
10. If the by-right is compared to the post-special permit conditions, the conditions post-special permit would be less.
11. The Board is limiting it to one tenant. By right, there can be two.
12. The Board is requiring parking onsite. By right, parking can be on the street, which is not unusual in a subdivision.
13. The homeowners association may do some things with the covenants, and that is their prerogative.
14. The Board is looking right now at zoning issues.
15. It will not have an impact on property values.
16. Relative to the by-right, the Board is improving the situation as compared to what could be done by right in a residential district.
17. Parking has been addressed by requiring parking in the driveway.
18. With the conditions the Board has in place, the approval will be limited to this particular owner. If the property ever conveys, the special permit will no longer be in place.
19. As far as precedent goes, it will not even carry on if the property is conveyed.
20. It will be for a limited period of time of five years.

21. If there are any issues with it, the Zoning Administrator will be informed and consider whether to approve any extension to the development conditions.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Anthony R. Martoccia and Gwen Yandall, and is not transferable without further action of this Board, and is for the location indicated on the application, 9459 Deramus Farm Court, (19,597 square feet), and is not transferable to other land.
3. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 2,280 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. The accessory dwelling unit shall contain a maximum of one bedroom for a maximum of one occupant.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit within 120 days of approval of this special permit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.

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

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

//

~ ~ ~ May 23, 2012, After Agenda Item:

Approval of February 7, 2006; March 7, 2006; and March 21, 2006 Minutes

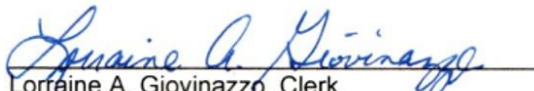
Ms. Gibb moved to approve the minutes. Mr. Hart seconded the motion, but asked for a change in a name, which was spelled incorrectly throughout the minutes. The motion carried by a vote of 4-0-1. Mr. Smith abstained from the vote. Mr. Beard and Mr. Hammack were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:13 a.m.

Minutes by: Kathleen A. Knoth/Lorraine A. Giovinazzo

Approved on: August 3, 2016


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 06, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; James R. Hart; and Paul W. Hammack, Jr. Nancy E. Gibb and Norman P. Byers were absent from the meeting.

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

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. DAVID GUGLIELMI, SP 2011-SP-107 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6300 Little Ox Rd., Fairfax Station, 22039, on approx. 2.25 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((10)) C2. *(Admin. moved from 2/29/12 for notices) (Deferred from 3/28/12 at appl. req.)*

Chairman Ribble called the applicant to the podium.

Mr. Hart made a disclosure that he had represented a case in reference to the applicant, and that the case had since been closed. He indicated that he would recuse himself from the public hearing.

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

David Guglielmi, 6300 Little Ox Road, Fairfax Station, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2011-SP-107 for Option 3 only, subject to the proposed development conditions contained in the addendum dated March 30, 2012.

In response to Mr. Hammack's question, Ms. Hedrick stated that nothing additional had been provided with respect to the onsite sewage, and she would defer to the applicant to see if there had been anything submitted to the Health Department.

In response to questions from the Board members, Ms. Hedrick provided the following information. In this case, the accessory dwelling had a completely separate driveway, and was separated by a large vegetated area. Staff believed it did not appear subordinate to the primary dwelling, because the principal dwelling could not be seen from the accessory dwelling unit. Mr. Beard stated that in essence, the piece of property had now been established for two residences. Ms. Hedrick stated, in staff's view that was correct. Ms. Hedrick stated that the closest neighbor would be separated by the septic field, but was not sure how far the distance would be. She further stated that the applicant obtained that portion of his lot from the property to the south to establish the area for his septic field. Mr. Smith stated that Option 1 was 90 feet from the neighbor to the north, and Option 3 would move it to the opposite side of the principal dwelling. Ms. Hedrick stated that Option 3 was only 30 feet from the principal dwelling and Option 1 was 160 feet. She continued that through discussion with the applicant, Option 3 would make the accessory dwelling closer to the principal dwelling and share the same driveway as the principal dwelling to appear clearly subordinate.

Mr. Guglielmi presented the special permit request as outlined in the statement of justification submitted with the application. He said there were two components to the application, the technical, which involved the Health Department and Code Compliance. The technical issue was something that could be overcome. With regard to the septic issue, there was an understanding with staff and the Health Department from the outset that, because there would be significant resources spent, with soil studies and engineering, there would be a staff recommendation with a Board approval, before he pursued the final option with the Health Department. The options with the Health Department were just technical matters which could be overcome. They were not issues where they would have rejections with the Health Department. The other technical aspect involved code compliance with regard to the existing structure that was built. There was a stipulation that they would bring the building up to code with the understanding that there would be a plumbing inspection, and it would need to be built up to residential code.

Mr. Guglielmi believed that the existing structure was subordinate and in harmony with the home, as it was designed by the same architect with the same structural elements. He stated that the accessory dwelling had existed for two years, and the County never had a complaint about an illegal subdivision or home built unpermitted.

In reference to Mr. Beard's comment about a separate driveway, Mr. Guglielmi stated that the separate driveway that was there had been permitted through the Virginia Department of Transportation. He said, adding a berm, landscaping, and driveway monumentation with evergreen screening would hide the property from passersby, so you would not be able to see it. He added that the home to the south was 150 feet or a little further. Everyone on the street had submitted letters of support, except the neighbors to the immediate north of the property, those that live closest to the existing structure. They had verbally committed their support but did not submit a letter.

Mr. Hammack asked whether the applicant had any plats which showed where he intended to put the new driveway entrance, screening or what kind of screening. Mr. Guglielmi stated that he did submit a plat which showed that under Option 1, there would be screening and a berm. He did not include screening to the immediate north, because they were just made aware of the concerns of the neighbors as related to screening.

Mr. Hammack asked should the proposed Option 3 be approved, what would happen to the foundation, the driveway, and the structure as it presently existed, and did approval for a shed include excavation for a basement. Ms. Hedrick replied that there was a Development Condition which suggested the driveway be removed and the area replanted. There could be additional wording in the Development Conditions to remove the foundation of the structure. Ms. Hedrick replied to the second question stating, that the shed did not have a basement, but automatic approval of a basement with a shed could be answered by Code Compliance.

Charles Fitzhugh, Department of Code Compliance, stated that they would also have to submit plans for a basement, which would have to be approved as a part of the shed permit. Discussion ensued with regard to different options allowed for the shed.

Mr. Beard asked about why the fictitious address was established. Mr. Guglielmi stated he was ignorant of the code, and went to the post office. He asked if he could get an address for the structure, and was told by the post office yes. All he had to do was just put up a mailbox. Mail had been coming there for a year, and 911 had established the address in its database. He has since been educated, and agreed to remove the address.

Discussion ensued on how the shed evolved to what it was now. Mr. Guglielmi said they wanted to use the structure for his mother-in-law gets to the house. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the unit was being rented, and that was how it was reported as a violation by the renters, who called code compliance. Mr. Smith asked whether the renter was Mr. Guglielmi's mother-in-law. Mr. Guglielmi replied that his mother-in-law was staying there and she went back home and he rented it while she was away. The renters that were there had rented it for about a year.

Mr. Smith asked if his mother-in-law walks across the tributary or walks along the street to get to the house. Mr. Guglielmi replied that she usually drives.

Chairman Ribble called for speakers.

James Bennet, 10960 Rice Field Place, came forward to speak in support of the application.

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

Mr. Hammack asked if the hearing could be reopened. Chairman Ribble reopened the public hearing.

Mr. Hammack asked whether Mr. Guglielmi opposed option three. Mr. Guglielmi replied that he did not oppose Option 3, but it was his least favorite of the Options. It was an acceptable Option, and his preference was Option 1, 2, and then 3.

Mr. Hammack asked Mr. Guglielmi to reconcile the matters concerning the technical issues to the septic field as it related to the Health Department. Mr. Guglielmi stated that as a technical matter he would connect the existing accessory dwelling unit to the existing field on the left side of the property. He had been in discussion with the Health Department, stating that he could do it with the appropriate pump and chamber at the accessory dwelling unit. Whereas if a new field was created he would not be able to find suitable land to have a second drain field for the accessory dwelling unit. It would have to be connected to the main field. Mr. Hammack asked whether it required destruction of the protected area of the stream valley. Ms. Hedrick replied that she thought the lines were already there, and he did not receive Health Department permits for the septic lines that there. The septic system subsequently froze.

Kevin Wasler, Health Department, stated that none of the work to accommodate the accessory dwelling unit had been inspected or permitted by the Health Department. There was a meeting with Mr. Guglielmi and the Health Department that he did not attend. His section of the Health Department would be the section that would approve the plans which would be submitted to correct this situation. There would have to be modifications not only to the pumping facility to get it up to the current drain field, but modification to the overall design to the existing drain field area to accommodate his need to add a separate bedroom, kitchen and laundry.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2011-SP-107 for reasons stated in the Resolutions.

Discussion ensued with regard to changing/adding language to the development conditions. Chairman Ribble stated he would support the motion very reluctantly. He stated he thought the situation was a self-created hardship, and it bothered him that Mr. Guglielmi, as a builder, should know the rules.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID GUGLIELMI, SP 2011-SP-107 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 6300 Little Ox Rd., Fairfax Station, 22039, on approx. 2.25 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((10)) C2. (Admin. moved from 2/29/12 for notices) (Deferred from 3/28/12 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 June 6, 2012; and

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

1. The applicant is the owner of the land.
2. The earlier observations of the Board members were on point.
3. What was constructed as a shed is removed from the principal dwelling unit and not clearly subordinate to that dwelling unit.
4. It appears to be more associated with the adjacent dwelling unit on the adjacent property.
5. The fact that it has a separate entrance, a separate driveway, and is 167 feet away from the principal dwelling unit, the fact that there is no connection or walk between this unit, the applicant says his mother-in-law would drive from this dwelling into his unit, all establish that it is not subordinate or intended to be subordinate within the meaning of the Ordinance.
6. The unit is attractive and seems to comply with the standards for building a shed, albeit that the applicant admits the construction of a kitchen and other improvements to the property were done without permits, as the applicant says, mistakenly, although he is a builder.

7. Staff has it right that the unit as it stands does not meet General Standard 8-006, that it will be harmonious and will not adversely affect the use or development of existing properties, specifically the next-door neighbor's property.
8. The Board is sympathetic to Dr. Rice's comments, but these are large lots, and this particular unit was built without permits.
9. The applicant has the option to simply remove the kitchen and restore the unit as a shed if that is what he wants to do.
10. With respect to use as an accessory dwelling unit, Option 3 is the only option the Board could live with.
11. If the application came in as a new application before the shed was ever built, it is questionable whether the Board could have supported an accessory dwelling unit in this particular location, so far removed from the principal dwelling unit.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, David Guglielmi, and is not transferable without further action of this Board, and is for the location indicated on the application, 6300 Little Ox Road (2.25 acres), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by GeoEnv Engineers dated November, 2011, as revised and sealed through April 12, 2012, and approved with this application, as qualified by these development conditions. The only option approved shall be that of Option 3 as shown on the plat.
4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The existing onsite sewage disposal system shall be upgraded as per the requirements in the e-mail from the Health Department, dated January 11, 2012, included as Attachment 1 to these conditions. These improvements shall be installed by a licensed contractor.
6. No one shall occupy the accessory dwelling unit until it has been relocated in accordance with Option 3, all of the Fairfax County Health Department requirements have been satisfied and building permits and final inspections have been approved.
7. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
8. Prior to the occupancy of the Option 3 accessory dwelling unit, the applicant shall permanently close the driveway entrance associated with Option 1 to the accessory dwelling unit and scarify and replant the area with native vegetation to the satisfaction of the Urban Forest Management Division, Department of Public Works and Environmental Services (DPWES).

9. There shall only be one bedroom and a maximum of two people within the accessory dwelling unit.
10. The accessory dwelling unit shall contain a maximum of 780 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 2 to these conditions.
11. 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.
12. 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.
13. 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.
14. Parking shall be provided on site as shown on the special permit plat.
15. The applicant shall obtain all applicable building permits, including electrical, for the detached accessory structure, depicted as "shed" on the special permit plat (which is used to hold mechanical equipment to heat the principal dwelling) which consists of approximately 250 square feet in size.
16. The applicant shall not be permitted to modify the existing architectural plans of the principal dwelling to satisfy the requirements of the septic field.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twenty-four (24) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 4-0. Mr. Hart recused himself from the hearing. Ms. Gibb and Mr. Byers were absent from the meeting.

//

Vice Chairman Hammack assumed the Chair.

//

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. EDDIE MITCHELL, SP 2012-BR-012 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit roofed deck to remain 9.6 ft. from side lot line and to permit an accessory dwelling unit in an existing dwelling. Located at 8512 Braeburn Dr., Annandale, 22003, on approx. 11,904 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 214.

Chairman Hammack called the applicant to the podium.

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

Eddie Mitchell, 8512 Braeburn Drive, Annandale, Virginia, came forward.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-012, subject to the proposed development conditions.

Mr. Hart asked whether there had been any communication with the holder of the easement of the property next door about the application, and whether they had any comments.

Susan Langdon, Chief, Special Permit and Variance Branch, stated the owner of the property had been notified, and there was some type of easement over it for county use. The only requirement was to contact the owner, and they had been contacted through the regular notice process.

Mr. Hart asked whether the owners of the property next door had expressed any opposition to the application. Ms. Langdon stated they had not.

Mr. Mitchell presented the special permit request as outlined in the statement of justification submitted with the application. He said the accessory dwelling unit was intended for his father who had passed during the process. He no longer wished to use the dwelling as a separate dwelling. His intention was to use it for recreation, and convert the bedroom into storage. He intended to move the refrigerator into the utility room and the wet bar was to remain. The roof was built with the intention of preventing water from flooding the basement when it rained. He understood the requirement for a 12-foot setback, but wanted the roof to remain at 9.6 feet instead.

Mr. Hart asked how many people currently lived in the house and how many vehicles were at the dwelling. Mr. Mitchell replied there were two people living in the house, himself and his mother, and they had two cars. Mr. Hart asked how many vehicles were in the driveway. Mr. Mitchell replied he kept one in the garage, and one in the driveway. Mr. Hart asked if he had read the development conditions in the staff report.

Ms. Langdon responded that she believed the applicant indicated he was withdrawing his request for the accessory dwelling unit, and he needed to clarify that the request was for the porch.

Mr. Mitchell confirmed that he wished to withdraw the application for the accessory dwelling unit.

Mr. Hart asked whether Mr. Mitchell was in the construction business. Mr. Mitchell replied that he was not, but someone else did construction for him. Mr. Hart asked who built the porch and whether they were a professional contractor. Mr. Mitchell replied that a guy built the porch who was a professional contractor and did it without a contract. Mr. Hart replied that normally a professional contractor would provide a written contract, and that contract would state who was supposed to get the permits, among other things.

Mr. Hart stated that there was not very much of the roof sticking over, and asked how much trouble it would be to chip that portion of the roof, so as not to file an application at all. Mr. Mitchell stated that it would cost him money, along with it being another project he would have to do. That was why he applied for the permits. Mr. Hart wanted to know how much it would cost him to get it done. Mr. Mitchell replied it would cost him approximately \$3,800. Mr. Hart asked what the total cost of the porch was. Mr. Mitchell replied approximately \$5,000. Mr. Hart asked if he had spoken with anyone in the county prior to starting the work. Mr. Mitchell replied that he filed prior to building. He built on the back, because he had water coming into the basement, otherwise he would not have started. He did speak with someone, but did not get the specifics about whether a permit would be needed, since it was on the back of the house on the roof and out of the view of the neighbors. Mr. Hart asked if the drainage issue in the basement and if the tip of the roof helped with the flooding. Mr. Mitchell replied it definitely did.

Mr. Beard asked how much the applicant had paid in fees to apply for the permits, including the plat. Mr. Mitchell replied he paid, \$1,700 dollars. Mr. Beard asked if the issue was 2.4 feet and Ms. Cho stated that was correct. Mr. Beard asked if the estimate to correct the roof was around \$3,000. Mr. Mitchell stated that was correct.

Chairman Hammack called for speakers.

Joyce Hedetniemi, President of the Oak Hill Civic Association, spoke in response to Mr. Hart's question, stating that the Oak Hill Mansion was a property that was brought by a developer who intended to subdivide it into two massive homes in front of the mansion and the community in concert with Chairman Bulova and

the Board of Supervisors and the Northern Virginia Conservation Trust, which enabled that property to be saved from development with cooperation of the developers. It was a conservation easement which allowed the public to use it three times a year. The Oak Hill Civic Association took great pride in that property, and worked very closely with it. She had been in conversations with Mr. Mitchell, and Oak Hill was a community of 180 homes built in 1969 and 1080. Mr. Mitchell's home was exactly like hers, and she understood what he was talking about with reference to the water damage. The homes had what they called, the Wizard of Oz doors in the back, which allowed access with a window well. Her window well tended to flood in heavy rain, and she had difficulty trying to figure out what to do. Mr. Mitchell's solution was to build a roof over that property.

Chairman Hammack closed the public hearing.

Mr. Hart moved to approve SP 2012-BR-012 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDDIE MITCHELL, SP 2012-BR-012 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to the minimum yard requirements based on error in building location to permit roofed deck to remain 9.6 ft. from side lot line and to permit an accessory dwelling unit in an existing dwelling. **(THE APPLICANT WITHDREW THE REQUEST FOR THE ACCESSORY DWELLING UNIT.)** Located at 8512 Braeburn Dr., Annandale, 22003, on approx. 11,904 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 214. 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 6, 2012; 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 applicable standards have been satisfied.
3. It is going to be a big production to remove the little tip of the porch that is extending into the minimum side yard.
4. The applicant did not do it. His contractor did it.
5. There would not be any significant difference, given the size of the structure and the distance to adjacent homes, whether the porch extends two feet less at the back of the house since no one can see it.
6. The Board has determined that the standards in the mistake section resolution have been satisfied.
7. Based on the explanation at the hearing, the request for an accessory dwelling unit is withdrawn, so the Board does not need to consider any of the issues with that, parking, et cetera. All the Board is dealing with is the porch.

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

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

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

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

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

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

1. This approval is granted to the applicant only, Eddie Mitchell, and is not transferable without further action of this Board, and is for the location indicated on the application, 8512 Braeburn Drive (11,904 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by James D. Thurber, L.S., Thurber Engineering & Land Surveying, dated February 6, 2012, and approved with this application, as qualified by these development conditions.
3. All applicable permits and final inspections for the roofed deck shall be diligently pursued and obtained within six months of final approval of this application.

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

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

//

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. MICHAEL B. JONES, SP 2012-SU-014 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 14618 Crenshaw Dr., Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with VC 2012-SU-002). (Admin. moved from 6/6/12 at appl. req.)

Chairman Hammack noted that SP 2012-SU-014 had been administratively moved to June 13, 2012, at 9:00 a.m., at the applicant's request

//

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. MICHAEL B. JONES, VC 2012-SU-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an existing accessory storage structure exceeding 200 sq. ft. in size to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 14618 Crenshaw Dr.,

Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with SP 2012-SU-014). (Admin. moved from 6/6/12 at appl. req.)

Chairman Hammack noted that VC 2012-SU-002 had been administratively moved to June 13, 2012, at 9:00 a.m., at the applicant's request.

//

The meeting recessed at 10:50 a.m. and reconvened at 10:55 a.m.

//

~ ~ ~ June 06, 2012, Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, A VIRGINIA CORPORATION, SPA 99-Y-065-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-065 previously approved for church, childcare center and private school of general education to permit increase in number of students. Located at 15450 Lee Hwy., Centreville, 20120, on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7.

Chairman Hammack called the applicant to the podium.

John Rinaldi, 9900 Main Street, Fairfax, Virginia, the applicants' agent, came forward.

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

Mr. Hart made a disclosure that he lived in the neighborhood that's adjacent to the property in the rear. He indicated he did not believe his ability to participate in the case would be affected.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 99-Y-065-02, subject to the proposed development conditions.

In answer to Mr. Hart's questions, Ms. Horner gave the following information. With regard to the frequency of use of the fire pit or the hours of the it's use staff did not object to that issue, so there was nothing included in the development conditions to regulate it. It was staffs' understanding that the church had written procedures in a binder, and it was recommended that the binder be on site during the use of the fire pit. The extinguisher would be at the site only when the pit was in use, and it would be stored in the building at other times. The conditions were sent to the Fire Marshal for review.

Lieutenant Castillo, Fairfax County Fire Marshall, stated that the fire code guidelines from Development Condition 23 were the same guidelines for the Fire Code requirements for a recreational fire pit. In answer to Mr. Hart's questions, he added that the guidelines needed to be met anytime the fire pit was in use, and it needed to be maintained. If there was an uncontrollable fire in the fire pit once, the local fire department would take preventive measures, and send in a brush unit. In an event that the brush unit was not available, the fire truck had the necessary equipment to come through the basketball area, with a hose to extinguish the fire. Fire trucks had capabilities of up to 2,000 gallons of water, which was sufficient to extinguish a pit fire. In the event the fire was larger, they could call more engine companies.

In response to Mr. Hammack, Mr. Castillo stated that the minimum requirement was a 4A fire extinguisher, which would extinguish approximately 4 square feet, and could be used on any combustible material. In addition to that, there was a recommendation to have a pressurized water extinguisher, a garden hose, or sand to be available.

John Rinaldi presented the amendment request as outlined in the statement of justification submitted with the application. He said that with regard to the request, there would be no new construction. He stated that he met with the Western Fairfax Citizens Association on May 15th, with citizens from Sully District Councils of Citizens Associations, Gate Post Estates and Virginia Run. The application was well received with no concerns about the increase of students. The only issue was the safe operation of the fire pit. At the meeting

when the fire marshal came in to do a fire inspection allowed by code, this was the first time that there were any formal complaints about the fire pit. The fire pit was there for the use of the Boy Scouts to use two to three times per year. It was located about 250 feet away from the nearest residence and outside of any preservation area designated by the county. Safety was a concern as heard from the meeting. Working with the county on the Development Conditions, they agreed on how to use the fire pit in the future. It was used by the Scouts occasionally as part of their mandate.

Chairman Hammack called for speakers.

Tom Corsh (phonetic) came forward. He stated that he was the committee chair for Troop 30, which was chartered by Centreville Presbyterian Church in 1999. Their existence was to foster the growth of youth through scouting. During that time 13 scouts had obtained the rank of Eagle, including seven in the past two-plus years. They had been established to promote survival skills and backpacking. One of the basic skills taught was the proper use and maintenance of a fire. When a scout joins a troop, they are provided an opportunity for a skill award. They had to show the Scout Master they were capable of handling and maintaining a fire. When a fire was established as a troop event, an assistant scout master that was trained in that use was in attendance, as well as other adults as per policies until a fire is extinguished.

Chairman Hammack closed the public hearing.

Mr. Smith moved to approve SPA 99-Y-065, for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE PRESBYTERIAN CHURCH, A VIRGINIA CORPORATION, SPA 99-Y-065-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-065 previously approved for church, childcare center and private school of general education to permit increase in number of students. Located at 15450 Lee Hwy., Centreville, 20120, on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. 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 6, 2012; 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 lot is 20.38 acres.
4. There is very little impact from the proposed amendment.
5. What you would normally expect is some transportation issues, and the transportation report made clear that there are no transportation issues at all.
6. The Board agrees with the staff report, which recommends approval.
7. The fire pit, the Boy Scouts are very conscientious about that, and the provisions in place will address any concerns. This goes a lot farther than you see in fire pits that are taking place all over Fairfax County in residential areas in people's homes. It is common these days.
8. These criteria, along with just the philosophy and the conscientious nature of the Boy Scouts, would give the Board quite a bit of comfort, also recognizing that it is a pretty good distance, 250 feet, from the nearest residential area.
9. The conditions address the concerns.

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

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

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

1. This approval is granted to the applicant only, Trustees of Centreville Presbyterian Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 15450 Lee Highway, consisting of 20.38 acres, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William M. Robson, dated September 13, 1999, as revised through May 10, 2012 by John C. Levtov, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats within the main area of worship shall not exceed 400 at the completion of Phase 1 with 158 parking spaces, 500 at the completion of phase II with 190 parking spaces, 650 at the completion of Phase III with 250 parking spaces, and 1200 seats at the completion of Phase IV with 435 parking spaces, as shown on the special permit plat.
6. The total maximum daily enrollment for the child care center shall be 99 or private school of general education shall be 150. Either use may operate on the site; however they shall not operate concurrently. The school may include grades K through 12.
7. The hours of operation for the child care center or private school of general education shall not exceed 6:30 a.m. to 7:00 p.m., Monday through Friday.
8. The total height of all structures on site, including the steeple, shall not exceed 45 feet.
9. Any outdoor lighting shall be in conformance with the following:
 - The combined height of the light standards and fixtures shall not exceed 12 feet,
 - The lights shall be focused downward directly on the subject property,
 - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,
 - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, and
 - Up-lighting of buildings or signs shall not be permitted on the site except at the recessed entrances to the building.
10. At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by Urban Forest Management. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate drip line, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the most current edition of "The Guide for Plant Appraisal." Specific tree

preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space, and to preserve additional trees near these limits where such preservation is determined to be both feasible and desirable by Urban Forest Management. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.

11. Transitional screening shall be as shown on the special permit plat along the northern, eastern and western property boundaries and shall consist of natural vegetation, supplemented with landscaping as shown along the western property boundary, subject to the review and approval of Urban Forest Management of DPWES. A 3 foot high landscaped area 25 feet wide with a berm shall be provided along the southern property boundary and a landscaped area between the eastern parking lot and the TRANSCO easement shall be planted using a combination of deciduous and evergreen trees, and understory plant materials to soften the view of the building. The size, number, and type of plant materials shall be subject to the review and approval of Urban Forestry Management of DPWES. The barrier requirement along all property boundaries shall be waived.
12. To the maximum extent feasible, as determined by DPWES, all stormwater runoff from impervious surfaces shall be conveyed to BMP facilities. If feasible, each stormwater management facility shown on the Special Permit plat shall be designed as a BMP facility, as determined by DPWES. The facility to the south of the parking lot may be provided as a bioretention facility, subject to the approval of DPWES.
13. The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including Urban Forestry Management, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible for that phase as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between the DPWES, including Urban Forest Management, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Notwithstanding the limits of clearing and grading shown on the plat, the TRANSCO Pipeline easement shall not be cleared, except for the minimum amount of clearing needed to provide the stormwater management pond access road as qualified by Condition 13.
14. Construction of the church shall be in general conformance with the architectural elevation contained in Attachment A, as determined by DPWES.
15. All signs shall be in conformance with Article 12 of the Zoning Ordinance.
16. The use of loudspeakers shall not be permitted outside the building.
17. Four parking spaces located adjacent to the building containing the child care center shall be reserved for the pick-up and drop off of children only, during the hours of operation of the child care center or private school of general education.
18. A play area shall be provided which meets the standards set forth by Section 9-310 of the Zoning Ordinance prior to the issuance of a Non-RUP for the child care center or private school of general education. The play area shall be located outside the minimum required front yards, transitional screening areas, and parking. The maximum number using the playground shall not exceed one child per 100 square feet of area of the play area at any one time for the private school of general education. Play equipment shall be provided at the time that grades K-3 are implemented.

19. Areas designated as undisturbed open space shall remain free of structures. Undisturbed open space adjacent the proposed outdoor recreation area shall be posted with signage so that children do no play in undisturbed areas.
20. Parking lot trees which are not in satisfactory condition to be counted toward the ten year canopy credit shall be replaced by the end of the planting season after approval of this permit as determined by Urban Forest Management of DPWES.
21. Areas of barrier and transitional screening shall be maintained to the satisfaction of Urban Forest Management of DPWES.
22. A minimum of 50% of the site, as shown on the plat, shall be maintained as undisturbed open space.
23. The fire pit shall be located outside of undisturbed open space and shall conform to all fire codes. The use of the fire pit is subject to the following restrictions:
 - An adult must be present at all times during the use;
 - There shall be written procedures for the extinguishing of the fire and the procedures shall be present during all use of the fire pit;
 - An emergency liaison for the church shall be established and contact information for that liaison shall be provided to the adjacent neighborhood and listed on the church website;
 - A water extinguisher shall be provided during all use of the fire pit.

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

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

//

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. JOHN DAPOGNY, A 2011-PR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that property located at Tax Map 39-4 ((1)) 146A and 146B in the R-3 District is deemed a corner lot and must meet the minimum required yard requirement as determined based on the configuration of the property. Located at 7703 Virginia Ln., Falls Church, 22043 on approx. 22,198 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 146A and 146B. (*Admin. moved from 1/11/12 and 6/6/12 at appl. req.*)

Chairman Hammack noted that A 2011-PR-037 had been administratively moved to September 12, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 6, 2012, Scheduled case of:

9:00 A.M. SJD-ZP, LLC DBA ZPIZZA, A 2011-PR-028 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is not operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hwy., Fairfax, 22031, on approx. 1.2 ac. of land zoned I-5 and H-C. Providence District. Tax Map 49-3 ((15)) 2. (*Admin. moved from 9/28/11, 11/30/11, 2/1/12, 4/18/12, and 6/6/12 at appl. req.*)

Chairman Hammack noted that A 2011-PR-028 had been administratively moved to July 11, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 6, 2012, After Agenda Item:

Approval of April 4, 2006, April 25, 2006, and July 27, 2011 Minutes


Mr. Beard moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 4-0. Chairman Ribble was not present for the vote. Ms. Gibb and Mr. Byers were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:23 a.m.

Minutes by: John W. Cooper

Approved on: July 19, 2017


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 13, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Thomas Smith was absent from the meeting.

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

~ ~ ~ June 13, 2012, Scheduled case of:

9:00 A.M. MARGARET J. DUBOIS, VC 2012-PR-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 13.0 ft. from front lot lines and stairs 10.0 ft. from front lot line. Located at 7703 Virginia Ln., Falls Church, 22043, on approx. 22,198 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 146 A and 146 B.

Chairman Ribble noted that the Board had received a request from the applicant's agent to defer the public hearing. Mr. Hart moved to defer VC 2012-PR-001 to July 11, 2012, at 9:00 a.m., at the applicant's request. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

~ ~ ~ June 13, 2012, Scheduled case of:

9:00 A.M. MICHAEL B. JONES, SP 2012-SU-014 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 14618 Crenshaw Dr., Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with VC 2012-SU-002). (Admin. moved from 6/6/12 at appl. req.)

9:00 A.M. MICHAEL B. JONES, VC 2012-SU-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an existing accessory storage structure exceeding 200 sq. ft. in size to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 14618 Crenshaw Dr., Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with SP 2012-SU-014). (Admin. moved from 6/6/12 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Ronald C. McCormack, the applicant's agent, 2740 Chain Bridge Road, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an existing fence greater than 4.0 feet in height to remain in the front yard of a corner lot. The 4.4 to 4.7 foot high wood picket fence was located along the front lot line facing Lock Drive, which was used as the applicant's side and rear yards. The applicant also requested variance approval to permit an accessory storage structure greater than 200 square feet in gross floor area to remain in a front yard of a lot containing less than 36,000 square feet. The shed measured approximately 413 square feet in size and was located partially within the front yard facing Lock Drive. The approved building permit depicted the structure entirely behind the existing dwelling and labeled the structure as a garage. A development condition was added which would prohibit the applicant from storing or working on motorized vehicles within the storage structure space, which would be permitted if the structure was a garage.

Mr. Hart and Ms. Hedrick discussed the previously approved plans for the structure, with Ms. Hedrick noting that it had been labeled as a shed and was built as approved on the plans. Mr. Hart said he made a site visit and noted that the shed was right up on the street and appeared to be dilapidated. Ms. Hedrick stated that a development condition could be added that the shed be landscaped and painted.

Mr. Hart questioned whether the structure could be used to store motor vehicles. Ms. Hedrick stated that Nancy Stallings, an inspector with the Department of Code Compliance, had spotted motorcycles in it previously, which by DMV standards qualified it as a garage.

Mr. Hart stated he was concerned about the shed being a fire hazard since it was made out of wood and could be used to store flammable liquid. Ms. Hedrick did not believe there was a fire issue, noting that lawnmowers and gasoline cans are frequently stored in a shed.

Mr. McCormack presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He stated that the structure was a shed with a wooden floor and was never intended to be a garage. He stated that the applicant owned an inoperable moped which was currently kept in the shed. Mr. McCormack said that a motorcycle which belonged to the applicant's nephew had been stored in the shed over the weekend once, but that was the only time a motorcycle had been near the shed. Mr. McCormack said a shed had been in the same location when the applicant bought the property; however, he had taken it down and built one a bit larger, but did not know he needed a permit to do so. Mr. McCormack said that many of the applicant's neighbors had sheds, so it was in harmony with the neighborhood. He said a couple letters in support and a petition had been submitted which had been circulated to the applicant's neighbors who overwhelmingly supported the shed. Regarding the fence, he asked that the special permit be approved without requiring the applicant to cut off the knobs on top of the posts. He said the applicant would be happy to paint the fence and add landscaping if he was not required to remove the fence.

In response to a question from Ms. Gibb, Ms. Stallings stated that a Notice of Violation had been issued after an inspector, who was in the neighborhood responding to a complaint, noticed the violations. After visiting the permit counter, it was suggested to the applicant that he request a garage, not a shed.

Mr. Hart and Mr. McCormick discussed the location of the new shed, with Mr. McCormick stating that it was rebuilt in the same location as the original shed.

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

Mr. Hammack moved to approve SP 2012-SU-014 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL B. JONES, SP 2012-SU-014 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 14618 Crenshaw Dr., Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with VC 2012-SU-002). (Admin. moved from 6/6/12 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 June 13, 2012; and

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

1. The applicant is the owner of the property.
2. Except for the finials, it appears that the fence is, for the most part, in compliance.
3. It is also pulled well back from the property line.
4. Given the small amount of special permit required, it is justified.

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

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

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

1. This special permit is approved for the location of the wood picket fence with a maximum height of 4.7 feet as shown on the plat prepared by Dominion Surveyors Inc., dated May 24, 2011, 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. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.

//

Mr. Hammack moved to approve VC 2012-SU-002 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL B. JONES, VC 2012-SU-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an existing accessory storage structure exceeding 200 sq. ft. in size to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 14618 Crenshaw Dr., Centreville, 20120, on approx. 12,945 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-3 ((2)) (27) 1 (Concurrent with SP 2012-SU-014). (Admin. moved from 6/6/12 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 June 13, 2012; and

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

1. The applicant is the owner of the property.
2. It is a close call.
3. The applicant might not have been aware that replacing an existing structure with a new structure slightly larger might create certain issues that he did not anticipate.
4. We get this kind of an issue before us many times.
5. In this case, the applicant replaced an older shed on the property, which he testifies was in the same location.
6. The application was processed in part by a friend who seems to have been given some helpful, but not necessarily good, advice at the counter to call it a garage instead of a shed.
7. The staff person who did that probably thought they were being very helpful, but sometimes it can cause unforeseen problems.
8. There is no opposition to the shed.
9. The community seems to be behind it.
10. The Board could not find that it would be detrimental to the other properties in the area.
11. All things considered, the applicant has satisfied the required standards for variances, in particular subparagraphs 1 through 8, and in particular that the character of the zoning district will not be changed by the granting of a variance.
12. There are double front yards here, and this encroaches partly into one, but would be permitted if it

- were a garage.
13. It meets the other requirements of the Ordinance.

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

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

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

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

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

1. This variance is approved for the size and location of an accessory storage structure (413 square foot shed) greater than 200 square feet in gross floor area in the front yard of a lot containing 36,000 square feet or less, as shown on the plat prepared by Dominion Surveyors Inc., dated May 24, 2011, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the accessory storage structure (shed), including electrical permits, shall be obtained within 120 days of approval of this variance application.
3. No motorized vehicles shall be stored or repaired within the accessory storage structure.
4. The structure shall be properly maintained in good condition with painting or staining.

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

Ms. Gibb seconded the motion, which carried by a vote of 4-2. Mr. Hart and Mr. Byers voted against the motion. Mr. Smith was absent from the meeting.

//

~ ~ ~ June 13, 2012, Scheduled case of:

9:00 A.M. PHILIP L. HOYLE, SP 2012-SP-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.2 ft. from rear lot line and 5.9 ft. from side lot line and to permit open deck to remain 0.0 ft. from side lot line. Located at 8818 Sweet Gum Pl., Springfield, 22153, on approx. 11,699 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 12.

Chairman Ribble called the applicant to the podium.

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

Philip L. Hoyle, 8818 Sweet Gum Place, Springfield, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said that on May 17, 2011 and January 18, 2012, the Department of Code Compliance inspected the property and found a zoning violation. On January 18, a Notice of Violation was issued for a tree house which was too close to the side and rear property lines. Another violation was found during the special permit acceptance process, an open deck too close to a side property line. The applicant was requesting a special permit for errors in building locations to permit a tree house to remain 3.2 feet from a rear lot line and 5.9 feet from a side lot line, and an open deck/patio to remain 0.2 feet from a side lot line. Ms. Horner noted that the Zoning Ordinance requires a minimum side yard of 8.0 feet and a rear yard of 22.1 feet for the accessory tree house structure, and a minimum side yard of 5.0 feet for the open patio deck. Modifications of 2.1 feet and 18.9 feet were requested for the accessory structure, and a modification of 4.8 feet was requested for the open deck.

In response to a question from Ms. Gibb, Ms. Horner said the open deck was attached to the house.

Mr. Hoyle presented the special permit request as outlined in the statement of justification submitted with the application. He said his statement of justification was contained in the staff report, but noted that he built the tree house for his children.

In response to a question from Mr. Hammack, Mr. Hoyle stated that he had one son that who almost six years old, 15-month-old twins, and another child due in November.

Mr. Beard and Ms. Gibb discussed the time the tree house had been in the yard, over one year, and the cost expended to bring it before the Board of approximately \$1,900.

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

Mr. Byers moved to approve SP 2012-SP-013 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP L. HOYLE, SP 2012-SP-013 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 3.2 ft. from rear lot line and 5.9 ft. from side lot line and to permit open deck to remain 0.0 ft. from side lot line. Located at 8818 Sweet Gum Pl., Springfield, 22153, on approx. 11,699 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 12. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 2012; and

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

1. The applicant is the owner of the property.
2. The application meets all the criteria under A through G.
3. The staff report indicates that the deck was actually built prior to the applicant purchasing the home.
4. This was tangential to the original complaint on this property.
5. There are five letters of support which were read completely, including the homeowners on each side of the tree house or each side of the property, and they would be the ones that are most affected.
6. The one letter of opposition is from an individual that is across the street.
7. The applicant has made significant efforts from the standpoint of mitigating any obtrusiveness that the tree house might cause.

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

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

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

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

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

1. This special permit is approved only for the location of the accessory structure (tree house) and open deck as shown on the plat prepared by Apex Surveys, dated January 23, 2012, as revised through February 20, 2012, signed by Guy H. Briggs, submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ June 13, 2012, Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (GOOD SHEPHERD CATHOLIC CHURCH), SPA 82-V-035-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-035 previously approved for a place of worship to permit building additions, site modifications and increase in seats. Located at 8710 Mount Vernon Hwy., Alexandria, 22309, on approx. 10.53 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 22A.

Chairman Ribble called the applicant to the podium.

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

Lynne J. Strobel, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. She said the application proposed an amendment to allow building additions, site modifications, and an increase in seats. Currently, there were 875 seats in the sanctuary and 349 parking spaces on site. Ms. Cho noted that the additions and modifications would occur in five phases over time to add 11,020 feet in gross floor area, 200 seats, and 39 parking spaces. The FAR was proposed to increase from 0.09 to 0.12. Major additions included a classroom addition in Phase 3, a 200-seat chapel during Phase 4, and a separate fellowship building in Phase 5. Staff recommended approval of SPA 82-V-035-03 subject to the proposed development conditions.

In response to a question from Mr. Hammack, Ms. Cho said she had seen the letter from Mr. Dunn and spoken with him by phone. She said staff had not able to respond to his letter since it had only been received the day before the hearing, but she did notify the applicant of his concerns.

Mr. Hammack referenced Mr. Dunn's desire to retain the conservation easement and asked Ms. Cho if staff supported its retention. Ms. Cho responded that staff was not recommending its elimination, but that final approval would rest with the Department of Public Works and Environmental Services. She noted that adequate best management practice (BMP) facilities would have to be in place.

Mr. Hart and Ms. Cho discussed the conservation easement and the possibility of a sound barrier for the area between Mr. Dunn's property and the church. Ms. Cho noted that barrier requirements were previously waived; however, a solid architectural block or board-on-board fence would be required had they not been waived.

In response to a question from Mr. Hart, Ms. Cho stated that the easement was sparsely landscaped because maintenance over the years had not been kept up and several trees either fell or had to be removed due to their poor condition.

Mr. Hart and Ms. Cho discussed the location of the proposed new emergency access road which would be located adjacent to Mr. Dunn's property. Ms. Cho pointed out that the road would not be utilized by parishioners, but only for emergency access and for trash removal. In response to a question from Mr. Hart, Ms. Cho stated that the dumpsters were not currently screened from Mr. Dunn's house.

Mr. Hart and Ms. Cho also discussed VDOT's comments regarding the consolidation of two access points along Mt. Vernon Highway and closure of the Braddock Avenue access point. Ms. Cho noted said staff was recommending that screening be extended to Mt. Vernon Highway so that it could not be an access point.

In response to a question from Mr. Byers, Ms. Cho confirmed that some trees would be removed from the conservation easement, but staff proposed replacement landscaping. She also noted that screening would be added so that the dumpsters would be less visible from Mr. Dunn's property.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She noted that the proposed improvements would be made in five separate phases, with Phase 1 as the first phase, however, the other four phases might be taken out of order. Ms. Strobel stated that two community meetings had been held where the citizens expressed their desire to have the northeast corner access point closed. At these meetings, Ms. Strobel addressed their concern about the proposed lighting, stating that the church intended to lower the wattage from 600 to 250. She commented on the proposed screening, stating her concern with proposed Development Condition 10D. Ms. Strobel handed out a proposed revision to that condition, suggesting a six-foot-high board-on-board fence instead of additional plantings. She also offered a change to Condition 19 so that the current chain-link fence would be replaced by wooden board-on-board fence in Phase 3.

In response to a question from Mr. Beard, Ms. Strobel stated that the ratio of seats per parking spaces was 4 to 1; therefore, there would be 219 parking stalls for the 875 seats.

Mr. Hart and Ms. Strobel discussed the work to be done during Phase 3. Mr. Hart suggested that changes to the conservation easement be done in Phase 2, not Phase 3. He reasoned that if the road was moving in Phase 2, why not build the fence in Phase 2.

Ms. Cho stated that staff was not aware that the phases might not be done in sequence and recommended that the fence be installed in the second phase. Susan Langdon, Chief, Special Permit and Variance Branch, said that staff wanted the screening done when the parking lot was constructed.

Ms. Gibb made a disclosure and stated that she should have recused herself earlier. She left the public hearing.

Chairman Ribble, Mr. Hart, Ms. Strobel, and Ms. Langdon discussed the phasing of the development, specifically when the screening and fencing would be installed. Chairman Ribble thought the funding for each phase would dictate the order in which they were built. In response to a question from Mr. Byers, Ms. Strobel stated that Phase 1 was already funded. Although the Diocese had approved all the phases, for each phase the church would have to demonstrate to the Diocese that there was a minimum amount of funding.

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

Mr. Hart moved to approve SPA 82-V-035-03 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (GOOD SHEPHERD CATHOLIC CHURCH), SPA 82-V-035-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-035 previously approved for a place of worship to permit building additions, site modifications and increase in seats. Located at 8710 Mount Vernon Hwy., Alexandria, 22309, on approx. 10.53 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 22A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 2012; and

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

1. The applicant is the owner of the property.
2. The staff recommends approval, and the Board adopts the rationale in the staff report.
3. The applicant has presented testimony showing compliance with the required standards.
4. The facility has been in operation for some time.
5. With the imposition of the development conditions, subject to some tweaks, the impacts will be satisfactorily mitigated.

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

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

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

1. This approval is granted to the applicant only, The Most Reverend Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, Virginia and his successors in office (Good Shepherd Catholic Church), and is not transferable without further action of this Board, and is for the location indicated on the application, 8710 Mount Vernon Highway (10.53 acres), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Rinker Design Associates, P.C., dated May 3, 2012, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the non-residential use permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 seating capacity shall be limited to a total of 1,075 seats in the sanctuary and chapel areas. Seating in the fellowship building shall be limited to 200 seats.
6. Parking shall be provided as depicted on the special permit amendment plat. All parking shall be on site.
7. All ancillary activities and events, not including religious services, shall conclude no later than 10:00 p.m.
8. The one-story fellowship building shown on the special permit amendment plat shall not be rented to individuals or entities not affiliated with the applicant.
9. There shall be no concurrent use of the chapel and fellowship building for separate activities and events.
10. The transitional screening requirement along all property lines shall be modified in favor of what is proposed on the special permit amendment plat and described within this condition. All plantings shall be installed concurrent with the proposed improvements to the parking lot, or any phase of construction other than Phase 1.
 - a. A minimum of five (5) evergreen trees shall be planted within the area located between the two (2) access points on Mount Vernon Highway.
 - b. Subject to the limitations of an existing forty (40) foot sanitary sewer easement, a minimum of eight (8) evergreen shrubs shall be planted between the southernmost access point on Mount Vernon Highway and Surrey Drive.

- c. A minimum of up to five (5) evergreens and five (5) shrubs shall be planted to supplement the four (4) proposed deciduous shade trees adjacent to the expanded parking area (Phase 2) as designated on the special permit plat.
- d. At the applicant's option, either supplemental evergreen trees and/or evergreen shrubs shall be planted, or a six (6) foot high board-on-board wooden fence shall be installed, along the northern lot line from the western rear end of the proposed fellowship building to the eastern end of the parking lot, subject to existing easements, to provide relief from headlights to the residences to the north.

Final species, size and number of all plantings shall be determined in consultation with Urban Forest Management Division (UFMD), taking into consideration limitations of overhead utility lines, space, etc.

11. The barrier requirement along all property lines shall be waived, except as otherwise required herein.
12. The exterior of the additions and buildings, including the roofs, shall be architecturally compatible with the existing buildings and shall be similar in style, color and materials. The conceptual elevations as included in Attachment 1 may be modified with respect to building articulation by the applicant as part of final engineering and building design, provided that the modifications are in substantial conformance with the elevations shown on the special permit plat.
13. Interior and peripheral parking lot landscaping shall be maintained and supplemented in the parking lot in order to improve the visual appearance of the property, as necessary. Dead, dying or hazardous materials shall be replaced in the first phase of construction.
14. A geotechnical engineering study in accordance with Chapter 107 of the Fairfax County Code shall be required at the time of site plan review if determined necessary by the Director of DPWES, and its recommendation implemented as determined by the Department of Public Works and Environmental Services.
15. Any proposed lighting of the parking lot areas shall be in accordance with Par. 9 of Article 14 of the Zoning Ordinance and with the following:
 - The combined height of any new light standard and fixtures shall not exceed sixteen (16) feet;
 - The lights shall be low intensity design, full cut-off fixtures, which focuses the light directly onto the subject property;
 - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
 - There shall be no up-lighting of the site, including signs.
 - All lighting except that needed for security purposes shall be turned off within ½ hour after the end of an event.
16. The conservation easement as shown on the plat shall be preserved as undisturbed open space. There shall be no use, improvements, or clearing and grading within the conservation easement area without the prior written approval of Fairfax County.
17. Unless waived or modified by DPWES, Stormwater Management (SWM)/Best Management Practices (BMPs) shall be provided on site in accordance with Public Facilities Manual (PFM) requirements.
18. A sign permit shall be obtained for any proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

19. Notwithstanding the fencing shown on the special permit, the existing four (4) foot high chain link fence located along the western property line shall be replaced with a six (6) foot high board-on-board wooden fence. The wooden fence shall have a length of approximately two hundred (200) feet and shall extend from the northwest corner of the property in a southerly direction and terminate at an existing public walkway. Said fence shall be installed concurrent with the improvements proposed with Phase 3.

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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved by this special permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing. Mr. Smith was absent from the meeting.

//

~ ~ ~ June 13, 2012, After Agenda Item:

Approval of May 9, 2006; June 13, 2006; and August 8, 2006 Minutes


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


//

As there was no other business to come before the Board, the meeting was adjourned at 10:47 a.m.

Minutes by: Suzanne Frazier

Approved on: May 14, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, June 27, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. BRIDGETTE DOWNER AND JESSE DOWNER, SP 2012-SP-015 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 12377 Henderson Rd., Clifton, 20124, on approx. 1.96 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-3 ((1)) 12.

Chairman Ribble called the applicants to the podium.

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

Bridgette Downer, 12377 Henderson Road, Clifton, Virginia, reaffirmed the affidavit.

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

Ms. Downer presented the special permit request as outlined in the statement of justification submitted with the application. She stated that on May 13, 2011 she received a Notice of Violation on Zoning Ordinance 10-104 for an accessory fence exceeding 4 feet in the front yard. The violation also stated that the Ordinance permitted an accessory fence in the front yard as long as it was in conformance with paragraph 3B. Her fence was 6 feet in height, and she owned 1.96 acres, therefore she was .04 acres shy of qualifying under this paragraph. She had no knowledge of the Ordinance prior to constructing the fence. She observed five other fences in the area which exceeded 4 feet in height in the front yard, one of them being on less than 2 acres. She stated that on each of the properties the homes were less than 40 feet off the road, and this proximity to Henderson Road and the nature of traffic on Henderson necessitated the increase of the fence height to 6 feet to protect her health and increase safety.

Ms. Gibb asked what the nature of the complaint was. Charles Fitzhugh, Department of Code Compliance, stated that the complaint came in by a passerby who was familiar with the code, and who noticed that the fence was possibly over 6 feet tall.

Ms. Gibb asked whether he knew of any fences in the neighborhood with fences over 4 feet and similar in looks. Mr. Fitzhugh stated he was aware of one fence, but it was not similar in looks. It was located on a larger property with a masonry wall.

Ms. Gibb asked the applicant if that was the fence she referred to in her justification, and whether she had any photos. Ms. Downer stated that was not the one she referred to, but she referred to five that were wooden, or board on slat fences, which looked similar to hers.

Mr. Hart asked whether the lot was nonconforming, and if the minimum lot size in this district was 5 acres. He also asked that if this lot was a whisker bigger, whether the fence would be by right, and if a conforming lot half this size in this neighborhood could still have the fence by right. Ms. Hedrick answered yes that anything over 2 acres was permitted to have a fence this height, and this property is 1.96 acres. Mr. Hart stated that there were plenty of fences nearby like this one. Ms. Hedrick stated that, doing the research within the database, no other properties in this immediate vicinity had received a special permit for this type of request, probably because they were all RC lots and more than likely all over 2 acres in size.

Chairman Ribble called for speakers.

Geneva Linder, 7721 Rosegate Court, Clifton, Virginia, stated that her property fronts Henderson Road, and she was a direct neighbor across the street. She agreed with Ms. Downer and her research as it related to

traffic, as she has seen cars pass school busses on the road which was very hilly. She stated that she thought the fence and landscaping was nice. She noted that there were other fences that were high were on the property across the street and to the left of Ms. Downer. They put a fence up without an application, because the property was over 5 acres. She was in total support of what Ms. Downer wanted to do.

Erick Linder, 7721 Rosegaet Court, Clifton, Virginia, stated that he was in agreement with his mother, Geneva Linder and the applicant. He thought the fence looked great, and matched everything around it. He stated that he recalled prior to the fence, seeing their baby in the front yard, and wondered whether a car would hit them. He had not heard anything bad said about the fence in the neighborhood.

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

Mr. Hammack moved to approve SP 2012-SP-015 for the reasons stated in the resolution

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIDGETTE DOWNER AND JESSE DOWNER, SP 2012-SP-015 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 12377 Henderson Rd., Clifton, 20124, on approx. 1.96 ac. of land zoned R-C and WS. Springfield District. Tax Map 86-3 ((1)) 12. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 2012; and

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

1. The applicants are the owners of the land.
2. The motion is based on the testimony of the applicant and the acknowledgement that there is a great deal of traffic on Henderson Road that just simply keeps enlarging, and that, in and of itself, justifies a higher fence.
3. The fence is pulled in from the property line a little bit. It varies from 4.2 feet to maybe a little further back and then comes back to the property line, and so it does not interfere with the sight lines along Henderson Road.

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 the wood privacy fence as shown on the plat prepared by DiGiulian Associates, P.C., dated May 24, 2011, as signed and sealed through March 16, 2012, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. SANJEEV MAGOON, SP 2012-DR-016 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit deck to remain 23.4 ft. from front lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 6319 Old Dominion Dr., McLean, 22101, on approx. 32,154 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 72 (Concurrent with VC 2012-DR-003).

9:00 A.M. SANJEEV MAGOON, VC 2012-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in front yard. Located at 6319 Old Dominion Dr., McLean, 22101, on approx. 32,154 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 72 (Concurrent with SP 2012-DR-016).

Chairman Ribble called the applicant to the podium.

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

Sanjeev Magoon, 6319 Old Dominion Drive, McLean, Virginia, reaffirmed the affidavit.

Farhang Mojgani, 20924 Nerine Court, Sterling, Virginia, came forward.

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

Mr. Hart asked, if the variance were to be denied, what the applicant would have to do, wondering if the applicant would have to get rid of the point of the pillars, and how much of it would have to come off. Ms. Hedrick stated that pillars 1, 2, 3, 11, 12 and 13 were over 6 feet in height. She stated she was not sure what portion of the pillars would need to come down, but would defer that question to the applicants' agent about how they would accommodate reducing it to 6 feet.

In response to questions from Mr. Hart, Ms. Hedrick stated they would install a permanent planter as indicated by a square located in the middle of the plat. Everything would stay the same on the plat. It was all concrete paver patio and driveway with one uniform look, which is why they were putting in the planters. If the special permit were denied, Ms. Hedrick did not know how much of the front patio would have to be taken away, but the impervious coverage for the driveway was at 21 percent. If all of the patio space was added into that for parking, they would exceed the 25 percent permitted. The impervious surface would be approximately 26 to 27 percent if all of the space was included.

Mr. Hart stated the applicant had two problems, one being the percentage over and the other being part of the driveway was too close to the front. Ms. Hedrick replied that the applicant indicated that there was no issue with impervious coverage since they do not park there. They park in another area because the applicant has committed to installing the planter and the patio area cannot be used for parking.

Mr. Byers asked whether the two neighbors on either side of the pillars had complained about the size of the pillars. Ms. Hedrick stated that she had not been aware of any complaints.

Mr. Ribble asked whether the code allowed for two of the pillars to be above the height in the driveway or gate. Ms. Hedrick stated that if there was a gate, then it would be allowed, but there was no gate.

Ms. Hedrick clarified that if the special permit would be denied, then the applicant would be required to reduce the front patio to not be closer than 34 feet from that front lot line. It would get a permitted extension because it was at grade. It was permitted to extend 6 feet into the front yard.

Mr. Hart asked whether the steps were past the 34 feet. Ms. Hedrick indicated that the steps, as shown on the plat, were already extended into the building restriction line. Mr. Hart asked where the patio was supposed to be according to the building permit. Ms. Hedrick stated that the previous owners obtained the building permits, but when Department of Public Works came in for a final inspection, they found the

violations. The violation was that they had exceeded the lot coverage of 18 percent impervious coverage for the entire lot, and therefore under violation for not abiding by the building permits. Then the house went into foreclosure, and Mr. Magoon purchased the property with these violations. The remedy to that were these applications. They also have to submit a new grading plan to the Department of Public Works and Environmental Services (DPWES) and a Best Management Practice (BMP) waiver for the impervious coverage.

Mr. Hart said that he meant specifically for the approved plans for the house which go with the building permit, and what was supposed to be built in the area where the steps and patio were. Ms. Hedrick stated that she did not have a copy of the permit, because it was done through a grading plan, and was still under review.

Mr. Hart asked whether the first building permit had been approved. Ms. Hedrick stated that the first building permit did not show all of these items. The Notice of Violation did not show a side load garage, the driveway being as large as it is, or a patio in the rear yard. All of these items were violations of the previous owners.

Mr. Byers asked whether the County issued a stop work order, because of the building permit not being approved, and also wondered how the previous owners were able to complete the house if nothing had been approved. Ms. Hedrick stated that she was not sure, but the previous owners applied for a building permit through a grading plan, and they exceeded what the building permit was for. That was why the violation was presented. Within the violation they were required to submit a revised plan to the County showing all the items they had added to the property that were not on the building permit. Mr. Byers asked whether that was the original owner, and if everything had stopped before it went into foreclosure. Ms. Hedrick stated that yes it was the original owner, and that was why the applicant was trying to remedy the zoning violations.

Answering Mr. Hammack's question, Ms. Hedrick stated that the applicant and his agent had been instructed by the Department of Public Works through the site reviewers, that upon approval of this application, they can submit a BMP waiver request, which will more than likely be approved. It would be another step in the process, and Mr. Magoon's agent was working with the site reviewer.

Mr. Magoon presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He said he purchased the house from foreclosure in 2009. Before it was finalized, he was told by the agent that Fairfax County had contacted them about issues with the house. The bank that owned the house hired an engineer, Mr. R.C. Fields, who spoke with the supervising engineering, Mr. Ed Ballard, inspector for Fairfax County, and they discussed what needed to be done to the house. He was told that a new grading plan would need to be submitted to represent what was actually built on the property. The issue could be managed by building a new storm management system and planting more trees to meet Chesapeake Bay requirements. No structural changes would be needed on the property. To comply he had planted 50 to 60 trees in both the front and back of the house. All of the issues were built before he purchased the house. Due to that he did not think he would have to make any structural changes. With respect to the pillars on either side of the house, those were set back further along the road than the other pillars.

In answer to Mr. Hart's question, Mr. Magoon stated he had lived in the house since March of 2009. Prior to that, the previous builder had lived in the house while it was being built.

Mr. Hart asked how the previous owner got a residential use permit if there was all this confusion over the permit. Ms. Hedrick stated she did not know, but thought there was a house there being renovated. She stated that she did not think this was a teardown and rebuild.

Mr. Hart said the staff report stated that the house was built in 2007, so it was his understanding that this was a new house. Mr. Magoon said that he thought this was a do over of an old house, because he thought the previous owner had torn down everything but the basement.

Mr. Hart asked if they were allowed to tear down the old house, except the basement, and still use the old residential use permit. Susan Langdon, Chief, Special Permit and Variance Branch, stated that she did not know all the history of the property, since DPWES had been working exclusively with the property until she received due to zoning issues.

Mr. Hart asked whether there was an extraordinary condition that would authorize a variance on the lot. Mr. Magoon stated that in terms of the pillars, they all have a design to where if the first three and last three pillars were to be cut that would make it look asymmetrical. So to preserve the symmetrical design of the pillars he felt like he would need to keep the same design. If three were cut then all thirteen would need to be cut.

Discussion continued on the different heights of the pillars, and whether the neighbors had any problems with them.

Ms. Langdon clarified the issues about the building permits, stating the house appeared to have been occupied in 1995, and the owners continued to expand. The original signoff for occupancy on the residential use permit was in 1995.

Discussion ensued with regard to what was supposed to be built in front of the house, the Notice of Violation having to do with the grading plan not being approved, the setbacks as shown on the plat, and whether or not there was originally going to be a circular driveway.

Chairman Ribble called for speakers.

Rafik Bazikian, 22765 Almost Neavitt Road, Neavitt, Maryland, the engineer, came forward to speak in support. Answering questions from Board members he stated he was the engineer from 2004 to 2005, and it was approved with a BMP wavier. He had copies of the approved permits, and would provide them.

Mr. Mojgani, the applicant's agent, came forward to speak. He did not know all the background, but the house was purchased under as is condition. They were not aware of all the violations, only the BMP issue. He stated that the current situation did not present unsafe conditions to anyone, and was in harmony with the building. He stated that there were two letters from neighbors stating that they had no opposition to the current conditions. It was not Mr. Magoon's fault as to the current violations, and it would be a hardship to make corrections. He stated that they are willing to all corrections to meet the variance, such as putting in a gate or land grading to bring the height below 6 feet.

Mr. Ribble asked when the agent was hired. Mr. Mojgani stated he was hired three months before the application was submitted.

There was discussion on meeting variance requirements, building up the dirt around the pillars to shorten the height, purchasing the property as is not negating the requirements of the Ordinance, on whether there were finalized permits, and the applicant needing another grading plan due to all the expansion.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny VC 2012-DR-003 for the reasons stated in the Resolution.

Discussion ensued regarding supporting the motion, due to there not being extraordinary conditions taking into consideration the lot size, and that the agent suggested that there were solutions if the application was denied.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SANJEEV MAGOON, VC 2012-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 6.0 ft. in height to remain in front yard. Located at 6319 Old Dominion Dr., McLean, 22101, on approx. 32,154 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 72 (Concurrent with SP 2012-DR-016). 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 27, 2012; 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 32,154 square feet.
4. Based on what the Board sees, the subject property was acquired in good faith, but it is difficult to see that the subject property has one of the following characteristics which are the exceptions which would allow the Board to grant a variance: Under 6, which was not satisfactorily answered, the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use of the subject property or the granting of the variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege by the applicant.
5. The staff report essentially indicates that the applicant would prefer not to modify the existing pillar and wall heights. That has the connotation certainly of a convenience for the applicant.
6. The authorization of the variance could be of substantial detriment to adjacent properties.
7. The pillars seem to be out of conformance on either end and are close to adjacent properties.
8. The one property on the left of the house as you face it is relatively small.
9. It could change the character of the zoning district because the Board does allow up to six feet, but we certainly do not allow up to 7.83 feet.
10. It is not in harmony with the intended spirit and purpose of the Ordinance and would be contrary to the public interest.

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

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

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

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

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

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

//

Mr. Byers moved to approve SP 2012-DR-016 for the reasons stated in the Resolution.

Discussion ensued with regard to changing one development condition, and adding a condition, which was accepted.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANJEEV MAGOON, SP 2012-DR-016 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit deck to remain 23.4 ft. from front lot line and fence greater than 4.0 ft. in height to remain in front yard. Located at 6319 Old Dominion Dr., McLean, 22101, on approx. 32,154 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 72 (Concurrent with VC 2012-DR-003). 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 27, 2012; and

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

1. The applicant is the owner of the land.
2. The application complies with Items A through G.

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

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

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

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

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

1. This special permit is approved for the location of fencing, brick pillars and decorative walls in the front yard, a maximum 6.0 feet in height, and deck (at-grade patio) as shown on the plat prepared by Civiland, LLC, dated April 3, 2012, as revised and sealed through June 4, 2012, as submitted with this application and is not transferable to other land.
2. A revised Infill Lot Grading Plan which reflects all site conditions shall be submitted to the Department of Public Works and Environmental Services within 120 days of approval of this application.
3. The fencing, brick pillars and decorative walls shall be reduced in height as applicable, and permits and final inspections for these features shall be obtained within 120 days of approval of this variance application.
4. The installation of a 2 x 4 permanent planter to clearly delineate the concrete paver driveway from the concrete paver patio, as shown on the plat, shall be installed within 30 days of approval of this application and shall be reflected on the revised Infill Lot Grading Plan.
5. No additional pavement, patio, or driveway shall be installed in the front yard other than what is there currently.

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.

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

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

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. MARGARETHA CARROLL MCGRAIL, TRUSTEE, SP 2012-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.3 ft. from rear lot line and 0.1 ft. from side lot line. Located at 743 Lawton St., McLean, 22101, on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 30. (Continued from 4/18/12.)

Chairman Ribble called the applicants to the podium.

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

Margaretha McGrail 743 Lawton Street, McLean, Virginia, came forward.

Chairman Ribble asked whether or not there was anything additional.

Brenda Cho, Staff Coordinator stated that the reason the case was continued was because there was specific language in the previous agreed order that required a decision within 21 days, but since then an amended agreed order had been issued that permits the decision to proceed without delay.

Mr. Hart moved to approve SP 2012-DR-006 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARETHA CARROLL MCGRAIL, TRUSTEE, SP 2012-DR-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.3 ft. from rear lot line and 0.1 ft. from side lot line. Located at 743 Lawton St., McLean, 22101, on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 30. (Continued from 4/18/12) 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 June 27, 2012; 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 applicable standards have been satisfied.
3. The problem the Board had was that time seemed to have run out under the court order, and we were beyond the window of time for the Board to do anything. That has since been affected in that the Board has a memo from Ms. Cho showing that Judge Nordlund signed another order on May 2nd which would allow the Board to proceed to decide the special permit application without regard to any delays that might have occurred with respect to the filing of the application and/or the defendant's satisfaction of all requests to the BZA and County staff relative to such application.
4. The shed itself does not seem to be bothering anyone and is well away from much of anything except it seems to be up against the neighbors' pool house, which itself seems to be quite tall and close to the line and large. The status of the pool house is unknown, but this is certainly no worse than that.
5. It does not seem that there is any negative impact on anyone.
6. Consistent with what the Board heard, an approval would be appropriate.

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

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

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

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

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

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

1. This special permit is approved for the location and size of the accessory storage structure (frame shed) as shown on the plat prepared by Highlander Surveying Services, P.C., dated September 23, 2011 and revised through January 13, 2012, as submitted with this application and is not transferable to other land.

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

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

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. LESLEY FORDE, SP 2012-DR-017 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 stairs to remain 12.0 ft. from one front lot line, deck to remain 26.8 ft. from other front lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 1464 Pathfinder Ln., McLean, 22101, on approx. 11,174 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (8) 305.

Chairman Ribble called the applicant to the podium.

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

Ms. Lesley Forde, 1464 Pathfinder Lane, McLean, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation.

Ms. Forde presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she purchased the property on September of 2009, and the house had been previously built upon and flipped. She stated that she purchased the house not knowing any of the zoning violations, and it was not brought to her attention upon closing. Ms. Forde stated that she went to add on to the house after finding out she was pregnant and that was when she learned that the front staircase encroached the setback being 12 feet from the property line. She stated that she hired the contractor that had previously done work on the house for the prior home owners, and he mentioned that he built the front stairs that way and since it was his error he would fix it for her at no additional cost. She stated that the contractor had spoken with zoning and submitted plans to fix the stairs and was issued a building permit then he told her that he would no longer fix the issue. She continued that the contractor started to build the addition and she terminated the contract because he would no longer fix the issues with the staircase. Ms. Forde stated that at that point she hired another contractor to finish the addition while she worked with the County to resolve the issues with the stairs to move the violations into compliance. She continued to state

that upon submitting the special permit, the special permit plat was completed and that was when she found out that the side deck was also encroaching the setback, and that the fence was not built correctly.

Ms. Gibb stated that she visited the property and did not know how she would get off the steps if she did not encroach. Ms. Forde stated that she would have to rebuild the whole front of the house, move it over and build a retaining wall.

Ms. Gibb stated that it was a huge drop-off. Ms. Forde stated that she thinks that is why the previous owners built it that way, because on one side there is a 4 foot drop-off and the other side it is a 2 foot drop-off.

Ms. Gibb stated that if that landing had been taken off, the drop-off was about 5 feet, and asked how tall the fence was. Ms. Forde stated that she thought it was 5 feet in height, making it 1 foot taller than permitted.

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

Ms. Gibb moved to approve SP 2012-DR-017 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LESLEY FORDE, SP 2012-DR-017 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 stairs to remain 12.0 ft. from one front lot line, deck to remain 26.8 ft. from other front lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 1464 Pathfinder Ln., McLean, 22101, on approx. 11,174 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((7)) (8) 305. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 2012; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony and in her justification that the applicant bought the property in good faith.
3. All the conditions existed when the applicant purchased the property.
4. The applicant tried to remedy the issues, but it just does not seem possible as far as the front steps.
5. As far as the deck on the side, there is no impact on any neighbor.
6. It looks out on the driveway and then across a big swath of grass and trees and then out on to Pathfinder.
7. Same thing with the steps. There is no impact on any neighbor.
8. As far as the fence, also no impact on the neighbor.
9. The fence is on a hill.
10. It actually looks shorter than it is.
11. The Board has received no complaints on it.

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

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

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

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

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

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

1. This special permit is approved for the location and size of the stairs, deck and fence as shown on the plat prepared by Dominion Surveyors Inc., dated August 9, 2011, revised March 5, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the stairs and landing shall be diligently pursued and obtained within six months of final approval of this application.

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

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

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. LA IGLESIA DE SANTA MARIA EPISCOPAL CHURCH AND NEW BUILDING BLOCKS PRE-SCHOOL, LLC, AND DIALOGUE RUSSIAN CENTER FOR CULTURAL DEVELOPMENT(DIALOGUE RCCD, LLC,) D/B/A METAPHOR RUSSIAN LANGUAGE SCHOOL, SPA 76-S-109-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 76 S-109 previously approved for church with child care center to permit the addition of a nursery school and school of special education and increase in land area. Located at 6928 and 7000 Arlington Blvd., Falls Church, 22042, on approx. 3.98 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183, 184 and 50-3 ((6)) 185. (*Admin. moved from 3/14/12, 3/28/12, and 4/25/12 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

Zhanna Buzov, 7000 Arlington Boulevard, Falls Church, Virginia, reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation. Staff recommended approval of SPA 76-S-109-02 subject to the proposed development conditions.

Answering questions from Mr. Hart, Ms. Cho gave the following information. Parents parked in the parking lot and on the street to walk their children to the building entrance. A separate entrance is used for the child care center. For the existing child care center, parents drove up the driveway for pickup and drop-off, which Ms. Cho observed one morning. She noted that since the entrance is located through the play-area, the parents that utilize the child care center use the driveway, because it is the most convenient way to access the entrance. The child care center opened at 7:00 a.m., and the proposed nursery school and school of special education proposed to open at 8:00 a.m., so there could possibly be some overlap between 8:00 a.m. and 9:00 a.m. Based on the proposed parking study as it related to demand, on the weekend when all the uses were operating concurrently, the parking demand never exceeded the total parking available.

With regard to the letter of complaint the Board received stating that the drop-off was not really onsite, Ms. Cho stated that staff did review the letter, and noted the condition which required all pickup and drop-off to be on the site in the parking lot. That would not be enforceable unless the special permit amendment was approved with that specific development condition. She noted that the sidewalk was the safest area.

Ms. Buzov presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she sent out an email to all the parents which requested that they park in the parking lot and walk the children towards the school building. She said she would make it part of her application process by having each parent sign a paper when applying to attend the school.

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

Mr. Smith moved to approve SPA 76-S-109-02 for the reasons stated in the Resolution.

Discussion ensued regarding the parking issue and parents' acknowledgement of such. It was decided to add an additional development condition to make clear what the applicant agreed to give written notice upon application to her school about the parking situation. Also, it should state that this will be done to protect the applicant and the public safety and welfare of the students.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LA IGLESIA DE SANTA MARIA EPISCOPAL CHURCH AND NEW BUILDING BLOCKS PRE-SCHOOL, LLC, AND DIALOGUE RUSSIAN CENTER FOR CULTURAL DEVELOPMENT(DIALOGUE RCCD, LLC,) D/B/A METAPHOR RUSSIAN LANGUAGE SCHOOL, SPA 76-S-109-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 76 S-109 previously approved for church with child care center to permit the addition of a nursery school and school of special education and increase in land area. Located at 6928 and 7000 Arlington Blvd., Falls Church, 22042, on approx. 3.98 ac. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 127, 128, 129, 182, 182A, 183, 184 and 50-3 ((6)) 185. (*Admin. moved from 3/14/12, 3/28/12, and 4/25/12 at appl. req.*) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 2012; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 3.98 acres
4. Staff has recommended approval.

5. The Board agrees with the analysis in the staff report and incorporates that.
6. There have not been complaints about the existing child care center use.
7. Additional property has been added, going from 3.47 acres up to 3.98 acres, to accommodate the additional nursery school and school of special education.
8. The big issue right now seems really to be parking.
9. Certainly the parking study that was done, as confirmed by staff and the Transportation Department, seems to indicate that there is adequate parking on site.
10. The real issue seems to be whether there is going to be compliance with the Development Condition 14 that was added that all parking will be on the site. That is the critical issue.
11. The testimony from the applicant about notifying the parents, actually having them sign something so that there is a contract with them that they will be dropping off their children utilizing the existing parking on the site and impressing upon them the safety issues associated with that, that is important, and there is an enforceable development condition.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, La Iglesia de Santa Maria, New Building Blocks Preschool, LLC, and Dialogue Russian Center for Cultural Development (Dialogue RCCD), LLC d/b/a Metaphor Russian Language School, and is not transferable without further action of this Board, and is for the location indicated on the application, 6928 and 7000 Arlington Boulevard, consisting of 3.98 acres, and is not transferable to other land.
2. This special permit amendment is granted only for the purposes, structures and/or uses indicated on the plat prepared by George B. Korte, Land Surveyor, dated January 11, 1984, 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 made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this Special Permit shall be in substantial conformance with these conditions. Minor modifications to the approved Special Permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the main area of worship shall be two hundred seventy six (276).
6. The total maximum daily enrollment shall not exceed 80 children for the child care center.
7. The maximum hours of operation of the child care center shall be limited to Monday through Friday, 7:00 a.m. to 6:00 p.m.
8. The maximum number of employees on site at any one time for the child care center shall be limited to 15.
9. Upon issuance of a new non-RUP, the total combined maximum daily enrollment shall not exceed 72 students for the nursery school and school of special education.
10. The maximum hours of operation of the nursery school and school of special education shall be limited to Monday through Friday, 8:00 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to 4:00 p.m.
11. The maximum number of employees on site at any one time for the nursery school and school of special education shall be limited to 10.

12. A play area shall be provided which meets the standards set forth by Section 9-310 of the Zoning Ordinance. The play area shall be located outside the minimum required front yards, transitional screening areas, and parking lot.
13. A minimum of two (2) play sessions shall be required for the nursery school and school of special education if there are more than 45 children at any one time.
14. All parking shall be on site, as depicted on the special permit amendment plat. The applicant shall obtain approval of a parking reduction through DPWES as required by Sect. 11-106.3 of the Zoning Ordinance prior to the issuance of a new Non-RUP for the church, child care center, nursery school and school of special education to permit the shared use of the church parking lot for all of the approved uses. If approval of a parking reduction is not obtained, the number of seats in the worship area and/or the number of children in the child care center, nursery school and/or the school of special education respectively shall be reduced to meet the parking requirements as determined by DPWES, prior to issuance of a non-RUP for the nursery school and school of special education, which must be obtained within 6 months of approval of this special permit amendment application.
15. The four parking spaces along Westcott Street shall be dedicated for the use of the church only.
16. Pick up and drop off for the nursery school and school of special education shall be conducted on site in the parking lot off Arlington Boulevard. The applicant shall have parents sign an acknowledgment in the application form and/or contract that parents will park in the church parking lot to pick-up and drop-off of children. There shall be no curbside pick-up and drop off of children.
17. Traffic control devices and/or directional signage shall be arranged on site to direct any traffic for the child care center, nursery school and school of special education to the entrances and parking areas of the different uses.
18. All signage shall be in conformance with Article 12 of the Zoning Ordinance.
19. Transitional screening and barrier requirements on all boundaries shall be modified or waived to that shown on the special permit amendment plat. The transitional screening shall be maintained, and dead, dying or hazardous materials shall be replaced.

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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. PRASHANT SAWANT, SP 2012-SU-018 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 2300 Hunter Mill Rd., Vienna, 22181, on approx. 2.07 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((12)) 2.

Chairman Ribble called the applicant to the podium.

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

Prashant Sawant, 2300 Hunter Mill Road, Vienna, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended denial of SP 2012-SU-018.

Answering Board members questions, Ms. Horner and Susan Langdon, Chief, Special Permit and Variance Branch, gave the following information. There were several reasons why staff was recommending denial. One being because the original base substructure was never part of a valid building permit process. While it was vested, it still was not considered a legal structure, and staff believed there were limitations to the vested rights. If the property was destroyed, the applicant would not be allowed to rebuild. Although this was not constructed by the applicant, it was constructed illegally, was later enclosed without a building permit, and the applicant was now asking for something more in addition to the vested rights.

The garage was about 5 feet from the lot line, and the second story bumped in a little bit, so would be approximately 10 feet from the lot line.

This request was to increase the depth of the garage and come out in the front. Both issues, coming forward on the garage and the upstairs were a problem. However, if the applicant went back 10 more feet with the upstairs, they would not need the application. Mr. Hart asked, if it was 10 feet from the bump-out or 10 feet from the upstairs wall. Ms. Langdon referred to the overhead to show the location.

Mr. Beard asked whether staff has tried to work things out with the applicant. Ms. Horner stated she has spoken with the applicant and was sure that they would present testimony today as to why they chose to go forward this way. As she understood it a lot of it had to do with marketability.

Mr. Sawant presented the special permit request as outlined in the statement of justification submitted with the application. He brought new plans with the second floor drawings. Mr. Sawant stated that even though the lot was large, before he started the design he was not aware of the restrictions. He purchased the property in 2008. Had he been aware that the structures were not legal, he would not have purchased the property or he would have tried to reduce the asking price. The property was undervalued, so he wanted to propose an addition which would make sense. He stated he is willing to take it an extra 5 feet inside in order to make an adjustment. Looking at the other side of the property he would have to take out the tree. There was support from neighbors for this application.

Mr. Hart asked whether the shed was attached to a foundation. Mr. Sawant stated that it was not but if he moved it to the inside it would be on the drain field, if he moved it to the opposite side of the property, his neighbors' storm water wells would go through that, which was the reason he could not build a swimming pool there.

In response to questions from Mr. Hart about the tree house, Mr. Sawant indicated that he paid approximately \$15,000 and built the tree house after the original permit was denied, because his builder stated that he did not need approval for a tree house.

A discussion ensued between Mr. Hammack, the applicant, and staff about the reasons the easement was vacated and where the water would flow.

Mr. Byers asked if the permit review branch had originally denied the tree house permit. They came back in for an interpretation and it required a permit but the applicant built the tree house anyway. Ms. Horner state that was correct

Chairman Ribble called for speakers.

Mark Mogenson, 21950 Golden Spike Terrence, Sterling, Virginia came forward in support of the application. He was the designer of the proposed addition, specifically the garage.

Mr. Hart stated that under 8-922 Sub. Sect. 9 the Board has to determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. This included factors to consider such as the layout of existing structures and the availability of alternate locations for the addition. He stated that he struggled from the beginning with the need for the upstairs over the garage, and believed it would be a magnificent home whether the garage had the 10 foot on top or not. He did not think it made a difference whether the upstairs came all the way out to the end of the garage, which it didn't according to the bump out shown on the drawings. There was no functional reason the bedroom had to be 10 feet, as opposed to 8 feet. The proposed master bathroom and closet were enormous, and could both be reduced in size.

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

Mr. Beard moved to defer decision on SP 2012-SU-018 to September 19, 2012, at 9:00 a.m. Mr. Hart seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ June 27, 2012, Scheduled case of:

9:00 A.M. CENTRAL SIKH MISSION OF AMERICA, SP 2012-SP-002 Appl. under Sect(s). 8-302 of the Zoning Ordinance to permit a place of worship. Located at 7800 Ox Road, Fairfax Station, 22039 on approx. 8.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 96-2 ((1)) 21. *(Admin. moved from 4/25/12 at appl. req.)*

Chairman Ribble noted that SP 2012-SP-002 had been administratively moved to September 12, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ June 27, 2012, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by McGuireWoods on behalf of Kettler, Inc. See memorandum dated April 18, 2012, from Mavis E. Stanfield, Deputy Zoning Administrator for Appeals.
(Continued from 4/25/12 and 5/23/12)

Mr. Ribble asked for someone to shed some light on why this was still being considered.

Mavis Stanfield, Zoning Administrator, stated they were still in the process of negotiating a resolution to the issues that were raised in the appeal.

Mr. Smith moved to defer the Consideration of Acceptance to September 12, 2012, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

//

~ ~ ~ June 27, 2012, After Agenda Item:

Request for Reconsideration regarding David Guglielmi, SP 2011-SP-107

Mr. Hart recused himself from the reconsideration.

Discussion ensued with regard to procedure, and then with the applicant regarding the request. The applicant then decided to withdraw his request for reconsideration, with the possibility of filing for a special permit amendment.

//

~ ~ ~ June 27, 2012, After Agenda Item:

Approval of September 26, 2006; August 10, 2011; and December 7, 2011 Minutes

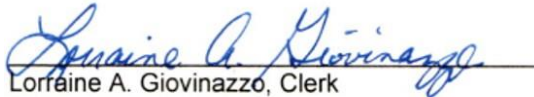
Mr. Hammack moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.


//

As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

Minutes by: John W. Cooper

Approved on: October 17, 2018


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, July 11, 2012. The following Board Members were present: Chairman John Ribble; 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. During Board Matters, Chairman Ribble congratulated Leslie Johnson, who had been selected to be the next Zoning Administrator. There being nothing further to bring before the Board, Chairman Ribble called for the first scheduled case.

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. STEPHEN COLE, SP 2012-DR-019 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1814 Opalocka Dr., McLean, 22101, on approx. 10,545 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((24)) 20.

Chairman Ribble called the applicant to the podium.

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

Stephen Cole, 114 Opalocka Drive, McLean, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an accessory dwelling unit in the basement of an existing dwelling. Ms. Horner noted that family members over the age of 55 would reside there. She stated that staff recommended approval of SP 2012-DR-019 subject to the proposed development conditions.

Mr. Cole presented the special permit request as outlined in the statement of justification submitted with the application. He said his parents were elderly, in their late 70s and early 80s, and that there were health concerns with his mother. Mr. Cole noted that the basement was a full daylight walkout basement, to which he would like to add a kitchen for his parents. He stated that one letter of opposition had been received; however, that neighbor was only opposed to transients, not his parents.

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

Mr. Hammack moved to approve SP 2012-DR-019 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN COLE, SP 2012-DR-019 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 1814 Opalocka Dr., McLean, 22101, on approx. 10,545 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((24)) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has a favor staff recommendation.

3. The applicant has given really, pretty much a textbook example of the need and requirement to allow an accessory dwelling unit such as this.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of the building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant/owners only, Stephen and Cristina Cole, and is not transferable without further action of this Board, and is for the location indicated on the application, 1814 Opalocka Drive (10,545 square feet), and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 1,200 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable trade permits and final inspections shall be obtained for all components in the accessory dwelling unit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance, or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on site as shown on the special permit plat.

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

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

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

//

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. CAROLINE M LEIES, SP 2012-DR-023 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of an addition 7.5 ft. from side lot lines. Located at 2017 Franklin Ave., McLean 22101 on approx. 21462 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((7)) 16.

Chairman Ribble noted that SP 2012-DR-023 had been indefinitely deferred at applicant's request.

//

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. JAY S. MILLER TRUSTEE, SP 2012-SU-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain yard requirements for R-C lots to permit construction of a deck 8.0 ft. from the side lot line. Located at 4341 Cub Run Rd., Chantilly 20151 on approx. 11683 sq. ft. of land zoned RC and WS. Sully District. Tax Map 33-4 (92) 78.

Chairman Ribble called the applicant to the podium.

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

Jay Miller, 4341 Cub Run Road, Chantilly, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested permission to construct a deck 8.0 feet from the side lot line, requiring a modification of 12 feet. Ms. Langdon noted that the property had originally been developed under R-2 regulations, which this request would have met.

Mr. Miller presented the request as outlined in the statement of justification submitted with the application. He stated that the house was built in 1981 under the R-2 zoning district which had 8-foot side yard requirements. Mr. Miller said the current deck was in poor condition and needed replacing.

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

Mr. Byers moved to approve SP 2012--SU-020 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAY S. MILLER, TRUSTEE, SP 2012-SU-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain yard requirements for R-C lots to permit construction of a deck 8.0 ft. from the side lot line. Located at 4341 Cub Run Rd., Chantilly, 20151, on approx. 11,683 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 78. 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 11, 2012; and

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

1. The applicant is the owner of the property.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. Criteria 1 through 5 are met.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance.

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

1. This special permit is approved for the location and size (approximately 23 x 14) open deck, as shown on the plat prepared by Paciulli, Simmons & Associates, Ltd., dated July 7, 1980, as signed by Jay S. Miller, Trustee, on April 12, 2012, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The open deck shall not include lattice beneath the floor or above the rails of the structure.

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

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.

//

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. BARBARA J. BECKER, TRUSTEE FOR THE BARBARA J. BECKER LIVING TRUST, SP 2012-MV-021 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 7216 Marine Dr., Alexandria, 22307, on approx. 16,124 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((3)) (1) 33.

Chairman Ribble called the applicant to the podium.

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

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

Chairman Ribble and Mr. Beard both made disclosures, but indicated they did not believe their ability to participate in the case would be affected.

Mr. Hart pointed out that Mr. Hoofnagle was not on the affidavit. Mr. Hoofnagle stated that the applicant had sent a letter stating that he was now representing her. Susan Langdon, Chief, Special Permit and Variance Branch, noted that the County had received a letter from the previous agent, Keith Martin, stating that he was no longer representing the applicant, but that she had not received a revised affidavit. Chairman Ribble asked the applicant to come to the podium and be sworn in. He asked her if she wished to change representation from Mr. Martin to Mr. Hoofnagle, to which she replied affirmatively.

In response to a question from Mr. Hammack, Ms. Becker said she wanted a fence greater than four feet in height to remain in the front yard. Mr. Hoofnagle stated that the applicant wished to retain a six-foot fence which ran parallel to Fort Hunt Road, a very busy road, and then down to Marine Drive. He noted that the applicant's husband had built the fence approximately 25 years ago and that the neighbors were in favor of retaining the fence. Mr. Hoofnagle said an issue had been brought up of a utility easement which ran along the front property line, but noted that there had not been any utilities there for the last 25 years.

In response to a question from Mr. Beard, Nancy Stallings, Department of Code Compliance, stated that the matter was before the Board of Zoning Appeals due to a complaint about the fence height.

Mr. Hart, Ms. Langdon, and Mr. Hoofnagle discussed the implications of Development Condition 2, since a portion of the fence was located within a utilities easement. Mr. Hart said he did not have a problem allowing the fence to remain as long as it was understood that repairs and/or maintenance of the fence were the responsibility of the applicant. Mr. Hoofnagle stated his agreement with the condition.

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

Mr. Hart moved to approve SP 2012-MV-021 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA J. BECKER, TRUSTEE FOR THE BARBARA J. BECKER LIVING TRUST, SP 2012-MV-021 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 7216 Marine Dr., Alexandria, 22307, on approx. 16,124 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-4 ((3)) (1) 33. 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 11, 2012; and

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

1. The applicant is the owner of the property.
2. Based on the evidence presented, the applicant has satisfied the required standards for the special permit.
3. The overwhelming circumstance here is that the fence has been there for many years.
4. It also has significant vegetation behind it.
5. Whether the fence was there or not, the effect is the same.
6. The fence is not interfering with traffic safety or visibility or anything.
7. There is a contingency about the easement, and that will be addressed in the conditions.
8. Based on the imposition of the development condition dealing with the easement problem, any conceivable impact from the fence has been mitigated.

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

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

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

1. This special permit is approved for the location and maximum height of 6.0 feet of a wood fence, as shown on the plat prepared by Alexandria Surveys, LLC, dated November 2, 2011, as sealed through June 13, 2012, submitted with this application and is not transferable to other land.
2. The applicant shall assume all responsibility for repair and/or replacement of any portions of the fence which must be removed to accommodate demolition, grading, excavation, construction, utility installation, repairs and/or maintenance, and any work permitted or allowed by easements of record within the easement as shown on the special permit plat.

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

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

//

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. MARGARET J. DUBOIS, VC 2012-PR-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 13.0 ft. from front lot lines and stairs 10.0 ft. from front lot line. Located at 7703 Virginia Ln. Falls Church 22043 on approx. 22198 sq. ft. of land zoned R-3. Providence District. Tax Map 3904 (91)0 146A and 146B. (Deferred from 6/13/12 at appl. req.)

Chairman Ribble called the applicant to the podium.

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

Lynne Strobel, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant wanted to build a home on Lot 146A approximately 13 feet from multiple front yard lines with stairs 10 feet from multiple yard lines. The two lots were divided by Interstate Route 66. Lot 146B would remain vacant. Ms. Langdon noted that a revised plat was submitted after the applicant met with the closest neighbor to allay their concerns.

Ms. Gibb, Mr. Hart, and Ms. Langdon discussed some of the specifics of the revised plat, with Ms. Langdon noting that the garage had been relocated to the other end of the house and the deck was optional.

In response to a question from Mr. Hart, Ms. Langdon confirmed that a determination had been made that nothing could be done with these lots, but was subsequently reversed because of loss of land to Route 66. She deferred to the applicant's agent regarding why the steps could not go towards Route 66 instead of Virginia Lane.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She gave a brief history of the parcel, noting that the property contained 22,000 square feet, but was divided by Route 66. The applicant purchased the property in 1977 in good faith to build a home, but this was prior to Route 66 being constructed. Ms. Strobel noted that the Zoning Administrator had determined that Lot 146A was buildable, but if the variance was approved, nothing could be constructed on Lot 146B.

She discussed each of the variance requirements, noting that if setbacks were imposed, Lot 146A would be unbuildable, that the hardship was not generally shared by other property owners, and that strict application of the Zoning Ordinance would unreasonably restrict use of the property. In summary, Ms. Strobel stated that all reasonable use of the property would be denied without the granting of the variance.

In response to Mr. Hart's original question about placement of the stairs, Ms. Strobel said that the steps were placed on the Virginia Lane side of the dwelling in an effort to have it look like it had two fronts. She also stated that Lot 146B was the smaller of the two lots, 9,000 square feet versus 12,000 square feet, and had no public street frontage.

Mr. Hart and Ms. Strobel discussed the tax assessment history of the parcels, with Ms. Strobel noting that they had been taxed separately. However, because they were once a single parcel, Lot 146B was included with this application.

Mr. Beard, Mr. Hammack, Ms. Langdon, and Ms. Strobel discussed development on Lot 146B in the future and its current status. Ms. Strobel reiterated that if the variance was approved, construction on Lot 146B would be prohibited. She noted that she had attempted to contact the owner, but did not receive a return call.

Chairman Ribble called for speakers.

Shelly Ewall, 2425 Hurst Street, Falls Church, Virginia, came forward to speak. She stated her surprise that someone would want to build on the property. Ms. Ewall said she thought any construction would be detrimental to the character of the neighborhood.

Chairman Ribble relinquished the chair to Vice Chairman Hammack.

Gregory Cane, 7704 Virginia Lane, Falls Church, Virginia, came forward to speak. He said he did not feel any house should be built so close to Route 66.

Mr. Hart commented that the owner had a legal right to build in the small buildable area on the property, and he asked Mr. Cane if he had any specific objections. Mr. Cane indicated that a house built in the shape which would fit would be out of character with the neighborhood. He said he had concerns regarding the power lines because they would be located five feet from the structure and run parallel with the property line. Mr. Cane said he had been told by the proposed builder that it would be cost prohibitive to bury them.

Edward Digges, 7712 Virginia Lane, Falls Church, Virginia, came forward to speak, noting that he had been at this location for 17 years. He felt the house would become vacant from its poor location and noise pollution from Metro and Route 66. Regarding the character of the area, Mr. Digges said the newest house had been built in 2004, with the remaining houses built in the '30s and '40s.

In her rebuttal, Ms. Strobel referenced a letter from Cathy Belgin from the Zoning Administration Branch which thoroughly discussed the development of Lot 146A. She also pointed out that the Digges and Cane lots were both approximately 12,000 square feet, the same size as Lot 146A. Ms. Strobel noted other lots in the neighborhood which had been granted variances, for a porch addition, lot coverage, and a house addition. She stated that the contract purchaser had said this would be his residence.

In response to a question from Ms. Gibb, Ms. Strobel said that after meeting with neighbors, the size of the house had been reduced.

John Dapogny, contract purchaser of the property, commented that the main concern of the neighbors was the appearance of the house. Therefore, he had redrawn it so that the front of the house was oriented towards the dead-end of the street.

In response to a question from Mr. Smith, Ms. Strobel stated that two comparably sized homes were in the surrounding area.

Vice Chairman Hammack closed the public hearing.

Ms. Gibb moved to approve VC 2012-PR-001 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET J. DUBOIS, VC 2012-PR-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 13.0 ft. from front lot lines and stairs 10.0 ft. from front lot line. Located at 7703 Virginia Ln., Falls Church, 22043, on approx. 22,198 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 146A and 146B. (Deferred from 6/13/12 at appl. req.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 2012; and

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

1. The applicant is the owner of the property.
2. This is a tough one.
3. The Board felt comfortable that the applicant has met eight of the standards, but was still worried about "the character of the zoning district will not be changed by the granting of the variance."
4. When we have new homes in established neighborhoods, they look different.
5. You only have to look across the street at the house that is seven years old and it was just sold, and it looks quite a bit like the proposed house.
6. So that is how neighborhoods change.
7. For a while, there are some odd looking houses in among the older ones, and then they all change.
8. That is what happens with infill development, and that is how Fairfax County is developing now.
9. When looking at the standards, Ms. Strobel made a good presentation.
10. There is a buildable lot; the Board has had that determination.
11. The applicant acquired the property in good faith.
12. The subject property certainly is exceptionally narrow and shallow, so it meets the required Standard 2.
13. The subject property is not of a general standard. This is not something that recurs so that an amendment to the Zoning Ordinance would be appropriate.
14. The strict application of the Ordinance would certainly produce unfair hardship.
15. The building envelope that is shown on the plat that was provided is just too small, and a house that would be built in there would not be in keeping with the character of the rest of the neighborhood and not something that anyone would want to see in the neighborhood.
16. It is not a hardship that is generally shared by the others.
17. According to Standard 6, the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict utilization of the subject property.
18. As to whether this authorization of the variance will be a substantial detriment to the adjacent property, the Board has one letter of support.
19. The Board knows that something can go in there, so the question is just whether the house proposed is acceptable.
20. The Board does not know that the applicant is required to build the minimum size home; it just needs to be one that is in character with the zoning district.
21. This is very close, but based on the fact that the home across the street looks so much like this, and certainly this lot size is consistent with other lots in the neighborhood, the applicant has satisfied the Board that the physical conditions as listed above exist under which a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the maximum size and location of a two-story, single-family detached dwelling, including optional items, as shown on the plat prepared by Smith Engineering dated January 30, 2012, as revised through and sealed through July 5, 2012, submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. The single-family dwelling shall be generally consistent with the architectural renderings and material as shown on Attachment 1 to these conditions.
4. Parcel 146B shall not be developed with a residential dwelling.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

//

~ ~ ~ July 11, 2012, Scheduled Case of:

9:00 A.M. CHEROKEE L.L.C. SPA 79-A-164-03 Appl. under Sect(s). 8-501 of the Zoning Ordinance to AMEND SP 79-A-164 previously approved for a health club to permit a change in permittee and development conditions. Located at 5505 Cherokee Ave. Alexandria 22312 on approx. 24568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52.

Vice Chairman Hammack called the applicant to the podium.

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

David Gill, the applicant's agent, 1750 Tysons Boulevard, Tysons Corner, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The owner wanted to change the name of the permittee from Total Adherence Sports to Cherokee, LLC, and to change the hours of operation to 5:00 a.m. to midnight, seven days a week. Staff recommended approval of SPA 79-A-164-03 subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Horner said the facility was already operating under the current special permit. The amendment was only to change the permittee and hours of operation. Mr. Hart asked if a martial arts studio was considered a health club. Ms. Horner said that the Zoning Administrator had determined that it was a commercial recreation use.

Mr. Gill presented the special permit request as outlined in the statement of justification submitted with the application. He noted that there had been several changes in permittee and wanted to remove the requirement for appearing before the Board every time there was a change.

In response to a question from Mr. Beard, Mr. Gill said it was a mixed martial arts center with paid memberships. The center had weight training, treadmills and other types of machines, a boxing ring, and martial arts training sessions. When asked if blood samples were drawn in the facility, Mr. Gill replied that they sometimes were taken from the fighters, but a subcontractor who was on the premises every day performed the draws. Mr. Beard asked if blood sampling fell within the purview of what was permitted. Susan Langdon, Chief, Special Permit and Variance Branch, said she was not sure whether that was something that typically happened with boxing matches. Mr. Gill said it had to be provided to comply with state requirements.

Sheree Egan, land use planner with McGuire Woods, came forward to speak, and the oath was administered to her. She said there was a separate tenant in the same building which drew blood, but it was not a part of the gym. In response to a question from Mr. Beard, Ms. Egan said the subcontractor had a separate entrance.

Mr. Hart questioned whether the designated 26 parking spaces were adequate since there were other tenants involved, and if tournaments were held at the facility. Mr. Hart and Mr. Gill further discussed the parking requirements, with Mr. Hart noting that the plat showed four racquetball courts on the property.

Vice Chairman Hammack called for speaker; there was no response.

Vice Chairman Hammack questioned whether the application should be deferred in order to investigate the other tenant and parking questions. Ms. Langdon stated that parking was not based on the number of people in attendance or number of memberships. She said the County was not aware of the second use, but could look into it further.

Mr. Gill said the applicant was prepared to live with the proposed development conditions or any others that staff determined were necessary for the health club use.

Vice Chairman Hammack closed the public hearing.

Mr. Smith moved to defer SPA 79-A-164-03 until July 25, 2012, at 9:00 a.m. Ms. Gibb seconded the motion, which carried by a vote of 5-0. Chairman Ribble and Mr. Byers were not present for the vote.

//

~ ~ ~ July 11, 2012, Scheduled Case of:

ABDUL M. AKBARI, SP 2012-LE-022 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 6018 Amherst Ave. Springfield 22150 on approx. 9713 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2)) (5) 10.

Vice Chairman Hammack noted that SP 2012-LE-022 had been withdrawn.

//

~ ~ ~ July 11, 2012, Scheduled Case of:

LORENA P. MALTEZ A 2011-PR-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established accessory outdoor storage and an accessory storage structure that do not meet size or location requirements all on property in the R-2 and H-C District in violation of Zoning Ordinance provisions. Located at 8418 Spartan Rd. Fairfax 22031 on approx. 23275 sq. ft. of land zoned R-2 and H-C. Providence District. Tax Map 49-3 117)) 7. (Admin. Moved from 2/29/12 at appl. req.)

Vice Chairman Hammack noted that A 2011-PR-044 had been withdrawn.

//

~ ~ ~ July 11, 2012, Scheduled Case of:

SJD-ZP LLC DBZ ZPIZZA, A 2011-PR-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an accessory service use in accordance with the limitations and conditions of Non-Residential Use Permit #110970039 in violation of Zoning Ordinance provisions. Located at 8442 Lee Hyw. Fairfax 22031 on approx. 1.2 ac. Of land zoned I-r and H-C. Providence District. Tax Map 49-3 ((15)) 2. (Admin. Moved from 9/28/11, 11/0/11, 2/1/12, 4/18/12, and 6/6/12 at appl. req.)

Vice Chairman Hammack noted that A 2011-PR-028 had been withdrawn.

//

~ ~ ~ July 11, 2012, After Agenda Item:

Approval of September 12, 2006, October 24, 2006, and February 12, 2008 Minutes


Ms. Gibb moved to approve the minutes. Mr. Hart seconded the motion, which passed by a vote of 5-0. Chairman Ribble and Mr. Byers were not present for the vote.

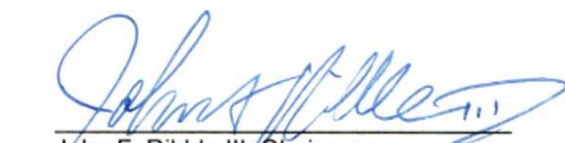
//

As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Suzanne Frazier

Approved on: May 21, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, July 18, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Paul W. Hammack. Absent from the meeting were Norman P. Byers and Thomas W. Smith III.

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

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. GLENDA SUE STUMP, SP 2012-BR-025 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 2.5 ft. from rear lot line and 4.4 ft. from side lot line and to permit accessory dwelling unit within an existing dwelling. Located at 7321 Jervis St., Springfield, 22151, on approx. 10,762 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (36) 15.

Chairman Ribble called the applicant to the podium.

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

Glenda Stump, 7321 Jervis Street, Springfield, Virginia, and Paul Walhout, 7321 Jervis Street, Springfield, Virginia reaffirmed the affidavit.

Brenda Cho, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of two special permit requests. Staff recommended approval of SP 2012-BR-025 for the accessory dwelling unit, subject to the proposed development conditions.

Mr. Hammack asked questions concerning the drainage easement. Ms. Cho stated that the drainage easement measured about 10 feet wide along the rear of the property and the engineer of The Department of Public Works and Environmental Services (DPWES) did not note whether or not it was planned for any construction or development in the near future. He just indicated that sheds were considered permanent structures and they would prefer to have the shed removed from the easement, although he did not indicate any timeline or an immediate need.

Mr. Hart said if the shed were shifted a little bit closer to the house it looked like it would come out to the drainage easement. He asked if the shed were out of the easement would staff have a problem with the location of it. Ms. Cho stated that was correct as noted. The rear of the shed was in the easement. After speaking with the applicant about possibly removing the shed from the easement, the applicant said it would create a bit of a hardship, since the shed was built on footings from 20 years ago. The applicant indicated if they had to move it they would.

In response to Mr. Hart's statement that he thought staff's recommendation for denial had been in part based on the fact that part of the shed had been in the easement Ms. Cho said that staff did not make recommendations on error in building requests. It was DPWES that would prefer to have it moved from the easement.

Mr. Hart read the statement from the conclusion in the staff report stating denial of the shed. Mr. Hart referenced the photos and asked whether the other sheds on the neighbors' properties were also in the drainage easement and whether there had been a problem with the other three sheds. Ms. Cho stated that she was not sure the neighbors were aware their sheds were in the easement. Mr. Hart stated that there needed to be consistency with the other owners as well as the applicant as it pertains to compliance within the easement.

Chairman Ribble asked when the easement was placed on the property, because there was a house location survey in the application dated 1993 that did not show the easement. Ms. Cho stated that she was not clear on the timeline, but did request additional information from DPWES and did not get a response.

Mr. Walhout and Ms. Stump presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Walhout stated that he was Ms. Stumps son-in-law, and he lived in one of the dwelling units. As far as the shed, there were four sheds in the corner which were in the easement, and also another one on the other property to the west. Several of them were built on piers which were up off the ground. If the application was approved and the county came in to do drainage work, he was willing to move the shed. At the moment it would be difficult, because it was built well would not move easily.

Ms. Stump stated that when her husband built the shed, he was told he did not need a permit to build it. He had died seven years ago.

Mr. Hart asked whether there was electricity or plumbing in the shed and how it was attached to the ground. Mr. Walhout replied no electric or plumbing, that it was just a garden shed. He said it was attached with nine concrete piers 2 feet deep into the ground. The floor was attached to the piers with mechanical fasteners. The shed itself was 16 or 15 by 12.

Mr. Hart asked whether the applicant knew when the easement came about. Mr. Walhout stated he did not know about the easement until staff pointed it out.

Mr. Beard asked whether the applicant would be averse to a development condition stating moving of the shed should it be needed with respect to the easement. Mr. Walhout indicated he would not oppose it.

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

Mr. Ribble mentioned that the Board would like to thank Brenda Cho for her service since this was her last meeting, and wished her the best.

Mr. Hammack moved to approve SP 2012-BR-025 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GLENDIA SUE STUMP, SP 2012-BR-025 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 2.5 ft. from rear lot line and 4.4 ft. from side lot line and to permit accessory dwelling unit within an existing dwelling. Located at 7321 Jervis St., Springfield, 22151, on approx. 10,762 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (36) 15. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 18, 2012; and

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

1. The applicant is the owner of the land.
2. The Board had testimony that the applicant's now deceased husband constructed this shed over 20 years ago and was given information by the County that he did not need a building permit and was unaware it was in an easement.
3. The shed has been there for over 20 years, not creating any problems.
4. It is further complicated by the fact that the shed is at least partially in a drainage easement.
5. It would be difficult to shift the shed because of the way it is constructed on the footings.
6. The Board has had several cases recently where there have been drainage easements of some sort. For one reason or another, one was going to be abandoned recently. Another one was a fence was in a drainage easement for over 20 years or in a public easement that was set aside for drainage for over 20 years with no ill effects.

7. In this particular case, the Board has testimony indicating there are three more sheds in this easement at the same intersection, none of which seem to be causing any drainage problems.
8. Because the shed is only marginally encroaching into the easement, the shed should stay with conditions.
9. The Board has determined that the applicant has met the standards set forth in the Ordinance, A through G.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the addition and kitchen in the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant only, Glenda Sue Stump, and is not transferable without further action of this Board, and is for the location of the accessory dwelling unit and shed indicated on the application, 7321 Jervis Street (10,762 square feet), as shown on the plat prepared by Apex Surveys, dated May 18, 2011, and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall

be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.

5. The accessory dwelling unit shall contain a maximum of 900 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. All applicable trade permits and final inspections shall be obtained for the kitchen components within 120 days of approval of this special permit.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on site as shown on the special permit plat.
11. In the event of construction or use for development in the storm drainage easement, the applicant shall assume all financial and other responsibility for the repair, removal, relocation or replacement of the existing shed and indemnify Fairfax County from all liability thereon.
12. The shed shall be maintained in good repair at all times.

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. VICTOR SILVA, SP 2012-BR-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.6 ft. from side lot line such that side yards total 15.8 ft.. Located at 9018 Lake Braddock Dr., Burke, 22015, on approx. 9,000 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((14)) 153.

Chairman Ribble called the applicant to the podium.

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

Victor Silva, 9018 Lake Braddock Drive, Burke, Virginia, Rolando Pivaral, 9104 Manassas Drive, Manassas, Virginia, the applicants' contractor, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-027, subject to the proposed development conditions.

Mr. Silva presented the special permit request as outlined in the statement of justification submitted with the application. He said the only thing he wanted to do was to enclose the existing carport, and not to go any further than what was already built there.

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

Mr. Hart moved to approve SP 2012-BR-027 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR SILVA, SP 2012-BR-027 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit addition 7.6 ft. from side lot line such that side yards total 15.8 ft. Located at 9018 Lake Braddock Dr., Burke, 22015, on approx. 9,000 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((14)) 153. 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 18, 2012; and

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

1. The applicant is the owner of the land.
2. The Board has a staff recommendation of approval.
3. The Board adopts the rationale in the staff report.
4. This is a relatively modest request for enclosure of an existing carport.
5. The carport as it is now has a very substantial roof.
6. The appearance of the enclosed garage is not going to be any more intrusive or create any more impacts on the neighbors than the carport which is in exactly the same location.
7. Enclosure of the carport would tend to conceal anything that is stored inside of it.
8. With the imposition of the development conditions, any impacts would be satisfactorily mitigated.
9. The architectural drawings appear to be compatible with the existing house and the neighborhood.
10. The Board has determined that the criteria listed in the motion have been satisfied.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the garage addition (468 square feet), as shown on the plat prepared by Scartz Surveys, dated December 22, 2010 as revised and sealed through June 14, 2011, 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 [2,000 square feet existing + 3,000 square feet (150%) = 5,000 square feet maximum permitted on lot] regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of

any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The garage addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. ROBERT D. AND LYDIA M. HACKETT, SP 2012-PR-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line. Located at 8225 McNeil St., Vienna, 22180, on approx. 10,830 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 341.

Chairman Ribble called the applicants to the podium.

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

Robert D. and Lydia M. Hackett, 8225 McNeil Street, Vienna Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-PR-024, subject to the proposed development conditions.

Mr. Hackett presented the special permit request as outlined in the statement of justification submitted with the application. He said they moved into the home in 1995. In 2009 his wife was diagnosed with Multiple Sclerosis. Although she was not currently disabled, in the future she would be unable to use the staircase to get to the upstairs bedroom. For that reason they proposed to build a ground-level, single-level living situation. The special permit had to do with the home sitting skewed on the lot so the proposal was to put the addition on the left side of the house on the ground level. Due to the orientation of the lot, it caused an issue with the back left rear corner of the addition.

Chairman Ribble called for speakers.

Christine Kelley, Applicants Agent, 2109 Popkins Lane, Alexandria, Virginia stated that she met with the applicant last winter to outline pros and cons to the design. They decided that this was the best design that gave them easy access from the driveway from the main entrance and the kitchen.

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

Mr. Ribble stated that there were letters of support in the file.

Ms. Gibb moved to approve SP 2012-PR-024 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT D. AND LYDIA M. HACKETT, SP 2012-PR-024 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.6 ft. from side lot line. Located at 8225 McNeil St., Vienna, 22180, on approx. 10,830 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 341. 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 18, 2012; and

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

1. The applicants are the owners of the land.
2. The Board adopts the staff report which recommends approval.
3. The applicant's testimony indicates that the reason for the addition is to have one-level living to accommodate the family and his wife's needs.
4. The impact will be minimal; it seems to blend in with the neighborhood scheme.
5. The house is skewed in its location on the lot so that is partially why it necessitates this special permit.
6. The applicants have met Standards 1 through 6 of the required Sect. 8-922.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story addition (approximately 847 square feet), as shown on the plat prepared by B.W. Smith and Associates, Inc., sealed by Timothy J. Farrell on February 17, 2012, as revised through February 28, 2012 and sealed by Christine A. Kelly, Architect, on April 24, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,059 square feet existing + 3,088.5 square feet (150%) = 5,147.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. NANCY MATISOFF AND/OR ROBERT MATISOFF, SP 2012-DR-028 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit deck to remain 5.6 ft. from one side lot line and reduction of certain yard requirements to permit construction of addition 8.2 ft. from other side lot line. Located at 1925 Kenbar Ct., McLean, 22101, on approx. 27,704 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 21A.

Chairman Ribble called the applicants to the podium.

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

Robert and Nancy Matisoff, 1925 Kenbar Court, McLean, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-DR-028, subject to the proposed development conditions.

Mr. Matisoff presented the special permit request as outlined in the statement of justification submitted with the application. He said they were seeking the permit to expand the size of the garage, from a one-car to a two-car garage on the west side of the property. The neighbors on that side were in favor as they had submitted a letter of support. He stated that his wife went spoke to the neighbors around the neighborhood, and no one had opposed the garage. As a result of the survey he was told that he needed a variance on the east side of the house because the patio was too close to the neighbor's property line. T the patio was originally put in 20 years before as a free-standing concrete patio, which was used by his kids to play basketball. A couple years ago he decided to cover the concrete with flagstone. He stated that in his understanding, when the patio was put in, it was within regulation because it was considered a free-standing accessory structure. When it was covered a couple years ago to improve the aesthetics, the outline was kept the same. The flagstone was added to the west side to tie into the side of the house and doorway to make it more attractive. Throughout all the time the patio existed there had never been a complaint from the neighbors until this process began. He understood the neighbors were not opposing or requesting that the patio be removed but they want some accommodations for noise and privacy. He stated that he was willing to accommodate the request to be good neighbors, although there was not much entertaining on the patio and what was done was quite sedate. The particular proposal that was made to enclose all sides of the patio with a 6-foot hedge was not conducive or effective for the purposes that they were talking about. It would interfere with their enjoyment of the patio. There was more reluctance because as the hedges grow next to the concrete, the concrete would be affected. He stated that he had proposed a fence along the property line, which did not satisfy them. He stated that to his understanding that if the course of flagstone was removed that connects the patio to the house, he would then be in compliance to the Ordinance, because then it would return to the state of a free standing accessory structure.

Mr. Beard asked how long he had been neighbors with the neighbor who opposed the structure. Mr. Matisoff stated that he moved into the house in 1979, and the Landlers moved in about a year or two after that. They

have been neighbors for many years, although not the best of friends, and up until now not hostile to each other.

Mr. Beard stated that he was under the impression that he would not have to engulf the patio with the plantings but be able to do it on the property line. He stated that he would like to see something along the property line as opposed to barricading in the patio. He stated that it speaks positively to his intent that he did not want to do what he could technically do, by just taking out a course of stone so the patio did not abut the house.

Ms. Hedrick stated that if there was a minimum of 12 inches of separation from the house to the structure, then it would be free standing and would be permitted to remain in its current location.

Mr. Hart asked whether the stairs touching the structure counted as being 12 inches from the house. Ms. Hedrick stated that it would be from the dwelling, and a determination in March of 2008 from the Zoning Administrator, stated that a patio or deck which is accessed by a walkway or a sidewalk not more than 5 feet in width shall be considered a detached, free-standing structure, and would meet the regulations.

Discussion ensued with regard to a photo supplied by the neighbor opposed to the application. Mr. Hart asked where the property line was and whether it was separated by the ivy shown on the photo. Ms. Hedrick indicated that the tree within the ivy went across the property line. Mr. Matisoff stated that both trees belonged to him and that the ivy belonged to the neighbors.

Mr. Hart stated that he agreed with Mr. Beard in that he did not agree with enclosing the patio, but at the same time with a little bit of strategic placement you could minimize the impact of someone through a gap. He asked where the property line was and how a fence would effect that. Mr. Matisoff stated that he was not in favor of putting up a fence, but a couple of shrubs in the corner would be agreeable.

Ms. Gibb asked what the patio was used for prior to the current situation and the noise. Mr. Matisoff stated that he installed a concrete patio that was used by his kids as a basketball court more than 20 years ago. When his kids were teenagers they used it for other things. The patio sat there for years and in order to make it more attractive the concrete was just covered in 2009. Ms. Gibb asked whether the neighbors had ever complained about noise. Mr. Matisoff replied that there was never a complaint about noise.

Answering questions from Mr. Hammack, Mr. Matisoff stated that prior to the flagstones being there, it was a 4-foot path of concrete that was attached to the house with flagstones. Ms. Matisoff stated that there was a break for storm drainage which was a black pipe that went under the flagstone and abuts the basketball court. She said that strip could be removed, since there was no cement under it.

Discussion ensued between Mr. Hammack, Mr. Hart and Ms. Hedrick about the origin of the Zoning Administrators interpretation of the Zoning Ordinance as it related to separation from an accessory structure and the primary dwelling.

Mr. Hart discussed the inconsistency of this type of request when a patio touches the house and asked when this meeting is concluded this issue as it related to the Ordinance be put on the work program.

Chairman Ribble called for speakers.

Scott Avery, 1921 Kenbar Court, McLean, Virginia, came forward. He stated that he lived two houses over from the Matisoff property. He stated the topography of the lots on the cul-de-sac presented challenges for garages, because they flare out and drop off. He said the neighborhood was a small 1960s development with homes that were 3,000 square feet having turned into homes that were 8,000 to 10,000 square feet. He was in complete agreement with what the applicant was doing, because it improved the home.

Carl Landware, 1923 Kenbar Court, McLean, Virginia, came forward. At the direction of the Chairman, the clerk swore in the speaker, as he was not sworn in earlier. Mr. Landware stated that he understood the correspondence, but wanted to express his concern about the patio. Although it represented an improvement to the applicant's property, it was not without impact to his property. He attempted to address the issues with the applicant, but the applicant did not like the proposal. Rather the applicant submitted an alternative which was a fence which he thought would not be a reasonable accommodation. He stated that Ms. Matisoff visited with him three days before the hearing and did not bring up the patio.

Ms. Gibb asked what he wanted accommodated. Mr. Landware stated that he could see the patio from their windows and the sight would reduce the desirability of the property. On occasion there was sound from the use.

Ms. Gibb stated that prior there was a cement slab where kids played basketball and now there was an attractive patio. She wanted to know what the objection was. Mr. Landware stated that the present structure was in violation of the current zoning regulations, and it did not improve their property. Ms. Gibb asked what the negative impact of the structure would be to his property. Mr. Landware stated that it was the existence of a structure that he had to overlook and had no control over it.

Priscilla Taylor, 1939 Lorraine Avenue, McLean, Virginia came forward in opposition. She stated that she represented the neighbors who did not support the patio. She did support the garage, as it would take a car off the cul-de-sac. She continued to state that she did not think the proposition was proposed clearly to the other neighbors. She indicated that there are parties, and the noise was an invasion to the Landwares.

Ms. Gibb asked whether Ms. Taylor heard the noise. Ms. Taylor stated that she had been to a party at the Landwares, but had not attended a party at the applicant's house. She had not heard any noise from the applicant's house, but knew the house situation with the houses being close together.

Mr. Hammack asked whether Ms. Taylor thought it would be better if the applicant converted the patio back into a basketball court. Ms. Taylor replied that she did not think the basketball court was really allowed. Mr. Hammack stated that according to the testimony it was perfectly legal as an accessory structure. Ms. Taylor stated that she would prefer neither a basketball court nor a patio, but she thought the applicant should show some good will to accommodate their neighbors.

Mr. Beard asked where Ms. Taylor lived in relation to the applicants' property. Ms. Taylor stated that she was on the other side of the forest on Birch Road, Lot 44, and nothing affected her.

Mr. Hart stated that the dilemma the Board was facing was if they denied the application the applicant would only have to remove 12 inches of something and the patio could stay. The patio would stay where it was regardless of what the Board did, because the applicant could keep it easier than they could rip it out. He talked about whether bushes or fences would help.

In rebuttal Mr. Matisoff stated that he appreciated Ms. Taylor representing her friends, although she did not live on the street. He continued to state that for a few weeks, there was a big yellow sign posted in front of their house that specifically stated what they were seeking, which was not only the garage, but the permit for the patio.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SP 2012-DR-028 for the reasons stated in the Resolution.

Discussion ensued with regard to the development conditions, and support of the motion.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY MATISOFF AND/OR ROBERT MATISOFF, SP 2012-DR-028 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit deck to remain 5.6 ft. from one side lot line and reduction of certain yard requirements to permit construction of addition 8.2 ft. from other side lot line. Located at 1925 Kenbar Ct., McLean, 22101, on approx. 27,704 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((24)) 21A. 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 18, 2012; and

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

1. The applicants are the owners of the land.
2. Staff recommended approval of the reduction of the yard requirements to permit construction of an addition 8.2 feet from the side lot line.
3. The zoning is R-2.
4. The applicant has presented testimony that Sect. 8-914 is met as it relates to the patio.
5. The addition to the garage is a modest improvement insofar as the mistake section.
6. It has been there for a period of time.
7. It has been determined that by making certain technical adjustments, there would be no need to appear before the Board seeking a hearing under the mistake section.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for a deck (at-grade slate patio) and the location and size of an addition (240 square feet), as shown on the plat prepared Dominion Surveyors, Inc., dated and sealed on October 20, 2011, as revised through December 5, 2011, as submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,089 square feet existing + 7,733.5 square feet (150%) = 12,722.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. STEPHEN SCOTT BOWERS, SP 2012-SP-030 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15'9" from rear lot line. Located at 13707 Stonehunt Ct., Clifton, 20124, on approx. 12,005 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-2 ((7)) 248.

Chairman Ribble called the applicant to the podium.

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

Stephen Scott Bowers, 13707 Stonehunt Court, Clifton, Virginia reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-SP-030, subject to the proposed development conditions.

Mr. Bowers presented the special permit request as outlined in the statement of justification submitted with the application. He said that the proposed bump out of the sunroom was intended to go no further than the existing standing deck. There was a portion of the deck that would be demolished.

Discussion ensued between Mr. Hart and the applicant regarding a letter from the Home Owners Association (HOA), what the Board did approve which was separate from what an HOA can determine if they chose, and whether he would have to come back in front of the Board in future if changes were made or just get an interpretation from the Zoning Administrator.

Mr. Hart asked the applicant whether he was in agreement with the development conditions, and Mr. Bowers stated that he was.

Mr. Beard and Mr. Hart discussed what the HOA might or might not approve, and how that would affect what the Board would approve. Mr. Bowers stated that the HOA approved his additions, one that was already done and did not need a special permit, and this one before the Board.

Mr. Beard asked whether there was a difference of the 10 foot or 14 foot addition. Mr. Bowers stated that at the time of the original application it was a 10 foot addition but still required a variance for that. The letter that was sent indicated that he did not, but even at 10 feet it was required.

Chairman Ribble called for speakers.

Bruce Wasserman, 6219 Springstone Place, Clifton, Virginia stated the he was the neighbor who lived directly behind Mr. Bowers on lot 196. He lived at that location for 25 years. His primary concern was for root damage to trees along his side of the property line. He also had a concern about runoff, and wanted there to be a plan in place to have water drained to the storm drain rather than to his property.

In answer to Mr. Hart's questions, Ms. Horner stated that she did not believe there was enough land disturbances to trigger a site plan, so it would only be a building permit required. She stated that she was not sure where the water was supposed to go, because staff did not receive a grading plan.

A discussion ensued between the applicant and Mr. Wasserman concerning where the easement is located and how the water drains from the applicant's property onto Mr. Wassermans property.

Mr. Hart asked whether staff had been aware of the complaints about the drainage. Ms. Horner stated that DPWES looked at it and indicated that they had no comments because it was not enough of a land disturbance for them to make a comment. She continued to say that she did discuss the drainage issues with the neighbors, and suggested they speak to the departments in charge of those regulations.

Ms. Gibb asked Mr. Wasserman whether or not he had a solution or what he thought the development condition should be. Mr. Wasserman stated that he did not have a solution, but wanted it included as a condition stating that the drainage and runoff issues would be addressed and incorporated into the applicant's improvements and addition.

Discussion ensued with regard to adding a condition, which probably wouldn't help, as it would be nonspecific in addressing the problem.

Mr. Bowers stated that he had talked to Mr. Wasserman about his concerns, and was not indifferent to them. He stated that he wanted to make sure that what was done was in compliance and would not adversely affect his neighbors. He said he had spoken with his builder and his intentions for the new addition including the two down spouts that are on that side of the house. The problem was still on the northern side where apparently the original owner tried to run something from the down spout into the middle of what was now the back yard, which then goes in the Mr. Wasermans yard. That down spout was not attached anymore, but the natural water runoff just from that down spout alone just goes directly into his neighbor's yard. He stated that he was not sure what exactly should be done on that side other than potentially digging a trench underneath the propose addition and tying everything into the other storm water runoff. He stated that he was not opposed to considering that as a proposition. With respect to the trees, he stated that they need to stay, and he was in total agreement with being responsible for replacing any trees that may die as a result of the construction. The footers are going to be dug by hand not with heavy machines, so he believes that any modification to the earth or root damage would be minimal if at all.

Ms. Gibb asked whether he could finish in 12 months. Mr. Bower states that he could. Mr. Hammack asked whether the storm water catch was on his property because it did not show on the plat. Mr. Bowers stated that it was, and that the catch was at the base of the easement at the far left hand corner of the lot line.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-SP-030 for the reasons stated in the Resolution.

Discussion ensued regarding the topography and adding a development condition. Mr. Hammack had no objection to the amendment.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN SCOTT BOWERS, SP 2012-SP-030 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15'9" from rear lot line. Located at 13707 Stonehunt Ct., Clifton, 20124, on approx. 12,005 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 65-2 ((7)) 248. 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 18, 2012; 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 six required subsections set forth under the Ordinance.
3. The Board has a favorable recommendation by staff.
4. Testimony of the applicant supports justification to grant the special permit.
5. While it is a request to extend to within 15.9 feet of a rear lot line, there is an irregular lot size, the house is sited kind of at an angle to the rear, and only part of the requested application would require the special permit.
6. All things considered, the application is justified.

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 560 square feet) of the addition, as shown on the plat prepared by Howard Jay Rosenberg, Professional Engineer, dated May 12, 2012, submitted with this application and is not transferable to other land.
3. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the western property boundary as a tree save area to protect existing off-site vegetation and shall install tree protection fencing along the edge of the existing storm sewer easement (approximately 6 feet west of the proposed addition at the closest point) to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.
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 (3,151 square feet existing + 4,726.5 square feet (150%) = 7,877.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor

area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

5. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
6. Construction shall be completed within 12 months of issuance of a building permit, weather permitting.
7. Existing vegetation on the applicant's property within the tree preservation area in Condition 3 shall be maintained in good condition. If trees die in the tree preservation area, the applicant shall replace them with appropriate material as may be directed by the Urban Forester.

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

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. CHERYL AND SHARON SODERSTROM, SPA 2006-PR-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 2006-PR-009 previously approved for accessory dwelling unit to permit change in permittee. Located at 2310 Chestnut Hill Ave., Falls Church, 22043, on approx. 24,051 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((60)) 4.

Chairman Ribble called the applicants to the podium.

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

Cheryl Soderstrom, 2310 Chestnut Hill Avenue, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2006-PR-009, subject to the proposed development conditions.

Ms. Soderstrom presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she and her sister used to live in a small house which made it difficult to accommodate their parents for long periods of time. They were looking to have a house which had space like this so their parents could come stay with them for longer periods of time and eventually move in with them. This was a perfect situation allowing her parents to live fairly independently but under their roof.

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

Mr. Hart moved to approve SP 2012-DR-028 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHERYL AND SHARON SODERSTROM, SPA 2006-PR-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 2006-PR-009 previously approved for accessory dwelling unit to permit change in permittee. Located at 2310 Chestnut Hill Ave., Falls Church, 22043, on approx. 24,051 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((60)) 4. 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 18, 2012; and

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

1. The applicants are the owners of the land.
2. The Board has a favorable staff recommendation.
3. The Board adopts the rationale in the staff report.
4. This is a change in permittee of an existing accessory dwelling unit.
5. The conditions are basically carried forward.
6. On the record in front of the Board, it does not appear that there would be any significant negative impact on anyone.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Cheryl and Sharon Soderstrom, and is not transferable without further action of this Board, and is for the location indicated on the application, 2310 Chestnut Avenue, (24,051 square feet), and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place in the accessory dwelling unit and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of 902 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. The accessory dwelling unit shall contain a maximum of one bedroom for a maximum of two occupants.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
9. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
10. All parking shall be provided on site as shown on the special permit plat.

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

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

//

~ ~ ~ July 18, 2012, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2011-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an existing horse boarding operation and associated buildings and storage may continue on property in the R-C and WS Districts without special permit approval. Located at 10810, 10810A, 10812, 10814, and 10816 Henderson Rd., 22039-2226 on approx. 27.8 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((15)) 1, 2, 3, 4, and 5. (Admin. moved from 9/14/11, 3/28/12, and 5/16/12 at appl. req.)

Chairman Ribble noted that A 2011-SP-013 had been administratively moved to October 17, 2012, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ July 18, 2012, After Agenda Item:

Approval of May 22, 2007; June 5, 2007; and August 7, 2007 Minutes

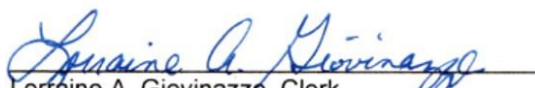
Ms. Gibb moved to approve the Minutes. Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Byers were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 11:28 a.m.

Minutes by: John W. Cooper

Approved on: February 13, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, July 25, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. JAMES W. SEAMAN, SP 2012-PR-029 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 7.0 ft. from side lot line and accessory structure to remain 4.9 ft. from side lot line and 3.2 ft. from rear lot line and second accessory structure to remain 6.9 ft. from rear lot line and 6.6 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 15.8 ft. from front lot line and 7.8 ft. from side lot line. Located at 2759 Marshall St., Falls Church, 22042, on approx. 6,250 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((4)) 6.

Chairman Ribble called the applicant to the podium.

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

Diane Horwitz, the applicant's agent, 2995 Steven Martin Drive, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting approval of several special permits, one to permit a deck to remain 7.0 feet from the side lot line, one for play equipment to remain 4.9 feet from the side lot line and 3.2 feet from the rear lot line, and one for a trampoline to remain 6.9 feet from the rear lot line and 6.6 feet from the side lot line. In addition, the applicant proposed to construct a roofed porch 15.8 feet from the front lot line and 7.8 feet from the side lot line. Staff recommended approval of SP 2012-PR-029 for the roofed porch subject to the proposed development conditions.

Ms. Horwitz presented the special permit request as outlined in the statement of justification submitted with the application. She said when the property was purchased by the applicant, there was a badly worn deck existing in the exact location and configuration of the current replacement deck. Ms. Horwitz stated there was an above-the-ground pool located where the current trampoline was located, and noted that it was the only level ground on the property. Finally, there was a metal swing set in the exact location of the current play set. She pointed out that the shrubbery and fencing blocked most of view of the backyard. Ms. Horwitz said that the applicant had a good relationship with his neighbors and in the 20+ years that he has lived there, there had been no complaints or negative comments about the property.

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

Mr. Hammack moved to approve SP 2012-PR-029 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES W. SEAMAN, SP 2012-PR-029 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 7.0 ft. from side lot line and accessory structure to remain 4.9 ft. from side lot line and 3.2 ft. from rear lot line and second accessory structure to remain 6.9 ft. from rear lot line and 6.6 ft. from side lot line and to permit reduction of certain yard requirements to permit construction of addition 15.8 ft. from front lot line and 7.8 ft. from side lot line. Located at 2759 Marshall St., Falls Church, 22042, on approx. 6,250 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((4)) 6. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has a favorable staff recommendation and generally adopts the rationale set forth by the staff.
3. With respect to the items required under Sect. 8-914, the applicant has satisfied Requirements A through G set forth thereunder.
4. The deck was granted a building permit years ago.
5. The two accessory structures are really part of the issue here.
6. Both while deemed accessory structures, one is a play set and one is a trampoline.
7. Both of them are pulled back from the rear and side lot lines an adequate distance.
8. Only a foot or a part of those structures require this application be made.
9. The Board did not feel the reduction will impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate vicinity, or create unsafe conditions with respect to both other property and public streets.
10. It satisfies the other sections of the Ordinance.
11. Under Sect. 8-922, the Board determined that the applicant has met the six subsections set forth thereunder.
12. In particular, this one is really the removal and just simply enlargement of an existing front porch, which ought to add to the value of the property and enhance the property.

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

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

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

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

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

1. This special permit is approved for the location and size of the roofed porch, play structures and deck, as shown on the plat prepared by Alterra Surveys, Inc., dated February 20, 2012, revised through April 14, 2012 and sealed April 17, 2012, as submitted with this application and is not transferable to other land.
2. The roofed porch shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. TIM AND CHRISTINE KATSAPIS, SP 2012-PR-031 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 stairs to remain 20.5 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of second story addition 6.9 ft. and 7.9 ft. from side lot lines and chimney 6.7 ft. from side lot line. Located at 2836 Marshall St., Falls Church, 22042, on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 66.

Chairman Ribble called the applicant to the podium.

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

Tim Katsapis, 2836 Marshall Street, Falls Church, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants applied for a special permit for a reduction of certain yard requirements to allow the construction of a second story addition 6.9 feet to its eave from the southern side lot line, 7.9 feet to its eave from the northern side lot line, and an extension of an existing chimney 6.7 feet from the northern side lot line. The proposed addition would be constructed entirely above the existing footprint of the dwelling. Ms. Hedrick noted that the applicants were also requesting a reduction in minimum yard requirements based on an error in building location to permit existing stairs associated with the front stoop to remain 20.5 feet from the front lot line. Staff recommended approval of SP 2012-PR-031 subject to the proposed development conditions.

Mr. Katsapis presented the special permit request as outlined in the statement of justification submitted with the application. He thanked staff, specifically Ms. Hedrick, for assisting him through the application process. Ms. Katsapis stated his willingness to answer any questions, but said the pictures, exhibits, and staff report spoke for themselves.

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

Mr. Byers moved to approve SP 2012-PR-031 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TIM AND CHRISTINE KATSAPIS, SP 2012-PR-031 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 stairs to remain 20.5 ft. from front lot line and to permit reduction of certain yard requirements to permit construction of second story addition 6.9 ft. and 7.9 ft. from side lot lines and chimney 6.7 ft. from side lot line. Located at 2836 Marshall St., Falls Church, 22042, on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 66. 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 25, 2012; and

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

1. The applicants are the owners of the property.
2. The Board has determined Items A through G have been satisfied under 8-914, and all requirements have been met under 8-922.
3. The staff recommends approval of the second-story addition, and the Board adopts its rationale.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of the stairs (20.5 from the front lot line) and the location and size of a second story addition and attic (926 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated and sealed on January 16, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,526 square feet existing + 3,789 square feet (150%) = 6,315 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. HEATHER WILCOX, SP 2012-PR-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 8234 Bell La., Vienna, 22182, on approx. 7,078 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-4 ((33)) 35.

Chairman Ribble called the applicant to the podium.

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

Heather Wilcox, 8234 Bell Lane, Vienna, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a reduction of certain yard requirements to permit the construction of a one-story screened porch addition to be located 12.6 feet to its eave from the rear lot line, in the location of an existing wood deck. She noted the applicant further proposed to construct a new 12 by 14 wood deck along the rear of the dwelling; however, that construction was permitted by right. Staff recommended approval of SP 2012-PR-033 subject to the proposed development conditions.

Ms. Wilcox presented the special permit request as outlined in the statement of justification submitted with the application. She said she had nothing to add and thanked the Board for their time and consideration.

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

Mr. Hart moved to approve SP 2012-PR-033 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HEATHER WILCOX, SP 2012-PR-033 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 8234 Bell La., Vienna, 22182, on approx. 7,078 sq. ft. of land zoned R-4 (Cluster). Providence District. Tax Map 39-4 ((33)) 35. 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 25, 2012;

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

1. The applicant is the owner of the property.
2. The Board has a staff report recommending approval, and adopts the rationale in the staff report.
3. This is a very small lot.
4. It is a very narrow wedge on a cul-de-sac.
5. In the front of the lot, the arc measures 32.75 feet.
6. The lot is very tight, and there is really nowhere to go on the sides.
7. The back of the house is really the only place to put a porch or deck or anything.
8. Immediately behind the property appears to be woods. It is the homeowners association open space for the adjacent community and a storm drainage easement.
9. Based on the record before the Board, there would not be any significant visual impact on anyone going close to that.
10. With the rest of the development conditions, particularly the tree save provision, there should not be any significant impact to the trees.
11. The Board has determined that the applicable standards in the Sect. 8-922 motion have been met.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story screened porch addition (approximately 320 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated February 29, 2012, as revised through May 21, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,698 square feet existing + 4,047 square feet (150%) = 6,745 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.

4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the southern property boundary as a tree save area to protect the existing off-site vegetation and shall install tree protection fencing to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process, and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activities such as the storage of construction equipment do not occur within the area.

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

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

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

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. DANIEL P. & PAULINE A. CONNOLE, SP 2012-MA-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 6220 Crestwood Dr., Alexandria, 22312, on approx. 11,599 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (Q) 21.

Chairman Ribble called the applicant to the podium.

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

Daniel and Pauline Connole, 6220 Crestwood Drive, Alexandria, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting a reduction of certain yard requirements to allow construction of an addition 12.6 feet from the northwestern rear lot line. An existing screened porch and deck would be removed at the rear of the existing dwelling to make room for a kitchen extension, laundry/utility room and family room. A minimum of 25 feet is required; therefore, a modification of 12.4 feet or 49.6% was requested. Staff recommended approval of SP 2012-MA-035 subject to the proposed development conditions.

Mr. Hart and Ms. Horner discussed staff's proposed condition to plant three deciduous trees in the area west of the addition, with Mr. Hart asking if there was enough space for three trees. Ms. Horner noted that the tree placement had been recommended by the Urban Forestry Department.

Mr. Connole presented the special permit request as outlined in the statement of justification submitted with the application. He thanked the staff for working with him on the application.

In response to a question from Chairman Ribble, Mr. Connole said he had not obtained any price estimates for the three trees.

Ms. Gibb, Mr. Hammack, Mr. Beard, Mr. Hart, and Ms. Horner discussed the proposed tree replacement. Mr. Hammack stated his concern that there could be a problem in the future with so many trees being planted in that area. Ms. Horner said the new trees were to provide screening, and reiterated that the recommendation had come from the Urban Forester, who did so after making a site inspection.

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

Ms. Gibb moved to approve SP 2012-MA-035 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL P. & PAULINE A. CONNOLE, SP 2012-MA-035 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line. Located at 6220 Crestwood Dr., Alexandria, 22312, on approx. 11,599 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (Q) 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 July 25, 2012; and

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

1. The applicants are the owners of the property.
2. The staff has recommended approval.
3. This is a modest addition that falls well within the percentage limitations that are allowed or square footage of the addition allowed.
4. It is built basically on an existing screened porch and deck, just a little bit larger than that.
5. Architecturally, it is going to be consistent with the existing home and with homes that are existing in the neighborhood.
6. The Board has determined that the applicants have met Standards 1 through 6.

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

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

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

1. 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 600 square feet) of the addition, as shown on the plat prepared by Apex Surveys, dated 05/02/2012, signed by Guy H. Briggs, Land Surveyor, submitted with this application and is not transferable to other land.
3. The applicant shall plant one (1), two inch (2") caliper large deciduous tree somewhere in the rear yard, such as swamp white oak, northern red oak, White oak, scarlet oak, pin oak, chestnut oak, American beech, pignut hickory, mockernut hickory, bitternut history, Kentucky coffeetree, blackgum, or willow oak due to the removal of a large existing deciduous tree in order to provide screening for the new proposed addition.
4. Notwithstanding the planned removal of the existing large deciduous tree adjacent to the proposed addition, prior to commencement of and during the entire construction process, the applicant shall designate the area along the northwestern area of the lot as a tree save area to protect existing on and off-site vegetation and shall install tree protection fencing to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.

5. 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 (1,650 square feet existing + 2,475 square feet (150%) = 4,125 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
6. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. ELIZABETH C. DAY, SP 2012-HM-034 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.2 ft. from rear lot line. Located at 2836 Thistleberry Ct., Herndon, 20171, on approx. 9,798 sq. ft. of land zoned PDH-3. Hunter Mill District. Tax Map 25-3 ((15)) 151.

Chairman Ribble called the applicant to the podium.

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

John R. Pohzehl, the applicant's agent, 8212 Kerfoot Drive, Gainesville, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting the reduction of certain yard requirements to allow construction of a 9 by 19 foot sunroom with storage below at the rear of the dwelling approximately 14.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a modification of 10.8 feet or 43.2% was requested. Staff recommended approval of 2012-HM-034 subject to the proposed development conditions.

Mr. Pohzehl presented the special permit request as outlined in the statement of justification submitted with the application. He thanked the Board for their consideration.

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

Mr. Smith moved to approve SP 2012-HM-034 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIZABETH C. DAY, SP 2012-HM-034 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 14.2 ft. from rear lot line. Located at 2836 Thistleberry Ct., Herndon, 20171, on approx. 9,798 sq. ft. of land zoned PDH-3. Hunter Mill District. Tax Map 25-3 ((15)) 151. 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 25, 2012; and

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

1. The applicant is the owner of the property.
2. The property is zoned PDH-3.
3. It is a relatively shallow lot with a small backyard on a cul-de-sac.
4. The angle of the house on the lot does not give you a whole lot to work with.
5. It is a relatively modest addition, 9 by 19 feet.
6. The lines will be consistent with the rearmost line of the house.
7. It is a similar style and harmonious with the house as well as with the rest of the neighborhood.
8. It meets all of the requirements identified in 8-922.
9. The staff has recommended approval, and the Board adopts their rationale.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size (approximately 238 square feet) of the addition, as shown on the plat prepared by Scartz Surveys, dated 04/16/2012, signed by Larry N. Scartz, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,321 square feet existing + 4,981.5 square feet (150%) = 8,302.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

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

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. ARTHUR J. MAURER, SP 2012-SU-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 13517 Heathrow Ln., Centreville, 20120, on approx. 14,065 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 54-2 ((6)) 99. (*Admin. moved from 7/25/12 at appl. req.*)

Chairman Ribble noted that SP 2012-SU-032 had been administratively moved to September 19, 2012 at 9:00 a.m., at the applicant's request.

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. CHEROKEE, L.L.C., SPA 79-A-164-03 Appl. under Sect(s). 8-501 of the Zoning Ordinance to amend SP 79-A-164 previously approved for a health club to permit a change in permittee and development conditions. Located at 5505 Cherokee Ave., Alexandria, 22312, on approx. 24,568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52. (*Decision deferred from 7/11/12*)

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

Mr. Byers stated that since he was not present for the public hearing two weeks ago, he would recuse himself.

Rebecca Horner, Senior Staff Coordinator, provided an update on the sublet tenant, stating that after the public hearing she spoke with the applicant's agent, who stated that the owner was unaware of this tenant who had not been approved by him. The sublet tenant had to be off the property by the end of the month. Ms. Horner said that the applicant had provided new photographs of the building's interior where the boxing matches were held, noting that the matches were not open to the public.

Mr. Hart stated his belief that the parking issues had been addressed inasmuch as the boxing tournaments were not open to the public. He asked if the intent was to allow the use to run with the land. Ms. Horner said if the tenant changed, but the use remained, as long as the new tenant complied with the use, they would not have to return to the BZA.

Ms. Gibb commented on the cost of changing a permittee, which was half of the prevailing fee, or \$8100. She said it was expensive but had this permittee change not come up, they would not have known about the sublessee on the property.

Mr. Hammack asked if there was a procedure in place for an inspector to visit the property when an applicant came in just to change the permittee name. Ms. Horner replied that an inspector did not always do a site visit in that instance. Mr. Hammack stated his concern that violations would continue forward.

Mr. Hart commented that a lot of filing fees were too high, suggesting that a change in permittee might be one of them, that is could be cost prohibitive. However, he said the County might want to look at the individual applicants, their credibility, enforceable development conditions, or bond enforcement. Mr. Hart thought the whole question of shady uses might need to be revisited, but felt that further discussions needed to be held before saying they will all run with the land.

Mr. Beard opined that if the applicant continued in compliance with the useage, he believed that it was outside the Board's purview to levy more restrictions.

Ms. Gibb said she was initially ready to allow a change in permittee to run with the land, but the applicant had something going on which they should not have.

Mr. Hart stated that the General Assembly had given the BZA the authority to make these decisions, however, he felt the credibility of the applicant should also be a consideration.

Mr. Smith said it should be a matter of policy, reminding the Board that John McBride had written several letters requesting that churches not have to pay for a change in permittee. Mr. Smith felt it should apply to all or none, that the County was better off with a uniform policy.

Mr. Beard moved to approve SPA 79-A-164-03. He said he felt the parking requirements had been met and the sublessee issue resolved. Mr. Beard also moved that future permittee name changes be allowed without public hearing as long as it remains in compliance with the approved use.

Mr. Hart seconded the motion for discussion purposes. He suggested that the following language be added to the end of Condition 1, "There will not be a second use or second tenant in the same space absent an amendment to the special permit." Mr. Beard accepted the amendment to the motion.

Mr. Hammack stated his opposition to the motion, noting that he was against allowing establishments to change their name or their hours without further discussion. Mr. Beard and Mr. Hammack discussed the pros and cons of allowing permittee changes without a public hearing. Mr. Hart stated his agreement with Mr. Hammack's position, noting that applications reviewed on a case-by-case basis were not problematic.

In response to a question by Mr. Hammack, Ms. Horner stated that a new permittee would have to obtain a new non-RUP. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, clarified that when a different permittee came to the County for a new permit, staff would see in the approved development conditions that a different use on the property was not allowed.

Chairman Ribble reminded the Board that there was a motion on the floor.

Mr. Hart reiterated his proposed amendment to the end of Condition 1. Mr. Hammack said he felt Mr. Hart's proposed language might complicate the permit process if everything was tied to the approved plat. For instance, if the permittee wanted to remove the current boxing ring and it was not shown on the plat, he could not remove it. Mr. Hart and Mr. Hammack discussed whether the interior of an approved use could be modified. Mr. Hart suggested that perhaps the applicant could be required to get a waiver if anything on the approved plat was changed.

Mr. Hammack compared the health club use to a restaurant, noting that the parking requirements would change depending on the interior of building, for example, removing a dance floor and adding dining tables. Ms. Horner commented that parking was based on occupancy loading and employees. She also noted that restaurant parking was tabulated differently.

In response to a question from Mr. Hammack, Ms. Horner stated that the subject site had been evaluated for a health club at one time, and the applicant had always been required to comply with the Zoning Ordinance and special permit which allowed it to be a health club. Staff's rationale was that if it always remained a health club, the particular analysis for that use as defined as a health club would not change.

Chairman Ribble called for the vote. The motion failed by a vote of 2-4. Mr. Smith, Ms. Gibb, Mr. Hammack, and Chairman Ribble voted against the motion. Mr. Byers recused himself from the hearing.

Mr. Hart moved to approve SPA 79-A-164-03 and adopted the comments made previously by Mr. Beard. He proposed a change to the language in Condition 1, stating that the special permit was granted to the applicant only and not transferrable without further action of the Board.

Mr. Smith and Ms. Gibb seconded the motion.

David Gill, the applicant's agent, 1750 Tysons Boulevard, Tysons Corner, Virginia, stated that the applicant, Cherokee, L.L.C., was the landlord, not the owner.

In response to a question from Mr. Hart, Ms. Stanfield said she did not know if it was possible for the applicant to obtain a tenant non-RUP.

Mr. Hammack suggested that the Board defer decision on this application so that staff could look into it further. Mr. Hart withdrew his motion.

Mr. Beard suggested that the Board return to the original motion where the landlord had the right to change the permittee.

Mr. Smith moved to reconsider Mr. Beard's original motion with Mr. Hart's amendment.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHEROKEE, L.L.C., SPA 79-A-164-03 Appl. under Sect(s). 8-501 of the Zoning Ordinance to amend SP 79-A-164 previously approved for a health club to permit a change in permittee and development conditions. Located at 5505 Cherokee Ave., Alexandria, 22312, on approx. 24,568 sq. ft. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52. (Decision deferred from 7/11/12) Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 25, 2012; 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 special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Kenneth W. White, Land Surveyor, Alexandria Surveys, Inc., dated October 20, 1993 as revised through August 8, 1994, and approved with this application, as qualified by these development conditions. There will not be a second use or second tenant in the same space absent an amendment to the special permit.
2. 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.
3. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES pursuant to this special permit, shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
4. The hours of operation shall be from 6 a.m. to 1 a.m., 7 days a week.
5. Parking shall be provided, and kept clear of debris or obstructions, as shown on the special permit plat. All parking shall be on site unless shared with adjacent owners as provided in a shared parking agreement with the owner of those parking stalls.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless a new non-RUP has been obtained. The Board of Zoning Appeals may grant additional time to obtain the new non-RUP if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion, which carried by a vote of 4-2. Mr. Hammack and Ms. Gibb voted against the motion. Mr. Byers recused himself from the hearing.

//

~ ~ ~ July 25, 2012, Scheduled case of:

9:00 A.M. APOGEE RETAIL, LLC, TRADING AS UNIQUE BAZAAR, A 2011-PR-045

Chairman Ribble noted that A 2011-PR-045 had been administratively moved to October 3, 2012 at 9:00 a.m., at the applicant's request.

//

~ ~ ~ July 25, 2012, After Agenda Item:

Approval of Minutes for October 16, 2007, October 30, 2007, and November 27, 2007

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

//

As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Suzanne Frazier

Approved on: May 14, 2014



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



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, September 12, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

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

~ ~ ~ September 12, 2012, Scheduled case of:

9:00 A.M. ERIC NORLAND, LEAKEHENA AU, SP 2012-MV-038 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on errors in building locations to permit dwelling to remain 21.2 ft. from front lot line and 4.0 ft. from side lot line, sgbggkllsteps to remain 15.2 ft. from one front lot line and roofed deck to remain 18.2 ft. from other front lot line and accessory storage structure to remain 6.1 ft. from side lot line and 6.8 ft. from rear lot line and reduction in certain yard requirements to permit construction of second floor addition 24.9 ft. from front lot line. Located at 2501 Fort Dr., Alexandria, 22303, on approx. 7,106 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((9)) (6) 20.

Chairman Ribble called the applicants to the podium.

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

Leakhena Au, 2501 Fort Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-MV-038, subject to the proposed development conditions.

In response to a question from Mr. Hart, Ms. Hedrick said the photographed structure in question was not part of the application, but appeared to be a collapsible hammock. She deferred to the applicant for clarification.

Ms. Au presented the special permit request as outlined in the statement of justification submitted with the application. She said the structure Mr. Hart had referred to was a portable canopy to place over a sandbox for her children. Ms. Au stated their main reason for the application was to put up a dormer on the back side of the house so that they could have a second bathroom. There would not be any ground disturbance associated with the addition.

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

Mr. Hammack moved to approve SP 2012-MV-038 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC NORLAND, LEAKHENA AU, SP 2012-MV-038 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on errors in building locations to permit dwelling to remain 21.2 ft. from front lot line and 4.0 ft. from side lot line, steps to remain 15.2 ft. from one front lot line and roofed deck to remain 18.2 ft. from other front lot line and accessory structure to remain 6.1 ft. from side lot line and 6.8 ft. from rear lot line and reduction in certain yard requirements to permit construction of second floor addition 24.9 ft. from front lot line. Located at 2501 Fort Dr., Alexandria, 22303, on approx. 7,106 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((9)) (6) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 12, 2012; and

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

1. The applicants are the owners of the property.
2. According to the staff report, this dwelling was constructed in 1942, and an addition permitted in 1948, with an attached garage in 1954.
3. The applicants proposed to simply add a second floor addition, a dormer to the existing dwelling.
4. It will not result in any encroachments of that dwelling.
5. The errors in building location appear to be fairly minor and do not seem to impact the community.
6. The reduction in yard requirements to permit the construction of the dormer on the existing dwelling will not have any impact on the community.
7. Part of the problem was in the fact that this lot has a double front yard requirement, which creates some of the issues.
8. The Board has a favorable staff recommendation.
9. The Board has determined the applicants have met the requirements in subsections A through G set forth in Sect. 8-914.
10. The Board determined the applicants satisfy Subsections 1 through 6 set forth in Sect. 8-922.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of structures and the location and size of a second floor dormer addition (196 square feet), as shown on the plat prepared Dominion Surveyors, Inc., dated and sealed on March 22, 2012, as revised through May 25, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,755 square feet existing + 2,632.5 square feet (150%) = 4,387.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. The existing trellis on the subject parcel shall be in conformance with Par. 4, 10-104 of the Zoning Ordinance and shall be no taller than 8.0 feet or wider than 4.0 feet.

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

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.

//

~ ~ ~ September 12, 2012, Scheduled case of:

9:00 A.M. PETER S. FERRY, SP 2012-PR-039 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line and reduction in certain yard requirements to permit construction of addition 15.3 ft. from side lot line. Located at 8505 Redwood Dr., Vienna, 22180, on approx. 21,783 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((7)) 6.

Chairman Ribble called the applicant to the podium.

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

Peter Ferry, 8505 Redwood 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 2012-PR-039 subject to the proposed development conditions.

Mr. Perry presented the special permit request as outlined in the statement of justification submitted with the application. He had been through many iterations of design, but felt that adding a second floor to the one

shorter side, as opposed to having three stories on the other side, would make the house look a lot better. Mr. Perry said he did not want to get closer to the property line, but just enclose the current footprint. As far as the shed, he said it was made to fall under the 150-square-foot requirement, but he had not taken into account the topography of the yard, which made it higher than allowed.

In response to a question from Mr. Hart, Mr. Ferry said there was no electricity or plumbing in the shed. He noted that the shed was level, and the yard was sloped.

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

Mr. Byers moved to approve SP 2012-PR-039 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER S. FERRY, SP 2012-PR-039 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line and reduction in certain yard requirements to permit construction of addition 15.3 ft. from side lot line. Located at 8505 Redwood Dr., Vienna, 22180, on approx. 21,783 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((7)) 6. 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 12, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has determined that Items A through G have been met under Sect. 8-914.
3. The application meets all of the Sect. 8-922 submission requirements.
4. The staff recommends approval of the addition, and the Board adopts its rationale.
5. The shed is tasteful, appropriately placed, and screened by very mature trees. The Board did not have an issue with it.

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

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

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of an accessory storage structure (Shed A) and a two-story addition (1,589 square feet), as shown on the plat prepared Sam Whitson Land Surveying, Inc., dated May 11, 2012 as revised through August 14, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (1,761 square feet existing + 2,641.5 square feet (150%) = 4,402.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ September 12, 2012, Scheduled case of:

9:00 A.M. ESPERANZA E. MARTINEZ, SP 2012-MA-036 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 0.7 ft. from side lot line and 8.7 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 7725 Arlen St., Annandale, 22003, on approx. 10,505 sq. ft. of land zoned R-3. Mason District. Tax Map 70-2 ((6)) 157.

Chairman Ribble called the applicant to the podium.

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

Esperanza E. Martinez, 7725 Arleen Street, Annandale, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Horner noted that staff had recommended denial of the application since the applicant had not submitted any details for the carport enclosure. However, the applicant submitted a drawing late in the afternoon one day before the hearing, but staff did not believe it was of sufficient detail.

Discussion ensued with Board members and Ms. Horner regarding the architecture of the carport enclosure and proposed materials to be utilized, with Mr. Beard commenting on the current use of plywood.

In response to a question from Ms. Gibb, Ms. Horner stated that if the Board denied the carport enclosure portion of the application, it would have to be restored back to its original condition.

Ms. Martinez presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the siding for the entire house was going to be replaced, including the plywood, but she was awaiting approval by the County.

In response to a question from Mr. Hart, Ms. Martinez stated that the siding would extend to the roof with no change in the appearance of the windows or roof.

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

Mr. Hart moved to approve SP 2012-MA-036 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ESPERANZA E. MARTINEZ, SP 2012-MA-036 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit an accessory structure to remain 0.7 ft. from side lot line and 8.7 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 7725 Arlen St., Annandale, 22003, on approx. 10,505 sq. ft. of land zoned R-3. Mason District. Tax Map 70-2 ((6)) 157. 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 12, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has a staff recommendation of denial for the addition, although the Board believes the basis for the denial was more the absence of specificity about how the structure would be completed rather than the location or existence of the structure.
3. For what it is, enclosing what was a carport into a garage, it does not seem it is going to be a problem.
4. The bulk of the structure is about the same whether it is a carport or garage.
5. It has a pretty substantial roof.
6. It has a brick wall around part of it and a pretty massive foundation.
7. It is no closer to the side lot line.

8. What is unusual about it is that the appearance of it now is not particularly attractive, and it has been a little vague to this point what it was going to be.
9. However, that can be addressed with some additional specificity in the development conditions.
10. The Board has not heard a whole lot about the shed, but it does not seem to be bothering anyone and it seems to have been there for some time.
11. It is in a back corner of the lot.
12. The Board has not had any testimony against it.
13. From the record before the Board, the application meets the required standards so long as the Board provides some greater specificity with respect to the completion of the garage.
14. It would be perhaps somewhat more compatible and somewhat more consistent with the structures around it if there was a window or something somewhere on the exterior walls.
15. Most of the homes and most of the garages that we see tend to have something, but the Board did not know if that standing alone is a basis for denial.
16. There are such things as garages that do not have doors or windows.
17. The Board has determined that the Sect. 8-922 criteria have been met.
18. The applicant has met the criteria under Sect. 8-914 with respect to the location of the shed.

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

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

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

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

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

1. This special permit is approved only for the location of the accessory storage structure, and the garage addition (approximately 550 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated February 1, 2012, signed by George M. O'Quinn, Land Surveyor, submitted with this application and is not transferable to other land.
2. 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.

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 (2,249 square feet existing + 3,373.5 square feet (150%) = 5,622.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The garage addition shall be generally consistent with the sketch attached as Exhibit A.
5. The exterior walls on the front, side, and rear of the garage above the existing bricks and up to the eave shall be finished with siding consistent with the rest of the structure. The exposed plywood shall be covered with siding.

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.

//

~ ~ ~ September 12, 2012, Scheduled case of:

9:00 A.M. WILLIAM HAIGHT, SP 2012-BR-037 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 7.54 ft. from side lot line. Located at 9119 Saranac Ct., Fairfax, 22032 on approx. 16,887 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 23.

Chairman Ribble called the applicant to the podium.

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

William Haight and his agent, Steve Scholl, 701 Park Avenue, Falls Church, Virginia, both reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-037, subject to the proposed development conditions.

In response to a question from Mr. Hammack, Ms. Horner stated that she did not know of any other residences in the neighborhood which had a similar layout as the one proposed. However, she noted that there were other carports that had accessory structures behind them.

Mr. Haight presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Haight said that his elderly parents visited frequently, and a carport would make it safer for them, keeping them from the elements. He said that even though he currently had a garage, it was detached.

Mr. Hammack and Mr. Haight discussed the plat submitted with the application. Mr. Hammack noticed the elevation of the proposed carport on the right was higher than on the left. Mr. Scholl explained that the 3 inch

difference was to keep the carport in line with the front façade of the house. He said that all the neighbors had given their approval.

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

Ms. Gibb moved to approve SP 2012-BR-037 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM HAIGHT, SP 2012-BR-037 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of carport 7.54 ft. from side lot line. Located at 9119 Saranac Ct., Fairfax, 22032 on approx. 16,887 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 23. 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 12, 2012; and

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

1. The applicant is the owner of the property.
2. This first came as a request for a variance, and the applicant has reworked it as a special permit.
3. The Board has a favorable staff report.
4. The impact of the carport itself into the side yard seems minimal since it is just actually one corner of it.
5. The fact that it is in front of a garage has prompted discussion, but it is going to be located on the existing driveway.
6. The cars are parked out front anyway and will cover up the cars.
7. There is testimony that the neighbors on the side of the property that adjoins the garage are supportive, as are neighbors across the street.
8. There has been an attempt to make the carport aesthetically consistent with the home and the garage.
9. Based on the recommendation of the staff and the lack of any opposition from the neighbors, it probably is compatible with the neighborhood.
10. The Board has determined that Paragraphs 1 through 6 have been met.

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

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

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

1. This special permit is approved for the location and size (approximately 256 square feet) of the carport, as shown on the plat prepared by James A. Afful, Professional Land Surveyor, dated June 1, 2011 as revised through May 1, 2012, submitted with this application and is not transferable to other land.
2. The carport addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
3. A building permit for the carport shall be obtained prior to construction and final inspections shall be

obtained and approved.

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

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

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

//

~ ~ ~ September 12, 2012, Scheduled case of:

9:00 A.M. CENTRAL SIKH MISSION OF AMERICA, SP 2012-SP-002 Appl. under Sect(s). 8-302 of the Zoning Ordinance to permit a place of worship. Located at 7800 Ox Road, Fairfax Station, 22039 on approx. 8.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 96-2 ((1)) 21. (Admin. moved from 4/25/12 and 6/27/12 at appl. req.)

Chairman Ribble noted that SP 2012-SP-002 had been administratively moved to March of 2013, at 9:00 a.m., at the applicant's request.

//

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

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to November 7, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ September 12, 2012, Scheduled case of:

9:30 A.M. JOHN DAPOGNY, A 2011-PR-037 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that property located at Tax Map 39-4 ((1)) 146A and 146B in the R-3 District is deemed a corner lot and must meet the minimum required yard requirement as determined based on the configuration of the property. Located at 7703 Virginia Ln., Falls Church, 22043 on approx. 22,198 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 146A and 146B. (Admin. moved from 1/11/12 and 6/6/12 at appl. req.)

Chairman Ribble noted that A 2011-PR-037 had been withdrawn.

//

9:00 A.M. AHZ OF CHANTILLY INC. T/A BRIAR OAKS EXXON, A 2012-SU-006 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a truck rental establishment, which is a use not permitted, on property in the PDC District in violation of Zoning Ordinance provisions. Located at 12306 Lee Jackson Memorial Hwy., Fairfax, 22033, on approx. 1.00 ac. of land zoned PDC, HC and WS. Sully District. Tax Map 46-3 ((1)) 14A.

Chairman Ribble noted that A 2012-SU-006 had been withdrawn.

//

~ ~ ~ September 12, 2012, After Agenda Item:

Consideration of Acceptance
Application for Appeal filed by McGuire Woods on behalf of Kettler Inc.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated that the issue had been resolved and the application for appeal withdrawn.

//

~ ~ ~ September 12, 2012, After Agenda Item:

Approval of May 23, 2006, June 20, 2006, and June 27, 2006 Minutes


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


//

As there was no other business to come before the Board, the meeting was adjourned at 10:02 a.m.

Minutes by: Suzanne Frazier

Approved on: February 13, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, September 19, 2012. The following Board Members were present: Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and, Norman P. Byers. Absent from the meeting were Chairman John F. Ribble III, V. Max Beard, and Paul W. Hammack, Jr.

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

~ ~ ~ September 19, 2012, Scheduled case of:

9:00 A.M. ARTHUR J. MAURER, SP 2012-SU-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 13517 Heathrow Ln., Centreville, 20120, on approx. 14,065 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 54-2 ((6)) 99. (*Admin. moved from 7/25/12 at appl. req.*)

Ms. Gibb called the applicant to the podium.

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

Arthur Maurer, 13517 Heathrow Lane, Centreville, Virginia, came forward.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-SU-032, subject to the proposed development conditions.

Mr. Hart asked was there a permit for the bathroom in the basement. Ms. Horner stated that there were some permitted items in the basement, but would have to look at the copy of the building permit. She continued that whatever work was not permitted would require a permit when the applicant went in for their kitchen components.

Mr. Hart stated that Development Condition 7 seemed to limit the permits and inspections to the kitchen components, and asked if there was any plumbing work besides the kitchen which should also be in Development Condition 7. Ms. Horner stated that after speaking with the inspector, once the applicant received the permit for the kitchen components, everything will have been permitted. There was not an open unpermitted case on this unit in addition to the accessory dwelling unit for other areas of the basement.

Mr. Maurer presented the special permit request as outlined in the statement of justification submitted with the application. He indicated that he had a petition of support from 10 of his neighbors. The addition was for his 31-year-old disabled son, who had cerebral palsy. He continued by stating that his son had resided in a group home for two years, but safety had become an issue. He decided to bring his son home while he determined the next step, and his wife had passed away. Mr. Maurer indicated that the home would stay in the family, moving ownership from himself to his daughter.

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

Mr. Byers moved to approve SP 2012-SU-032 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR J. MAURER, SP 2012-SU-032 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 13517 Heathrow Ln., Centreville, 20120, on approx. 14,065 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 54-2 ((6)) 99. (*Admin. moved from 7/25/12 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 19, 2012; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 cluster, WS.
3. The area of the lot is 14,065 square feet.
4. The staff recommends approval of the application, and its rationale is adopted.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owner only, Arthur J. Maurer, and is not transferable without further action of this Board, and is for the location indicated on the application, 13517 Heathrow Lane, (14,065 square feet), and is not transferable to other land.
3. A copy of this special permit SHALL BE POSTED in a conspicuous place in the accessory dwelling unit and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall contain a maximum of approximately 751 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. The accessory dwelling unit shall contain a maximum of two sleeping areas for a maximum of two occupants.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit within 120 days of approval of this special permit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Sect. 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the

property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.

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

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

Mr. Smith seconded the motion, which carried by a vote of 4-0. Chairman Ribble, Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ September 19, 2012, Scheduled case of:

9:00 A.M. PRASHANT SAWANT, SP 2012-SU-018 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 2300 Hunter Mill Rd., Vienna, 22181, on approx. 2.07 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((12)) 2. (*Decision deferred from 6/27/12.*)

Ms. Gibb called the applicant to the podium.

As Mark Mogenson, the applicant's agent, 21950 Golden Spike Terrance, Sterling, Virginia, was not sworn in at the earlier hearing, and at the direction of Ms. Gibb, he swore or affirmed that his testimony would be the truth.

It was determined that Mr. Mogenson was not on the affidavit, so the applicant came forward. She and others who might speak took the oath. Mr. Mogenson then reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation. Staff recommended denial of SP 2012-SU-018, but if the Board chose to approve the application, staff recommended they do so subject to the proposed development conditions.

Mr. Byers stated that staff originally recommended denial based on Standards 6, 7 and 9. He asked whether anything had changed from the original denial. Ms. Horner stated that staff believed the applicant had made an effort to reduce the impact of the side yard by stepping back the structure.

Mr. Byers asked whether staff still recommended denial or approval because in one of the standards, there were other locations the addition could go. He continued to say he understood that the new proposal reduced the impact, but the original opposition was that it could go someplace else on the property. Ms. Horner stated that staff had not changed the recommendation as it pertained to Standard 9.

Discussion ensued between Mr. Hart and Ms. Horner with regard to the septic field as shown on the plat received by the Board members. They realized they were not looking at the latest plat. Ms. Horner pointed out the differences between the two plats and pointed out which was the correct plat.

Mr. Hart stated that he went to look at the property and compared the drawings. He stated that what went wrong with the tree house was that it was in the easement. He stated that it either needed to be moved, because they could not get a building permit in the easement, or was it that they were going to vacate the easement. Ms. Horner stated that they were in the process of vacating the easement. The easement did not lie on the low part of the property, and there was no underground utility, so it did not serve the purpose that it should.

There was discussion regarding the side of the addition to the right of the garage. The applicant had pulled back the top from the edge of the new garage, so it was further away from the side, and included a second floor. Mr. Hart and Ms. Horner discussed different scenarios with complications, including a large tree with roots that might be interfered with during construction. Also, there was a wall in question which would make it difficult and very expensive for them to have an addition on a different side of the home.

Mr. Mogenson stated that the septic field was in the wrong place on the plat, since the surveyors must have taken an older version of the file. The applicant pulled the second-story addition back so that it was only encroaching 5 feet into the setback. Part of the reason it was not pulled back further was for structural reasons.

Mr. Smith stated that he personally thought the design went a long way to address the issues that were raised at the last hearing. Looking at the two different versions the concern before was, it looked like it was so top heavy when looking at the front of the house due to being so close to the property line for reasons beyond the current owners control, as it was built over 5 feet from the property line. The change that was made had really addressed this situation. Discussion ensued on why the addition could not be built on the left side or behind the house.

Mr. Hart asked whether the easement was going away or would be shifted. Mr. Sawant stated that the easement was going away, but there was a water and soil study being done of the area.

Mr. Hart stated that staff was still recommending denial and part of the reason for denial was because this is a huge lot and there were other places on the lot to do something other than encroaching into the side yard where the house was so close already. He asked what was going on in the area behind the garage side of the house. Mr. Sawant stated that there was going to be a kitchen there.

Mr. Mogenson and Mr. Sawant discussed the plat not being correct. It showed that there was a ground floor addition. Mr. Sawant said that the plat was not correct, and there was actually a rear addition that was a living room, kitchen, and dining room.

Mr. Mogenson stated that when he met with staff previously he asked staff directly, since he was unfamiliar with the process, what they would approve and listed all the structural concerns, and staff would not endorse anything but they said with the current proposal they would remain neutral. So that was the entire reason he moved forward with this current proposal.

Mr. Sawant stated that one more reason not to place the addition in the back was because the garage portion would stick out with nothing over it. So it would again look like an addition and never look like one structure. Also, he would not be able to move the garage because of the tree in front of the garage.

Mr. Hart asked about the garage doors moving to the left but wanted to know what the side space of the garage was becoming. Mr. Mogenson stated that the garage remained, and they were moving 2 feet forward but that portion was going to remain as unused space in the garage.

Mr. Hart stated that the Board had received the wrong plat at least concerning the footprint of the building and the location of the septic field. He asked whether there was anything else missing or were there any other discrepancies. Mr. Mogenson stated that all the errors were errors in the building that were there by right. All the reasons in which he was asking for an exception were correctly indicated on the plat.

Mr. Byers asked whether the applicant was in compliance with Standard 7, since the Board had resolved the issues with Standard 9. Ms. Horner stated that when staff met with the applicant and went over their proposed changes, staff was able to find that they met Standard 6. Standard 7 there were no other examples of surrounding properties that were that close, but staff believed it reduced the bulk in scale adjacent to the immediate neighbor to the north. Staff indicated to the applicant that staff could not find that the applicant met Standard 9 because there were other locations. Standard 6 and 7 seemed to be resolved with the exception that there were not any good examples around that were that close to the property line.

Mr. Byers asked whether there was an indication by staff that there was neutrality or as the applicant indicated.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that both she and Ms. Horner were at the last two meetings, and all along staff told the applicant that the preference was that they come into compliance. She said that staff told the applicant that the Board did not have to agree with staff. If they choose to go forward, the Board may disagree with staff because there are different interpretations to the standards.

Mr. Mogenson stated that everything Ms. Langdon stated that was correct, but they felt from their position that the Board would not approve anything which staff recommended denial for. They would not move forward with the current proposal if ultimately it was a denial.

Mr. Hart asked if there were only four Board members present and the vote was 3-1 what would happen. Ms. Langdon stated that the application would not be approved, because it would not be a majority of the Board would voting for approval. There had to be four votes in favor to approve a special permit or variance.

Mr. Hart stated that the Board had not spent a lot of time on the tree house and when he started out with the application he did not know what to do with the tree house. He asked Mr. Sawant, if he understood there was correspondence back and forth with the Zoning Administrator, and she said, not to build it and somehow it was built anyway. He stated that he did not understand why the tree house was built if the Zoning Administrator said no.

Mr. Sawant stated that it was a mistake on his side. When he spoke with the person who was building the tree house, he was told he did not need a permit, as others did not have permits.

Ms. Langdon stated that the tree house is not in violation of yards, the only thing the applicant needs to do is remove it from the easement, which is the reason they applied to vacate the easement. Then they would have to get building permits. Staff did have conditions that addressed that. Even if the application was denied, they would still have to get permits to keep the tree house. So that was not directly part of this application.

Mr. Hart stated that it was in the conditions. Ms. Langdon stated that it was in the conditions, because they realized they needed a building permit.

A discussion ensued between Ms. Gibb, Ms. Landon and Ms. Horner about documentation for the easement and whether the non-existence of the documentation would allow the applicant to put a structure in the easement and later move it if requested by Stormwater Management.

Mr. Hart stated the he was more concerned with a good faith issue, due to the fact that there was a letter from the Zoning Administrator in advance of construction which stated not to build, and with no appeal to the determination, it was built anyway.

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

Mr. Hart moved to approve SP 2012-SU-018 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PRASHANT SAWANT, SP 2012-SU-018 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 2300 Hunter Mill Rd., Vienna, 22181, on approx. 2.07 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((12)) 2. (Decision deferred from 6/27/12) 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 September 19, 2012; and

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

1. The applicant is the owner of the land.

2. The Board has a staff recommendation of denial.
3. This is a large lot, but it has some development constraints.
4. There is an existing house that is constructed and has been added to all the way over to the right-side of the lot.
5. There was an existing carport that was enclosed apparently without a permit some years ago, but as the Board understands, it was determined to be vested because of the passage of time and the payment of taxes. That circumstance has driven a lot of this in that the wall is the closest part of the house to the side line and still is. Whether the Board approves or denies the application that is not going to change. That wall or that side of the house is already vested.
6. That proximity on that side is the principal impact on the neighbors or the appearance of the structure, and there is not much that could be done about that in any event.
7. Notwithstanding the staff recommendation with respect to the addition, in the memo the Board received last week, the massing of the structure and the proposed addition and the stepping back of first the garage, then the upstairs, and then the hip roof from the sideline, is very carefully addressed in the new proposed front elevation.
8. If you go up and down Hunter Mill Road, there is a vast mix of new and old houses. There are big houses. There are some more modest houses.
9. What is proposed in the attachment to the September 12th memo, it certainly is not out of line with what is in the neighborhood and what is around it.
10. It is an improvement over the existing house.
11. What is proposed in the attachment to the addendum would not have a significant negative impact on the neighbors any more so than what is already there.
12. Where it gets complicated is whether there are alternate locations for the structure on this lot. But given the constraints that the Board has, and there has been testimony about the trees or the function of these rooms, the location of the existing bedrooms, the chimney, the easement on one side and the tree house, the driveway in the front, it is a close call, but the Board is satisfied that the applicable standards for a reduction to the minimum yard requirement have been met.
13. A distinguishing factor on this case is that the existing ground level of the house is already there, and the side wall of the house is already that close to the lot line.
14. What is proposed as it has been amended is less of a reduction than when they started.
15. The cumulative impact of what is being proposed is minimal or maybe even less than the way it is now.
16. It is a case-by-case analysis. It is a judgment call. It is often difficult, but the applicant clears 6, 7, and 9, maybe 9 just barely.
17. Looking at all the factors and everything in the record, they clear 9 with respect to the addition.
18. With respects to the shed, the Board was confused about whether it was in the septic field or not. It is in a very remote corner of the lot, screened somewhat by two big trees.
19. The Board has not really heard much about the shed and certainly has not heard complaints for the neighbors.
20. There are many accessory structures on other lots on Hunter Mill Road.
21. This is very small compared to the house and very far away from the house.
22. It is not creating, in and of itself, any particular impact. It seems to have been there for a long time.
23. There would be trouble concluding that the tree house was constructed in good faith; however, for the purposes of the application before the Board, the Board does not think the good faith standard is to be evaluated with respect to the tree house. It pertains to the shed.
24. The problem with the tree house is it is in the easement.
25. Somewhere along the way, the Zoning Administrator said you cannot do that.
26. The easement is either going to be vacated or under the development conditions it will be relocated outside of the easements.
27. The Board did not see the paperwork for the easement. If it had, it would not be surprising if there was something wrong somewhere. The easement does not seem to make sense although the house was built to stay out, and that probably started this chain of events with this house being added to.
28. Given all that and notwithstanding the staff recommendation, the Board concludes that the application as modified satisfies the applicable standards for a reduction to the minimum yard requirements.
29. The Board is okay also with respect to the mistake issue for the shed so long as the septic field is on the location from one plat ago.
30. The Board has determined that the applicable standards for the Sect. 8-914 mistake section resolution have been met with respect to the shed and that the Sect. 8-922 standards have been met with respect to proposed addition.

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

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

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

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

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

- 1. This special permit is approved only for the location of the accessory storage structure, and the home addition (approximately 1,970 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated August 11, 2011 as revised through September 20, 2012, signed by George M. O'Quinn, Land Surveyor, submitted with this application and is not transferable to other land.
- 2. 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.
- 3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,500 square feet existing + 8,250 square feet (150%) = 13,750 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
- 4. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
- 5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the northern property boundary as a tree save area to protect existing off-site

vegetation and shall install tree protection fencing to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.

6. The existing tree house shall become compliant with all applicable Zoning Ordinance provisions:
 - a. All applicable permits and final inspections shall be obtained for the treehouse within four months of approval of this special permit; and,
 - b. The applicant shall vacate the drainage easement along the southern portion of the lot in the area of the tree house; or
 - c. The tree house shall be relocated to an area outside of required setbacks and easements, meeting all applicable Zoning Ordinance provisions.

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

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 4-0. Chairman Ribble, Mr. Hammack and Mr. Beard were absent from the meeting.

//

~ ~ ~ September 19, 2012, Scheduled case of:

9:00 A.M. SUZI COMET, A 2012-SP-009 (Admin. moved from 8/1/12 at appl. req.)

Ms. Gibb noted that SP 2012-SP-009 had been withdrawn.

//

~ ~ ~ September 19, 2012, After Agenda Item:

Approval of July 26, 2005; October 11, 2005; and December 11, 2007 Minutes


Mr. Hart moved to approve the Minutes. Mr. Byers seconded the motion, which carried by a vote of 4-0. Chairman Ribble, Mr. Hammack and Mr. Beard were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:20 a.m.

Minutes by: John W. Cooper

Approved on: January 16, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 3, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Absent from the meeting was Paul W. Hammack, Jr.

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

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. JAMES AND CONNIE O'CONNOR, SP 2012-PR-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck 9.3 ft. from rear lot line. Located at 2301 Shawn Ct., Dunn Loring, 22027, on approx.6,923 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((22)) 5.

Chairman Ribble called the applicant to the podium.

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

Connie O'Connor, 2301 Shawn Court, Dunn Loring, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-PR-043, subject to the proposed development conditions.

Mr. Hart asked whether the advertising needed to be changed since it had been advertised at 9.3 feet. The details on the diagram had the existing patio at 8.0 feet and would be connected to the house with the new patio. There had been issues before where if a patio touched the house, then that became an open deck. He continued by stating that it looked like the old part was 8.0 and if it were connected to the proposed part it would be touching the house at 8.0. If that was the case, he wondered if the advertising would need to show it at 8.0, because it was touching the house. Ms. Hedrick stated that because the patio was underneath the existing house, and that portion of the patio already existed, they will be connecting to it with additional flagstone. The patio was entirely beneath, so the depiction below was showing the proposed patio to the right of the existing patio. Only the 9.3 feet at the closest point was advertised with the understanding that the proposed patio would be underneath the proposed decking which was also 9.3 feet.

Mr. Hart stated that he was under the impression the old patio was never approved. Ms. Hedrick indicated that was correct since the old patio was an old concrete pad outside of an existing doorway so it was basically a walkway into the rear yard.

Mr. Hart stated that at 12 x 13 feet it was somewhat a larger dimension than anything the Board had characterized as a walkway. Ms. Hedrick said that she meant it came out of that rear door and that was its purpose coming out of the sliding door to be used as a patio. It was where their HV/AC was, but it was not advertised for the decking underneath to be 8.0 feet.

Discussion continued with regard to the patio and advertising, the differences between the existing patio and the patio displayed on the original patio, and the patio and deck being in an RPA (Resource Protection Area).

James O'Connor, 2301 Shawn Court, Dunn Loring, Virginia presented the special permit request as outlined in the statement of justification submitted with the application. He said this was just a normal deck addition to the house for standard use. The patio was larger than it was originally, but that was how it was when the house was purchased in 2003.

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

Mr. Byers moved to approve SP 2012-PR-043 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES AND CONNIE O'CONNOR, SP 2012-PR-043 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of deck 9.3 ft. from rear lot line. Located at 2301 Shawn Ct., Dunn Loring, 22027, on approx. 6,923 sq. ft. of land zoned R-5. Providence District. Tax Map 39-4 ((22)) 5. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 3, 2012; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the application meets all of the submission requirements set forth in Sect. 8-922.
3. Staff recommends approval and the Board adopt its rationale.

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

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

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

1. This special permit is approved for the location and size of an open deck and patio, as shown on the plat prepared by Dominion Surveyors, Inc., dated and sealed on May 25, 2012, as revised through June 26, 2012, as submitted with this application and is not transferable to other land.
2. The open deck shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. JOHN & KATHLEEN H. VOLLBRECHT SP 2012-SU-044 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.9 ft. from rear lot line. Located at 13014 Bankfoot Ct. Herndon 20171 on approx. 9223 sq. ft. of land zoned R-3. Sully District. Tax Map 35-1 ((2)) 664A.

Chairman Ribble called the applicants to the podium.

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

Nicholas Vitally, the applicants' agent, 25484 Stallion Branch Terrance, Chantilly, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation. Staff recommended approval of SP 2012-SU-044, subject to the proposed development conditions.

In answering Mr. Hart's and Chairman Ribble's questions, Ms. Gumkowski confirmed that the request was outside of the Resource Protection Area (RPA), and the house was zoned R-3 cluster, so it needed to be at 8 feet with a total minimum of 20 feet for the side lot line. She continued that there were no other special permits for this property, but there was a grading permit that listed 10 feet on each side. The house was built in 1989. The vested right was only for the deck and the steps.

Mr. Smith stated that the vested rights determination, specifically referenced the side yard setbacks in appendix 4 first paragraph, stating, the single family dwelling is located at 6.1 feet from the left side lot line and 9.8 feet from the right side lot line encroaching into the minimum required left side yard by 3.9 feet and into the minimum right side lot line by 0.2 feet. Mr. Smith continued to state that it seemed to identify the encroachment and then made a determination of vested rights by stating that the single family dwelling and the deck may remain but may not be replaced or enlarged unless the replacement or expansion complies with all regulations of the district in which located.

Mr. Vitally said he had nothing to add to the statement of justification submitted with the application.

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

Mr. Hart moved to approve SP 2012-SU-044 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN & KATHLEEN H. VOLLBRECHT, SP 2012-SU-044 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 13.9 ft. from rear lot line. Located at 13014 Bankfoot Ct., Herndon, 20171, on approx. 9,223 sq. ft. of land zoned R-3. Sully District. Tax Map 35-1 ((2)) 664A. 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 3, 2012; 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, and the Board would adopt the rationale in the staff report.
3. This is a relatively modest request to put a screened porch on top of an existing deck.
4. This is a very oddly shaped lot with a very shallow backyard which is further constrained by an RPA (resource protection area).
5. The impact of the porch would be minimal in that it is on top of the footprint of the existing deck.
6. It is backing to what appears to be the homeowners association open space with no homes really near it. In the photographs, it is downhill and wooded, and no one would really be able to see the porch.

7. The Board believes there would be no significant negative impacts on anyone.
8. There appeared in some way to be some problem with the location of the house on the lot, but it sounds like the vested rights determination has resolved all of that in that the house is more than 20 years old and they have paid taxes for more than 15 years. Whatever the mistake was, it does not matter now.
9. The Board has determined that the Sect. 8-922 standards in the motion all have been met.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one story addition (a screened porch), as shown on the plat prepared by Larry N. Scartz P.C., dated May 7, 2012 as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,490 square feet existing + 5,235 square feet (150%) = 8,725 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. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the northern property boundary as a tree save area to protect existing off-site vegetation and shall use the existing wooden fence to protect the vegetation in this area. In addition, the applicant shall use tree protection fencing placed a minimum of 10 feet from the base of the existing tree in the rear yard. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.
5. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. BERNADETTE KEANY, VCA 2011-MV-010 (yard variance)

Chairman Ribble noted that VCA 2011-MV-010 had been administratively moved to October 17, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. ALFONS MASSOUD, SP 2012-SP-026 (place of worship) (*Admin. moved from 8/1/12 at appl. req.*)

Chairman Ribble noted that SP 2012-SP-026 had been administratively moved to December 12, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. APOGEE RETAIL, LLC, TRADING AS UNIQUE BAZAAR (NON-RUP A051606), A 2011-PR-045 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that separate retail booths operating as "Unique Bazaar" exceed the allowable 40% retail use, which is not in accordance with Non-RUP A-516-06, on property in the I-5 and part H-C Districts in violation of Zoning Ordinance provisions. Located at 2956 Gallows Rd., Falls Church, 22042, on approx. 1.76 ac. of land zoned I-5 and pt. H-C. Providence District. Tax Map 49-4 ((1)) 12B.

Chairman Ribble noted that A 2011-PR-045 had been withdrawn.

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:30 A.M. JANELLE M. BLANCHARD, A 2012-DR-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has established a school of general education on property in the R-3 District without an approved Special Exception in violation of Zoning Ordinance provisions. Located at 6449 Linway Te. McLean 22101 on approx. 0.5 ac. of land zoned R-3. Dranesville District. Tax Map 31-3 ((1)) 19.

Chairman Ribble called the appellant to the podium.

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

Janelle M. Blanchard, 6449 Linway Terrace, McLean, Virginia came forward.

Roger Marcy, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report dated September 26, 2012. He stated that this was an appeal of a determination that the appellant had established a school of general education on property in the R-3 District without an approved special exception in violation of Zoning Ordinance Provisions. The appellant had owned the property since 1984, and a complaint was received by the Department of Code Compliance on May 8, 2012 concerning a business in a residential district. An inspection was conducted on May 15, 2012 at which time it was determined that the basement of the home was being used as a school of general education. The inspector determined that the basement of the home was arranged as a school and included a library, student work table whiteboard and computer for the use the students. On June 27, 2012, a notice of violation was issued to the appellant for the operation of a school of general education on property in the R-3 district without an approved special exception, violation of part 1 of Section 2-301 of the Zoning Ordinance.

The appellant's position was that the school should be considered a school of special education, as the school taught no more than four students at a time. A school of special education that teaches no more than four students at a time may operate as a home occupation, and did not require special exception approval. He stated that the appellant further argued that she is operating a tutoring service rather than a school.

It was the Zoning Administrator's position that the use of the property clearly met the definition of a school of general education because the school taught a general studies curriculum and provided regular instruction school had historically taught as many as seven students at one time. The operation of the school has been substantiated by the appellant's website, by the schools calendar and by statements of parents of two of the school's students.

Staff recommended that the Zoning Administrator's determination be upheld.

Ms. Gibb stated that no matter how few students there was, if you were teaching a variety of subjects that would be normally taught at a public school, you would need a special exception. Mr. Marcy stated that was correct, and the only way you would be able to do a home occupation would be as a school of special education, and then only with four students. Since this was clearly a school of general education, the appellant would need a special exception.

Discussion ensued between Mr. Hart and Mr. Marcy with regard to a minimum number of students for something to be considered general education, whether the appellant could apply for a special exception, if there was a minimum number of students required for a special exception, and if there was a minimum lot requirement. In answer to Mr. Hart's question, Mr. Marcy stated that tutoring was by right as an accessory use as opposed to a school.

Mr. Hart asked about the factual dispute concerning whether the school was being operated five days a week. Mr. Marcy stated that the calendar shows the school operated five days a week, and it showed the hours. Mr. Hart asked if the school operated less than 5 days a week, would the Zoning Administrator make the call as to which definition it fit. Mr. Marcy stated that was correct, Zoning Administration would make that interpretation. He said that staff had this discussion, and still interpreted it to be a school of general education even at four days a week.

Mr. Smith asked how people homeschooled their kids under this interpretation. Ms. Stanfield replied that was not happening here. Mr. Smith stated that the thought came to mind because the appellant stated that the students were homeschooled elsewhere and were coming to her place to be tutored. Mr. Marcy stated that according to one of the parents, her students were not registered as homeschooled so it was not clear if that was actually occurring.

Mr. Beard asked whether the appellant was accredited and whether there were any accreditation issues raised. Mr. Marcy stated that staff contacted the State Department of Education, and according to them, a private school being accredited was a voluntary action. As far as staff knew, she was not accredited.

The appellant presented the arguments forming the basis for the appeal. The appellant presented a document at the onset of her presentation which she read to the Board. She stated that she owned and operated a school of general education in an office building in Reston for nine years, ending with school year 2012-2011. The school never became financially viable with the reasonably low tuition she charged, so this past school year she moved her operation to the lower level of her home with two of the students who attended in Reston. She stated that she planned to take the year to sort out a new approach to the business while completing the landscaping needed for easy access to the space that had a separate entrance not integral to her residence and had a large fenced outdoor area. She stated that she told each family that she would no longer be allowed to have a school of general education in a residential zone, so they could homeschool and hire her to be a tutor.

Ms. Blanchard stated that the notice of violation was not based on a complaint from a neighbor as she had support from the neighbors with a signed petition of 52 neighbors representing 46 homes. She continued by stating that she had ceased all instruction, and therefore complied with the notice of violation.

She stated that there were inaccuracies in the complaint, noting the differences between a school of general education and her business. She pointed out the class sizes, stating that a school of special education

specifies no more than four students at one time and no more than eight in one day. She stated that this was a size that worked for her students.

A discussion ensued between Ms. Gibb, Mr. Marcy, and Ms. Stanfield about whether the applicant could apply for a home occupation permit after the notice of violation had been placed, and why she was turned down. They further discussed what factors went into a denial of the permit.

Mr. Hart stated that it needed to be determined whether this was a school of general education or a school of special education that could be small enough to get a home occupancy permit. He continued to state during the process when the applicant applied for a permit, she was told no because the Zoning Administrator had already determined that it was a school of general education and not a school of special education. Mr. Hart asked the appellant whether there was a school year. Ms. Blanchard stated that she generally offered classes during the academic year, for seven months, as students tended to come and go more often during a normal school time.

Mr. Hart asked, how many students were attending on May 12th, the day the inspector came to the building. Ms. Blanchard stated there were no students because she was closed that entire week. Mr. Hart asked how many students were enrolled at that time. Ms. Blanchard implied that she had three students enrolled.

Mr. Hart asked what times the students were there. Ms. Blanchard stated that the day is usually 8:30 am to 2:00 pm but varied depending on the number of students, because it was more efficient with less people.

Mr. Hart asked whether the photographs in the staff report were accurate descriptions of the conditions in the basement. Ms. Blanchard implied that they were correct, because she moved all of her belongings from Reston and she had more than someone would have if they had just started to establish what she was looking to do in the future.

Mr. Hart stated that he thought through the photos, the basement looked like a classroom. He asked about the two definitions, stating that if he went into the category of school of special education, it sounded like it would apply to a school primarily devoted to teaching something special. He asked what special subject was taught because it seemed from the photos that the kids were getting a more general education. Ms. Blanchard stated that she was arguing that as long as the students are homeschooled and therefore do not need a school of general education, the environment of various curriculum that one student would need was a sort of specialized teaching. It was not that she was doing math and not language arts, but that it was integrated in a way and the environment was a special environment that really was not a general education environment. Mr. Hart asked whether all of the students, as of May 12th, were registered or listed as homeschooled. Ms. Blanchard stated that she did not know, because she did not require the families to give her that data, but intended to do that going forward.

Mr. Hart asked whether the appellant had shut down while waiting for the case to be resolved. Ms. Blanchard stated that she chose to not do something that was considered in violation. She stated that she did not have anyone from the county come back out and inspect but thought the notice of violation was officially still on record. She continued to state that she was looking to see what she could do in order not to break the rules.

Mr. Smith asked what the ages of the students were. Ms. Blanchard stated that they ranged from 8-12 years old, middle to upper elementary.

Ms. Gibb asked whether the website was accurate. Ms. Blanchard stated that was the description of the school in Reston. The only thing accurate was the philosophy stating that the school was a small circumstance mix between what you get from a tutor, homeschooling, or from a school of general education. She continued to state that when she moved to McLean she did not update the site, and the address from McLean was not on the website.

Ms. Gibb asked whether the contracts for educational services for enrollment were accurate. Ms. Blanchard stated that was correct, although she talked about school or academic year, but she does not refer to it as a school, but educational services. Ms. Gibb indicated that the site had school policies, and it reads like a school. Ms. Blanchard stated that there was some carry-over that she had not corrected.

Ms. Gibb stated that she had clients who have a small preschool, and they had to get a special exception and it was quite the process because of the expense. She indicated that she knew why the appellant did not

want to do it. She continued to state that academically there are no checks. Ms. Blanchard replied that was the way the state has established it. She stated that the first call she made when she first started to organize this was to the state board of education who indicated there was nothing she needed to do to seek any kind of accreditation other than from private organizations which require certain structure that she never had.

Chairman Ribble called for speakers.

Rachael Jennings, 1829 Grampion Place, Vienna, Virginia stated that her son was a student all last year and would have attended this year had the appellant remained open. She stated that they are currently homeschooling exclusively until she found an alternative. She stated that the appellant did inform the students that were there at the time that she was moving to her home and was no longer going to be a school of general education. She stated that she was already a registered homeschooler and was registered at Oasis. The speaker gave a background about her son and his difficulties in public school because of his Individualized Program (IP) needs and anxiety issues and how the small personal environment of Oasis was beneficial to him.

A discussion ensued between Mr. Beard and Ms. Jennings about the definition of IP.

Mr. Hart asked whether the subjects at Oasis were general subjects. Ms. Jennings stated that it was the same subjects that were being studied at home such as language arts, math and social studies.

Andrea Delvivo, 6453 Linway Terrance, McLean Virginia, stated that she was an immediate neighbor of the applicant. She stated that she did go to each neighbor and inform them that she would be tutoring in her home prior to last year. She stated that the presence of the children in her home have caused no problem to the neighborhood and has delighted in seeing them walking around. The street that she lived on was a mile-long state road. It was not limited to a residential use and was the home to a church, school, historic cemetery, private swim and tennis club, county parks and other athletic resources. She stated that she had seen signatures on the appellant's petition and would vouch for their authenticity. She stated that the appellant was a very conscientious and contributing citizen in her neighborhood and wholeheartedly supported her efforts to support a nurturing environment for these students in need. She stated in her past she was a resource teacher and was impressed with the appellant's work.

Mr. Byers asked whether the complaint came from the neighborhood or another source. Mike Adams, Department of Code compliance stated that the complaint came from another source.

At the direction of the Chairman, not previously having been sworn in, Stacey Hoffman, swore or affirmed that her testimony would be the truth,

Stacey Hoffman, 1 East Market Street, Leesburg, Virginia stated that she was a pediatric psychologist who participated in trials and hearings as it related to what was appropriate for students in an academic setting, and to make sure that a student's educational interventions were appropriate. She stated that she was hired by Ms. Kerchenski (phonetic) to become familiar with her situation and observe the school setting, and to make recommendations. She stated that on April 13th she observed what she considered a school, and spoke with the science teacher. She continued to state that she observed students across four grade levels with a wide variety of cognitive levels. She stated that she would not be able to educate that amount of students on one topic with that amount of variance and discrepancy. She stated that Ms. Kerchenski's eldest daughter indicated that she was quiet bored, and her other daughter spent most of the time sleeping. She continued to state that in her opinion to allow a child to continue in that type of avoidance behavior would make it hard when in fact an academic curriculum was presented. She stated that there were six students that day and thought that the decline in numbers was not so much a function of the appellant's desire to maintain a student size, but the recommendations of removal of three other students. After the observation, she spoke with the appellant and referred to it as a school. Ms. Hoffman continued to discuss the problems with the academic conditions provided by the appellant.

Mr. Hart asked how many times Ms. Hoffman observed the school. Ms. Hoffman stated that she went one time, because she did not think she needed to go again to complete her observation. Mr. Hart asked when she went that one time was there just one teacher present. Ms. Hoffman stated that was correct.

Tren Kerchenski (phonetic), 404 Montgomery Court, Berryville, Virginia, stated that initially she sought the appellant through her website, which directed calls to her cellphone where she spoke about the small

environment inside her basement. Ms. Kerchenski described the disabilities of her children which affected their ability to be placed in a normal school environment, because of one child's anxiety and another's mild autism. She stated those were the reasons she hired Ms. Hoffman and later took her recommendation.

Diana Sullivan, 47309 Middlebluff Place, Sterling, Virginia, stated that she was one of the four mothers who attended the open house for Oasis School, but was never told that it was not a school. The appellant told her how much it cost her in rent in Reston, and about her decision to move into her basement. She had homeschooled one of her children for two years, and had done the paperwork to homeschool. She stated that the appellant never stated that the operation was for homeschooling, even when asked. She stated that all three of the other mothers had removed their kids from the prior school. She stated that two of her children are autistic and one has Asperger's Syndrome, and the others with attention deficit disorder, depression and anxiety. She stated that the appellant told her that she had been a family therapist and would be able to help her children. She stated that when she left the open house, she and the other parents were impressed with the presentation.

Marks Sets, 6640 Kirby Court, Falls Church, Virginia, stated his disapproval in the appellants appeal, noting that there needed to be a special exception in place, and that the board needed to see that the appellant was in clear violation of the zoning ordinance.

Mr. Hart asked whether there was a non-residential use permit issued for the Reston location. Ms. Stanfield stated that there was, and it was called an office use, for educational services. Mr. Hart asked whether a school of general education have needed some other approval besides a nonresidential use permit. Ms. Stanfield stated that it would need a new tenant layout in order to operate that way. She continued to state that it had been represented to the staff at the time that it was an educational services office.

Mr. Hart asked what an educational services office was. Ms. Stanfield stated that it was represented as an office at the time and not a school, although the website called it a school. Mr. Hart asked if there was a copy of the nonresidential use permit. Ms. Stanfield stated that staff did not have a copy, because it was probably an office to office use, and did not require anything other than an occupancy permit.

Ms. Blanchard stated that at the time in Reston when she got the occupancy permit, there was a provision in the building code providing for an accessory use of a small school up to thirty students as long as only a portion of the space was used. She continued to state that she did have an office use occupancy as a tutoring and educational curriculum development business, and she operated the small school as an accessory which she understood was in compliance with the building code at that time. She continued to state that for the various people that spoke, she did not address the issues the speakers brought up, because she did not think it was the appropriate forum for that type of discussion. She was under the impression that this Board was about the distinction between general and special education.

Mr. Marcy stated that there needed to be one correction in that one nonresident is allowed to be involved in a home occupation use. He continued to state that in regards to what was heard so far, the issue is that there were two definitions of education and the use needed to fit into one of those definitions. He continued to state that clearly it fit into a school of general education, as it satisfied all the criteria through the calendar and the curriculum, and it did not meet the requirements of special education, because the appellant did not specialize in one area or one subject.

Ms. Stanfield stated that the other uses along Linway Terrace had been established with special exceptions and special permits or were in another nonresidential use zoning district.

Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. The Board had discussed the definitions of a school of general education and a school of special education and this was certainly not clear. The Board did not think it was a school of special education as described, because it was not a school devoted to giving instruction in vocational, professional, music, dramatic, artistic, terpsichorean, linguistic, scientific, religious or other special subjects not including a child care center or a riding school. The Board thought that the drafter of the Ordinance was meaning a piano teacher or an art instructor or some of the traditional things that were taught in the home to one or two students at a time that would have minimal impact on the zoning district and not need supervision of the county. The school of general education is defined more generally, and the problem here is that it stated giving regular instruction five days a week except holidays for a normal school year of not less than seven months. Ms. Gibb stated that the testimony

given was a little conflicting in that it may have occurred four days a week generally but there is testimony that for at least one week there was school five days a week. In this case the Board had to pick the definition to which it was closest. The testimony from everyone is that it was instruction on all subjects, and was intended to give a general, liberal-arts type of education to the students who participated. The county had an interest in overseeing that type of institution where that type of education took place, whether it was an impact on the neighborhood in how the parking took place or just exactly what was going on in the classroom. She continued by stating that she was acutely aware of the burden that a special exception imposed on any citizen of the county, as it is expensive and tough, but that was what the ordinance required. Mr. Smith seconded the motion.

Mr. Beard indicated that he did not support the motion but this was a tough call. He stated that although not indifferent to Ms. Hoffman and her clients, the Board was not there to discuss the quality of what had happened at the school. He stated that it was an operation that geared itself to special needs children, no matter the quality, which pulled itself back into a school of special education. He continued to state that he would come down on the side of tutoring verses teaching, and would rule not to uphold the zoning administrator in this matter.

Ms. Gibb stated that special needs are not the same as school of special education. She clarified to Mr. Beard that the word definition was artistic not autistic. Mr. Beard indicated that he changed his view to support the zoning administrator.

Mr. Hart indicated that he supported the motion because on an appeal like this, it does not get into whether the board or a supervisor should support smaller schools or under what part of the zoning ordinance or what the definitions should say.

Chairman Ribble called for a vote which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ October 3, 2012, Scheduled case of:

9:00 A.M. HAJIMOHAMMAD REVOCABLE TRUST, MOHAMMAD HAJIMOHAMMAD, TRUSTEE,
AND FLORA HAJIMOHAMMAD, TRUSTEE, A 2012-LE-017

Chairman Ribble noted that A 2012-LE-017 had been administratively moved to November 28, 2012 at 9:00 a.m., at the appellant's request.

//

~ ~ ~ October 3, 2012, After Agenda Item:

Approval of July 24 2007; October 2 2007; and February 1 2012 Minutes

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

//

~ ~ ~ October 3, 2012, After Agenda Item:

Approval of BZA meeting dates for 2013


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

//

As there was no other business to come before the Board, the meeting was adjourned at 11:01 a.m.

Minutes by: John W. Cooper

Approved on: November 7, 2018


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 17, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr. Absent from the meeting was Thomas W. Smith III.

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 17, 2012, Scheduled case of:

9:00 A.M. BURGUNDY FARM COUNTRY DAY SCHOOL, INC., SPA 93-L-015-02 Appl. under Sect(s). 3-403 and 8-401 of the Zoning Ordinance to amend SP 93-L-015 previously approved for community swimming pool to permit increase in land area to add community center uses, building additions and site modifications. Located at 3700 Burgundy Rd., Alexandria, 22303, on approx. 23.66 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 5, 6 and 8; 82-2 ((11) 1. (In association with SEA 93-L-014-02.)

Chairman Ribble called the applicant to the podium.

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

G. Evan Pritchard, Esquire, the applicant's agent, 2200 Clarendon Boulevard, Arlington, Virginia, reaffirmed the affidavit.

Megan Brady, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Brady noted that the Planning Commission recommended approval of the associated special exception, SEA 93-L-014-02, on October 11, 2012. Staff recommended approval of SPA 93-L-015-02, subject to the proposed development conditions.

In response to a question from Mr. Hammack, Ms. Brady said the special permit pertained to an increase in land area, the community pool, as well as the proposed additional community center uses. The special exception would apply to the nursery school, childcare center, and private school of general education.

Mr. Pritchard presented the special permit amendment request as outlined in the statement of justification submitted with the application. He complimented Ms. Brady on her presentation. Mr. Pritchard said there would be no major changes to the pool use, keeping the pool available for community use. As far as the proposed additional community uses, he said they were an attempt by the school to continue to be a good neighbor to the Burgundy community and to make the school more available for use when school was not in session.

Mr. Hammack, Mr. Hart, Mr. Pritchard, Ms. Brady, and Regina Coyle, Director, Zoning Evaluation Division, discussed the proposed Development Condition 2, which included special exception amendment (SEA) language within the special permit conditions. Mr. Hammack noted that the SEA conditions were different from the SPA conditions. Mr. Pritchard said his intent was for the special exception and special permit applications to stand alone. Mr. Hart said the Planning Commission had discussed Development Condition 2, which addressed the future need for a sign at the northern entrance. Ms. Coyle stated that it was a minor site modification, which was included to alleviate the need for the applicant to come back in for another amendment.

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

Mr. Hammack moved to approve SPA 93-L-015-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BURGUNDY FARM COUNTRY DAY SCHOOL, INC., SPA 93-L-015-02 Appl. under Sect(s). 3-403 and 8-401 of the Zoning Ordinance to amend SP 93-L-015 previously approved for community swimming pool to permit increase in land area, to add community center uses, building additions and site modifications. Located at 3700 Burgundy Rd., Alexandria, 22303, on approx. 23.66 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 5, 6 and 8; 82-2 ((11)) 1. (In association with SEA 93-L-014-02.) 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 17, 2012; and

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

1. The applicant is the owner of the property.

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

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

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

1. This special permit amendment is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This special permit amendment is granted for the purpose(s), structure(s), and/or use(s) indicated on the Special Exception Amendment / Special Permit Amendment Plat approved with the application, as qualified by these development conditions.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) shall be posted in a conspicuous space on the property of the use and be made available to all departments of Fairfax County during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit Amendment shall be in substantial conformance with the approved Special Permit Amendment Plat entitled Burgundy Farm Country Day School, and prepared by Oculus, seal dated September 12, 2012, and these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.
5. In the event that a future amendment to this SPA does not require a modification to the SEA, the applicant may file an SPA only, as determined by the Zoning Administrator.
6. The community pool use shall be limited to a maximum of 78 bathers at any one time.
7. The regular hours of operation for the community swimming pool shall not exceed 9:00 a.m. to 9:00 p.m.
8. After-hour parties for the community swimming pool shall be governed by the following:
 - Limited to six (6) per season.

- Limited to Friday, Saturday, and pre-holiday evenings.
 - Shall not extend beyond 12:00 midnight.
9. Prior to the first day of school each year, the School administration shall establish a neighborhood liaison committee to meet with the Burgundy Citizens Association and/or other applicable community groups in the adjacent neighborhoods to discuss and address neighborhood concerns regarding the use and operation of the pool, gym, and meeting spaces as it relates to impacts on the surrounding neighborhood. The frequency of these meetings shall be at the discretion of the community group, but no more than two meetings a year shall be required. The School shall provide contact information for a representative of the neighborhood liaison committee to the Lee District Supervisor's office prior to the first day of school each year.
 10. Within 180 days of approval of the SPA, the applicant shall bring the maintenance building located along the southern property line, containing the dimensions of 30.69 feet by 40.06 feet and labeled as "MAINTENANCE BLDG" on the SEA/SPA Plat into conformance through one of the following methods: modify the structure to comply with the previously approved variance for this structure (structure located 21.2 feet from the front lot line), comply with the Zoning Ordinance's location regulations for the structure, or remove the structure.
 11. All vehicle parking shall be provided on-site. Additional parking for the additional community uses besides the community pool shall be subject to DPWES approval of a shared parking agreement if such agreement is determined to be necessary by DPWES.
 12. The applicant shall seek a waiver from DPWES of the dustless surface requirement, or other approval determined to be appropriate by DPWES, for the gravel driveway and parking lots. If approved, the applicant shall implement the conditions associated with such approval. If not approved, the applicant shall satisfy all applicable DPWES requirements.
 13. The applicant shall remove all existing barbed wire on the fence and reduce the fence height to 6 feet around the perimeter of the property.

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

Pursuant to Section 8-015 of the Zoning Ordinance, this Special Permit Amendment shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. Construction of at least one (1) new structure or proposed site improvement on site shall constitute establishment of the Special Permit Amendment. 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 Amendment. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. JOHNNY LE, SP 2012-MA-045 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line and deck to remain 7.5 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6902 Columbia Pike, Annandale, 22003, on approx. 10,910 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((16)) (L) 1A.

Chairman Ribble called the applicant to the podium.

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

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

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The first part of the request was to permit a reduction of certain yard requirements based on an error in building location to permit a garage to remain 5.7 feet from the eastern side lot line. A modification of 6.3 feet or 52.5 percent was requested. The second part of the request was to allow an existing deck to remain 7.5 feet from the western side lot line. A modification of 4.5 feet or 37.5 percent was requested. The third part of the request would allow an existing fence and existing pillars greater than 4.0 feet in height to remain in the front yard. A 5.5 foot fence existed on the southern portion of the western property line. A modification of 1.5 feet was requested. Staff recommended approval, subject to the proposed development conditions.

Mr. Hart said it appeared that part of the fence was within an easement. He asked who held the easement, and what the deed reference said. Ms. Gumkowski stated that staff did not have that document.

Mr. Hart stated his confusion with the two sets of plats. Ms. Gumkowski explained that one set showed the height, and one showed the distance from the side lot line.

In response to a question from Mr. Hart, Ms. Gumkowski said that the pavers shown in the photographs were part of a walkway, not a patio. She also noted that the pavers at the top of the steps had already been removed.

Mr. Le presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said he purchased the home last year and was a first time homeowner. Mr. Le was not aware there were any violations, however, he was told at the time of purchase that the garage and deck needed permits. He stated that he had met with his neighbors and answered their questions.

Mr. Hammack and Mr. Le discussed the purchase of the property and the Notice of Violation (NOV) which had been issued. Mr. Hammack said it was his understanding that if an appeal was not made within 30 days of the issuance of an NOV, that the BZA had no jurisdiction. Susan Langdon, Chief, Special Permit and Variance Branch, stated that whether there was a written violation or not, the homeowner had the right to apply for a special permit. She noted that one could either fix the violations, or ask permission to keep them as they are.

In response to a question from Mr. Hart, Mr. Le said he did not have a copy of the deed relating to the easement. Mr. Le said the fence was located between his property and a vacant lot, but since his lot sloped downward, the fence was only chest-high.

Chairman Ribble called for speakers.

Laurie Chittenden came forward to speak. She stated that she was the owner of the adjacent empty lot and was in the process of selling it. Ms. Chittenden was concerned that if the deck was allowed to remain, that it might have a negative financial impact on the sale of her property. She noted that a recent potential buyer questioned the deck and its proximity to the lot line. Ms. Chittenden asked that if this permit was granted, if it would affect a variance request on her property. Chairman Ribble stated that each request was considered separately.

In response to a question from Mr. Hart, Ms. Chittenden said that potential buyers only seemed to be concerned with the deck, not the fence.

In rebuttal, Mr. Le again stated that the deck had been built prior to his purchase of the property, and that he would like to keep it without modification.

In response to a question from Ms. Gibb, Ms. Gumkowski stated that the reference in the staff report to an addition being constructed between 2002 and 2003 was to the garage, not the deck. She noted that there was no evidence of when the deck was built.

Chairman Ribble closed the public hearing.

Mr. Byers moved to defer decision on SP 2012-MA-045 to November 28, 2012, at 9:00 a.m., and asked for staff to provide answers to the issues that had been raised at the public hearing. He stated he would like answers from staff regarding the fence placement in an easement and a second easement labeled on the plat for a sanitary sewer. Mr. Byers also noted that the Corrective Work Orders were dated November 11 and February 3, however, no action was taken between then and now. He pointed out that the property had been sold after the Notices of Violation were issued, which he felt was a disservice to the purchaser. He asked for clarification from the County Attorney's office or Zoning Administrator on this point.

Mr. Hart seconded the motion.

Ms. Gibb did not feel the Board had any reason to delay decision on this application. She said that while she would like to see copies of the easement documents, it was really more of an issue between the property owners and the entity who holds the easements.

Mr. Hart stated his support for the deferral. He felt the owner had the standing to come in and get these issues straightened out. Further, he said there was no rush to vote on the application today.

Mr. Hammack said he would support the deferral, and asked for clarification about the 30-day requirement for filing an appeal. He was unsure the BZA had jurisdiction to act on this case.

Mr. Beard aligned himself with Ms. Gibb's remarks.

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

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. CHARLES E. BUGGS, TRUSTEE AND GEORGIA S. BUGGS, TRUSTEE, SP 2012-DR-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 24.9 ft. and deck 25.8 ft. from side lot line such that side yards total 35.6 ft.. Located at 6603 Baymeadow Ct., McLean, 22101, on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 21-4 ((18)) 42.

Chairman Ribble called the applicant to the podium.

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

John Benedetto, the applicants' agent, 746 Walker Road, Great Falls, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants wanted to construct an addition 24.9 feet and a deck 25.8 feet from the side lot line, such that side yards total 35.6 feet. The Zoning Ordinance required a minimum side yard of 12 feet and total side yards of 40 feet under the cluster regulations of the R-1 Zoning District. Both structures met the minimum side yard requirement of 12.0 feet; however, they did not meet the total side yard requirement of 40.0 feet; therefore, a modification of 4.4 feet, or 11 percent, was requested. The addition as proposed would consist of a sunroom on the top level and additional interior basement living space on the lower level. A proposed deck with steps would lead into the rear yard to access the existing in-ground swimming pool. Ms. Hedrick said staff recommended approval of SP 2012-DR-042, subject to the proposed development conditions.

Mr. Benedetto had nothing to add to his special permit amendment request as outlined in the statement of justification submitted with the application. He thanked Ms. Hedrick for the excellent job she did.

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

Mr. Hart moved to approve SP 2012-DR-042 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES E. BUGGS, TRUSTEE AND GEORGIA S. BUGGS, TRUSTEE, SP 2012-DR-042 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 24.9 ft. and deck 25.8 ft. from side lot line such that side yards total 35.6 ft. Located at 6603 Baymeadow Ct., McLean, 22101, on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 21-4 ((18)) 42. 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 17, 2012; and

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

1. The applicants are the owners of the property.
2. The Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. The addition is relatively modest compared to the scale of the house.
4. The reason why there is a total side yard dimensional issue is not really changing.
5. The addition in its location would otherwise comply with the minimum side yard on that side of the house, but this is a lot where the right-hand side line is skewed to the house so that the back corner of the house has a relatively short side yard 10.7 feet, and that is not changing by this addition.
6. The addition is really on the other side of the house.
7. Where the wall is for the addition and the deck is not significantly different from where the house is now.
8. The house is significantly more massive.
9. There is already a driveway and other things.
10. This is not significantly changing what is there now, or creating any additional negative impact on the neighbors.
11. It appears to be an attractive structure in the plans that are provided and were incorporated and added in the development conditions.
12. The Board determined that all of the Sect. 8-922 criteria have been met.

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

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

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

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 two-story addition (528 square feet) and a deck with steps, as shown on the plat prepared Larry N. Scartz, dated May 15, 2012 as revised and sealed through June 20, 2012, as submitted with this application and is not transferable to other land.

3. Pursuant to Paragraph 4 of Sect. 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 (2,619 square feet existing + 3,928.5 square feet (150%) = 6,547.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC., & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 (amend SP to permit telecom facility) (*Indefinitely deferred from 4/14/10 at appl. req.*) (*Reactivated on 5/11/12.*)

Chairman Ribble noted that the application had been administratively moved to December 12, 2012 at the applicant's request.

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. MARIA TORRES, SP 2012-MA-041 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 3706 Quaint Acres Ci., Falls Church, 22041, on approx. 23,850 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 206.

Chairman Ribble called the applicant to the podium.

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

Henry Baynes, the applicant's agent, 3706 Quaint Acres Circle, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant wanted to add an accessory dwelling unit (ADU) within the basement of an existing building. No exterior changes were proposed. The ADU would be for the applicant's father-in-law, who is over 55 years old. The ADU would be approximately 474 square feet or 25 percent of the primary dwelling unit, and consist of two bedrooms, a kitchen, a bathroom, and a living area. Staff recommended approval of SP 2012-MA-041, subject to the proposed development conditions.

Mr. Baynes presented the special permit request as outlined in the statement of justification submitted with the application. He said the ADU was being requested so that the applicant's father and his caregiver could live with her, noting that the caregiver was also a relative of the applicant.

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

Ms. Gibb moved to approve SP 2012-MA-041 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARIA TORRES, SP 2012-MA-041 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 3706 Quaint Acres Ci., Falls Church, 22041, on approx. 23,850 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 206. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 17, 2012; and

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

1. The applicant is the owner of the property.
2. The Board adopted the staff report, which recommends approval and says that there is not going to be any difference in the outside of the house. It looks just like it does right now.
3. There has been no neighborhood opposition.
4. It looks as if there will be no impact on the neighborhood whatsoever.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owner only, Maria A. Torres, and is not transferable without further action of this Board, and is for the location indicated on the application, 3706 Quaint Acre Circle, (23,850 square feet), and is not transferable to other land.
3. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.

5. The accessory dwelling unit shall contain a maximum of approximately 474 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. The accessory dwelling unit shall contain a maximum of two bedrooms for a maximum of two occupants.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit within 120 days of approval of this special permit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.

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

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

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. BERNADETTE KEANY, VCA 2011-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 25.3 ft. from front lot line, 5.2 ft. and 12.1 ft. from side lot lines, roofed deck 21.3 ft. from front lot line, deck 9.9 ft. from side lot line and to permit a fence greater than 4.0 ft. in height to remain in the front yard. Located at 5736 Mallow Trail, Lorton, 22079, on approx. 7,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (*Admin. moved from 10/3/12 at appl. req.*)

Chairman Ribble called the applicant to the podium.

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

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

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

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She noted that in 2011, the BZA approved a variance to allow the partial reconstruction and addition to an existing dwelling. The BZA approved a renovated and new second and third story additions to the existing dwelling. During construction, it was determined that the foundation needed to be reinforced, and the applicant subsequently demolished the entire structure to the foundation. When the applicant attempted to construct a new dwelling on the foundation, the county determined that the construction was no longer in conformance with the approved variance. The applicant was now requesting a variance amendment to allow the construction of a new three-story dwelling with modification to the yard requirements. The applicant was also requesting that an existing 6-foot high fence be allowed to remain in the front yard.

In response to a question from Mr. Beard, Ms. Horner confirmed that the application was being amended only because of a change in the footprint.

Ms. Kelsey presented the variance amendment request as outlined in the statement of justification submitted with the application. She stated that Barnes Lawson, an attorney, Bernadette Keany, the applicant, and Bill Bond, the builder, accompanied her to the public hearing. Ms. Kelsey had sent letters to the neighbors inviting them to contact her if they had any questions or concerns. She received one letter stating that they had no opposition to the application.

Ms. Kelsey provided a brief history of the property, noting that the builder said he could not go forward in good faith since the footings were crumbling, so he removed the first and second floors. She said that the builder submitted new plans, put in plumbing underneath the house, and regraded. When the builder called the County for an inspection, he was told that property no longer met the variance conditions, and they had to return to the BZA.

Mr. Larson addressed each of the nine variance requirements, noting that most of his comments were taken from the BZA's approval in the prior variance hearing. He thought it complied with the intent of the Ordinance. Mr. Lawson showed a plat delineating the hardship in building a very small house without a variance.

Chairman Ribble called for speakers.

Bernadette Keany, 8212 Collingwood Court, Alexandria, Virginia, came forward to speak. She said she was the owner of the subject property and had purchased the home four and one half years ago. Ms. Keany stated she was trying to do everything by the book, and wanted to build a sturdy home for herself and her daughter.

Chairman Ribble closed the public hearing.

Mr. Beard moved to approve VCA 2011-MV-010 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BERNADETTE KEANY, VCA 2011-MV-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 25.3 ft. from front lot line, 5.2 ft. and 12.1 ft. from side lot lines, roofed deck 21.3 ft. from front lone line, deck 9.9 ft. from side lot line and to permit a fence greater than 4.0 ft. in height to remain in the front yard. Located at 5736 Mallow Trail, Lorton, 22079, on approx. 7,500 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (Admin. moved from 10/3/12 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 October 17, 2012; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-E.
3. The area of the lot is 7,500 square feet.
4. The Board noted that this is an amendment to a variance that has been approved previously and is back in for construction modifications having to do with foundation.
5. The applicant satisfies the required standards for a variance, 1 through 9 Required Standards.

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

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

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

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

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

1. This variance is approved for the maximum size and location of a single-family detached dwelling, as shown on the plat prepared by Dominion Surveyors Inc., dated May 22, 2012, and signed by George M. O'Quinn, Land Surveyor, as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. The dwelling shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

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

//

~ ~ ~ October 17, 2012, Scheduled case of:

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

Chairman Ribble noted that A 2012-MV-010 had been administratively moved to November 28, 2012, at 9:00 a.m., at the appellant's request. Jane Kelsey, the applicant's agent, stated that since the variance amendment had been approved, she would withdraw the appeal.

//

~ ~ ~ October 17, 2012, Scheduled case of:

9:00 A.M. JOLANDA N. JANCZEWSKI, A 2011-SP-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that an existing horse boarding operation and associated buildings and storage may continue on property in the R-C and WS Districts without special permit approval. Located at 10810, 10810A, 10812, 10814, and 10816 Henderson Rd., 22039-2226 on approx. 27.8 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((15)) 1, 2, 3, 4, and 5. (*Admin. moved from 9/14/11, 3/28/12, 5/16/12, and 7/18/12 at appl. req.*)

Chairman Ribble noted that A 2011-SP-013 had been administratively moved to April, 2013, at 9:00 a.m.

In response to a question from Mr. Hart, Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, acknowledged that the appeal had been moved several times. She said the appellant was not continuing to operate, but was unsure how to proceed.

//

9:00 A.M. DAVAR VEISEH, A 2012-PR-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an office, which is a use not permitted, on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 2221 Chain Bridge Rd., Vienna, 22182, on approx. 48 ac. of land zoned R-1 and H-C. Providence District. Tax Map 39-1 ((4)) 5.

Chairman Ribble noted that A 2012-MV-010 had been administratively moved to November 28, 2012, at 9:00 a.m., at the appellant's request.

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

//

~ ~ ~ October 17, 2012, After Agenda Item:

Approval of Minutes from
May 10, 2005, August 1, 2006, and September 11, 2007 Minutes


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

//


As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Minutes by: Suzanne Frazier

Approved on: February 6, 2019



Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 24, 2012. 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 9:02 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ October 24, 2012, Scheduled case of:

9:00 A.M. THUAN NGUYEN, SP 2012-HM-048 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building locaton to permit accessory storage structure to remain 2.9 ft. from side lot line and open deck to remain 9.0 ft. from side lot line and to permit reduction in certain yard requirements to permit construction of addition 28.3 ft. from front lot line. Located at 9938 Vale Rd., Vienna, 22181 on approx. 42,021 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 5

Chairman Ribble noted that the Board had received a deferral request.

Ms. Gibb moved to defer SP 2012-HM-048 to December 5, 2012, at 9:00 a.m., at the applicant's request. Mr. Hart seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ October 24, 2012, Scheduled case of:

9:00 A.M. ROBERTA RENZI, SP 2012-BR-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing detached structure. Located at 9700 Burke View Ct., Burke, 22015, on approx. 5.23 ac. of land zoned R-1. Braddock District. Tax Map 78-1 ((2)) 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.

Roberta Renzi, 9700 Burke View Court, Burke, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-BR-047, subject to the proposed development conditions.

In response to questions from Mr. Hart, Ms. Hedrick stated that there were permits issued in 1969 for a barn that showed the location and size, which were the same as the current structure, and the permit stated it was specifically to be used as a horse barn.

Ms. Renzi presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the barn already had electricity and plumbing when she moved in, with a bathroom and office built into it, and her husband used it as an office. She said she had 12 children, and it was later used for overflow for the family. Ms. Renzi stated that there had been a fire, and afterward they renovated the barn to more of a dwelling unit. She said she planned to have her mother move into the dwelling where her son would live with her as a caregiver.

In response to a question from Mr. Hart, Ms. Renzi stated that she had read and agreed with the development conditions.

Mr. Byers asked if Ms. Renzi was the wife of a former republican congressman from Arizona. Ms. Renzi stated that she was. Mr. Byers recused himself from the public hearing.

In response to Mr. Beard's question regarding whether the accessory dwelling was on public sewer, Ms. Renzi stated that it was, but the main house was on a septic system. She stated that there was a certain amount of rooms allotted for the drain field, and the health department approved the dwelling for public sewer.

Chairman Ribble called for speakers.

Geraldine Lash, 9704 Brookview Court, Burke, Virginia, spoke in opposition to the application, stating that she thought it was an attempt to justify a violation of the zoning laws, and although the applicant said the primary reason for the accessory dwelling was for her mother, she still resided in Arizona. Ms. Lash said the dwelling had been remodeled three times without the necessary permits, was in violation of the homeowners association covenants, and destroyed the appearance of the lakeside view in the neighborhood.

In response to a question from Mr. Hammack, Ms. Hedrick stated that the land records showed it taxed as an additional dwelling on the property.

Ms. Renzi stated that the other neighbors were in support, and the dwelling unit did not interrupt traffic or disrupt the character of the neighborhood. She said the neighbor who spoke in opposition had planted trees that blocked her view of the accessory unit. She indicated that her mother was coming to live in the home at the end of the month.

Ms. Gibb asked whether anyone in the house was over 55 years old. Ms. Renzi stated that her mother would be moving in, her husband was 54, and she was 53, so in the next few months someone would be over 55.

Susan Langdon, Chief, Special Permit and Variance Branch, clarified for Mr. Hammack that once the applicant or her husband turned 55, there would be no conditions to prevent them from having someone else move in.

Mr. Hart asked how the plumbing was connected to the sewer without a plumbing permit. Ms. Langdon said it would have been approved and done by the Fairfax County Sanitary Sewer Division, and the applicant had a letter from the Division of Environmental Health included in her statement that addressed the sewer.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-BR-047 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERTA RENZI, SP 2012-BR-047 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing detached structure. Located at 9700 Burke View Ct., Burke, 22015, on approx. 5.23 ac. of land zoned R-1. Braddock District. Tax Map 78-1 ((2)) 1 Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 2012; and

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

1. The applicant is the owner of the land.
2. The Board adopts the resolution in view of staff's recommendation of approval and testimony by the applicant.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of building and/or trade permits for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Roberta S. Renzi and/or Richard G. Renzi, and is not transferable without further action of this Board, and is for the location indicated on the application, 9700 Burke View Court (5.23 acres) and is not transferable to other land.
3. A copy of this special permit **SHALL BE POSTED IN A CONSPICUOUS PLACE IN THE ACCESSORY DWELLING UNIT** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
5. The accessory dwelling unit shall be in the detached accessory structure and shall contain a maximum of 1,536 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
6. The accessory dwelling unit shall contain a maximum of two (2) bedrooms for a maximum of two (2) people.
7. All applicable building and trade permits and final inspections shall be obtained for the accessory dwelling unit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify

the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers recused himself from the hearing.

//

~ ~ ~ October 24, 2012, Scheduled case of:

9:00 A.M. AATEF E. MORKOS, SP 2012-SP-046 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 9472 Lapstrake Ln., Burke, 22015, on approx. 10,609 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((12)) 27A.

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.

Aatef E. Morkos and Susana Morkos, 9472 Lapstrake Lane, Burke, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The proposed accessory dwelling unit was approximately 1,145 square feet or 40.7 percent of the primary dwelling unit, which exceeded the maximum permitted of 35 percent. Ms. Horner said staff believed the request was not in conformance with the minimum Zoning Ordinance standards and recommended denial of SP 2012-SP-046.

Mr. Hart and Ms. Horner discussed the available on-site parking and the number of vehicles and residents on the site.

Ms. Morkos presented the special permit request as outlined in the statement of justification submitted with the application. She said her husband was not in good health, and their income was not enough to cover the mortgage. She stated that when she purchased the house, it already had a sink and cabinet in the basement, and they added two windows and one room. She also noted that the tenant had moved out.

In response to questions from Mr. Hammack, Mr. Morkos stated that he had read the criteria in the staff report, and there was nothing he could do about the size of the accessory dwelling unit, but he did meet the criteria concerning his age since he was 66 years old.

Mr. Hart stated that one of the conditions was based on the size of the accessory dwelling relative to the entire house, and the apartment was too large compared to the rest of the house. Mr. Morkos said that was how it was purchased.

Mr. Hart and Ms. Morkos discussed parking, with Ms. Morkos stating that she parked her two cars in the driveway, and the tenants parked two cars in the front of the home. Mr. Hart stated that all of the parking needed to be on the property and not on street.

Mr. Hart stated that there were too many people living in the basement. Ms. Morkos stated that it was a husband and wife with one seven-year-old child, but they had moved out. Mr. Morkos indicated that they would comply with the rule and keep the tenant to one car and two people.

Ms. Gibb and Ms. Horner further discussed the parking, occupancy, and square footage issues and whether the applicant had been advised, with Ms. Horner stating that she had communicated the three issues with the applicant. Mr. Morkos stated that they understood the rules and would only allow one car for the tenant, but would do nothing with the size of the basement. Susan Langdon, Chief, Special Permit and Variance Branch, stated that there were difficulties separating the accessory dwelling unit due to the way the rooms were laid out. She said the applicant was given the opportunity to reconfigure the basement to show the 35 percent requirement could be met, but had not done so.

In response to Mr. Hart's question, Charles Fitzhugh, Inspector, Department of Code Compliance, stated that he spent a lot of time with the applicant in 2011 and had discussed with the applicant on three occasions that the application had to be completed and the outstanding issues resolved. Mr. Fitzhugh said there was difficulty getting the applicant to complete the application, and the case had eventually been sent to the County Attorney's Office to be litigated.

Chairman Ribble called for speakers.

Michael A. Keeman, 9475 Lapstrake Lane, Burke, Virginia, and Tom Hooper, 9468 Lapstrake Lane, Burke, Virginia, spoke in opposition to the application. They voiced concerns regarding pet problems and parking issues, stating the tenants parked three vehicles on the street blocking driveway entrances and had been reported for not having proper plates and inspection.

In his rebuttal, Mr. Morkos said he discussed resolving the parking issues with his neighbor. He said he needed the income because of his age, and the expenses regarding the application had been a burden. He stated that the basement could not be changed because it was under the house. Ms. Morkos stated that her husband could not close off another room due to the renovation costs. She said she would do a better job communicating the parking issues with the tenants in the future.

In response to Mr. Hammack's questions, Ms. Horner stated that she did not find any building permits for interior finishes in the basement, but found two building permits for the egress windows. Ms. Morkos stated that she had a permit for construction and architectural plans to reconstruct the room.

Chairman Ribble closed the public hearing.

Mr. Byers moved to deny SP 2012-SP-046 for the reasons stated in the Resolution. Mr. Hammack seconded the motion.

Mr. Byers stated that the R-3 Cluster Zoning District allowed single-family homes, and the 35 percent criteria for an accessory dwelling unit was to avoid duplexes or two-family homes. He said staff had indicated meeting the criteria was problematic because there would have to be reconstruction. There was storage in the garage and driveway restricting parking, and on a public street, cars were supposed to be parked parallel, but the photographs showed they were all parked perpendicular to the curb, and based on the testimony, the parking was in violation. Mr. Byers stated that he was sympathetic, but the application did not meet the requirements of the Zoning Ordinance.

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

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

AATEF E. MORKOS, SP 2012-SP-046 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within the existing dwelling. Located at 9472 Lapstrake Ln., Burke, 22015, on approx. 10,609 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((12)) 27A. 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 24, 2012; 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 Cluster.
3. The area of the lot is 10,609 square feet.

4. The application fails to meet additional Standards 3, 5C, and 7.
5. The standards can only be met with certain development conditions which the Board considers to be problematic.
6. Staff recommends denial, and the Board adopts its rationale.

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

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

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

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

//

~ ~ ~ October 24, 2012, Scheduled case of:

9:00 A.M. CHARLES B. MOLSTER, III; SHARON B. MOLSTER, A 2012-DR-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Riding/Boarding Stable on property in the R-E District without an approved special permit in violation of Zoning Ordinance provisions. Located 815 Blacks Hill Rd., Great Falls, 22066, on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26.

Chairman Ribble noted that A 2012-DR-019 had been administratively moved to October 31, 2012, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ October 24, 2012, Scheduled case of:

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

Chairman Ribble noted that A 2012-HM-020 had been administratively moved to January 30, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ October 24, 2012, After Agenda Item:

Approval of January 29, 2008; and April 25, 2012 Minutes


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

//

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

Minutes by: John W. Cooper

Approved on: December 3, 2014


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


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, October 31, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Absent from the meeting was Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. 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 31, 2012, Scheduled case of:

9:00 A.M. WAYNE R. LACEY, SP 2012-BR-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.6 ft. from side lot line. Located at 5312 Moultrie Rd., Springfield, 22151, on approx. 10,800 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((8)) (11) 20.

Chairman Ribble called the applicant to the podium.

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

Wayne R. Lacey, 5312 Moultrie Road, Springfield, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow reduction of certain yard requirements to allow an existing garage to remain 6.6 feet from its eave to the northern side lot line. A minimum side yard of 12 feet was required, therefore, a modification of 5.4 feet or 45 percent was requested. The approximately 230-square foot garage was originally constructed as an open carport attached to the dwelling. The carport was enclosed without permit on an unknown date before the applicant purchased the property. Staff recommended approval subject to the proposed development conditions.

Mr. Lacey presented the special permit request as outlined in the statement of justification submitted with the application. He bought the house in 2009 in good faith, expecting that everything about the property was in accordance with regulations and statutes. Mr. Lacey noted that when he came to the County to obtain a permit to rebuild the deck, he was informed that the garage was not in compliance.

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

Mr. Byers moved to approve SP 2012-BR-050 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE R. LACEY, SP 2012-BR-050 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.6 ft. from side lot line. Located at 5312 Moultrie Rd., Springfield, 22151, on approx. 10,800 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-4 ((8)) (11) 20. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2012; and

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

1. The applicant is the owner of the property.
2. The Board determined that this application meets all of the criteria in A through G.
3. The staff recommended approval, and the Board adopted its rationale.

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

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

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

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

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

1. This special permit is approved only for the location of the existing dwelling as shown on the plat prepared by Jeffrey D. Warner, dated January 25, 2012 as revised through July 31, 2012, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the garage addition within 180 days of approval of this application.

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

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

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:00 A.M. WILLIAM KRAKAT, SP 2012-SU-055 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 8.6 ft. from side lot line. Located at 15521 Eagle Tavern Ln. on approx. 13,376 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1)) 23.

Chairman Ribble called the applicant to the podium.

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

William Krakat, 15521 Eagle Tavern Lane, Centreville, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow modification to minimum yard requirements to allow construction of an attached deck to be located 8.6 feet from the western side lot line. The R-C district required a minimum side yard of 20 feet, therefore, a modification of 11.4 feet was requested. This subdivision was originally developed under the R-2 Cluster regulations that required minimum side yards of 8 feet with a total minimum side yard of 24 feet, which the proposed deck would meet.

Mr. Krakat presented the special permit request as outlined in the statement of justification submitted with the application. He said he only wanted to replace the existing deck, which was 24 years old and deteriorating. Mr. Krakat stated that he applied for the permit because the supporting posts, which were rotting, needed to be replaced.

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

Mr. Hart moved to approve SP 2012-SU-055 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM KRAKAT, SP 2012-SU-055 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of deck 8.6 ft. from side lot line. Located at 15521 Eagle Tavern Ln. on approx. 13,376 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 23. 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 31, 2012; and

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

1. The applicant is the owner of the property.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.
6. The applicant has presented testimony showing compliance with the required standards.
7. This is similar to some other R-C lot approvals.
8. These are five-acre lot setbacks on lots that are much smaller, and because of that, the reasonable modifications to houses sometimes need relief from the Ordinance.
9. The deck will be no closer to the side line than the existing deck or the existing house.
10. The Board did not believe this would have any significant negative impact on anyone.
11. Mr. Hart said he lived around the corner, and although he does not know the applicant, this is not out of line with anything else that is in the neighborhood.
12. There is no opposition to it.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance.

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

1. This special permit is approved for the location of a deck as shown on the plat prepared by Rice Associates dated October 14, 1991, updated by David Sams on August 1, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction and approval of final inspections shall be obtained.

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

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

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

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:00 A.M. ANTHONY SORIA, SP 2012-LE-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.0 ft. from side lot line. Located at 6316 Alamo St., Springfield, 22150, on approx. 9,240 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (4) 20.

Chairman Ribble called the applicant to the podium.

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

Robert Parker, the applicant's agent, 3187 Readsborough Court, Fairfax, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting special permit approval to allow a reduction of minimum yard requirements based on an error in building location to allow an addition, specifically the enclosure of a carport, to remain 4.0 feet to its eave from the southern side lot line. A minimum side yard of 10 feet was required, therefore, a modification of 6 feet or 60 percent was requested.

In response to a question from Mr. Hart, Ms. Hedrick stated that the application was advertised correctly since Jarmon/Jarma was a typographical error and does not affect advertising.

Ms. Hedrick confirmed for Mr. Hart that the Department of Public Works wanted the shed removed from the storm water easement. Mr. Hart and Ms. Hedrick discussed the legality of the shed in 1956 when it was shown on the house location survey. Ms. Hedrick noted that it was not shown on the current plat, because it was no longer attached to the house.

Mr. Byers asked about the construction status when the Notice of Violation (NOV) was issued on December 1, 2010. Rick Antonowics from the Department of Code Compliance (DCC) stated that the addition was approximately 50 percent completed when they discovered it. Regarding the shed, he noted that most of the sheds in the neighborhood were built with a carport at the time of construction.

In response to a questions from Mr. Byers, Mr. Antonowics said that the applicant got in touch with DCC within three days of the date of the Corrective Work Order (CWO), noting that Mr. Soria then applied for a building permit. Mr. Antonowics said he did not know if construction continued after the issuance of the CWO, because he had not been allowed on the property since. He said the 50 percent which had been constructed consisted of the exterior shell and some drywall.

Mr. Byers asked why it took 15 months to obtain a special permit. Mr. Antonowics stated that DCC will first issue a CWO, which gives the applicant a certain amount of time to respond, then an NOV, which gives them more time. He said the applicant was given a number of extensions so that he could get a special permit, however, he did not. Mr. Antonowics then had a summons issued to compel the applicant to come to court, and that was when they applied for the special permit.

In response to a question from Mr. Byers, Rachel Perrot, Department of Code Compliance, stated the County and the applicant were in court a few times, and there were a few continuances in order to allow the applicant time to resolve the zoning portion of the case. A general district court judge made the decision that it was easier to dismiss the case with the understanding that the County could always come back and get a second round of summons issued if the building permit process was not completed.

Mr. Hart referenced the photos in the staff report, noting that one window was approximately 4 feet in height. He asked if that would have to be removed since the Building Code does not allow windows below 5 feet. Mr. Antonowics confirmed that it would have to be removed.

Mr. Parker presented the special permit request as outlined in the statement of justification submitted with the application. He said that the original construction was just to the carport, since the applicant had seen other enclosed carports in the neighborhood. Mr. Parker said the applicant did not know a special permit would be necessary.

Ms. Gibb asked if Mr. Parker would address the good faith standard in the Ordinance. He said that when the applicant purchased the property, the rear portion of the carport was already enclosed, and he did not know he needed a permit to enclose the remainder of the carport.

In response to a question by Ms. Gibb, Mr. Parker said the court delay was due to the plat being incorrect. He stated that it took the surveyor three times to make the plat acceptable to the county.

Ms. Gibb referenced a letter which the BZA received stating that proximity of the shed to adjacent property made it a fire hazard. Mr. Parker stated that the exterior wall would be constructed so to ameliorate a fire hazard.

Ms. Gibb asked Mr. Parker to address the special permit standard which states that forced compliance with the Zoning Ordinance would cause an unreasonable hardship on the owner. Mr. Parker stated that the houses were small, and the applicant needed the additional space.

In response to a question from Mr. Smith, Mr. Parker said the applicant had two cars, which could be parked in the driveway.

In response to a question from Mr. Hart, Mr. Parker said that the applicant needed the space for storage. No boarders would live in the house. There was no separate kitchenette or bathroom. He said the enclosed carport would be heated.

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

Ms. Gibb moved to approve SP 2012-LE-049 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY SORIA, SP 2012-LE-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.0 ft. from side lot line. Located at 6316 Alamo St., Springfield, 22150, on approx. 9,240 sq. ft. of land zoned R-4 and HC. Lee District. Tax Map 80-4 ((5)) (4) 20. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2012; and

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

1. The applicant is the owner of the property.
2. This is a close call.
3. The Board could go either way on this.
4. The Board is usually not persuaded by what else has happened in the neighborhood.
5. They certainly did not need special permits or variances probably to enclose their carports in the neighborhood.
6. The Board took into effect the testimony of the agent that the applicant had language difficulties and looked around and saw other carports turned into additions, and it appeared that he was building in the same footprint, and for that reason, he could proceed.
7. Of course, that did not explain why he did not get a building permit, but as to meeting the standard that the compliance was done in good faith, just barely.
8. The applicant has met the other required standards, the other being E, which the Board was worried about, that it did not create an unsafe condition with respect to both other property and public streets.
9. The Board had an anonymous letter raising the question of building too close to the adjacent property and that it could be a fire hazard, but the Board had testimony from the inspector that fire retardant materials will be required.
10. The applicant met required Standards A through G, just barely.

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

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

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

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

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

1. This special permit is approved only for the location of an addition (carport enclosure) as shown on the plat prepared by Alexandria Surveys, LLC, dated April 6, 2012, as revised through August 1, 2012, sealed on September 14, 2012, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the addition within 180 days of approval of this special permit.
3. The exterior of the addition shall be finished with vinyl siding and gutters consistent with the house.
4. Notwithstanding what is shown on the special permit plat, the "shed" located within the 25 foot storm sewer easement shall be removed from the property or relocated outside of the easement to a permitted location within 90 days of approval of this special permit.

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

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

//

~ ~ ~ October 31, 2012, Scheduled case of:

- 9:00 A.M. JAIME REYES, SP 2012-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.6 ft. from side lot line and 11.8 ft. from rear lot line. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. (Concurrent with VC 2012-LE-004).
- 9:00 A.M. JAIME REYES, VC 2012-LE-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit front greater than 25 percent front yard coverage. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. (Concurrent with SP 2012-LE-053).

Chairman Ribble called the applicant to the podium.

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

Jaime Reyes, 3426 Spring Drive, Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested special permit approval for a reduction to the minimum yard requirements based on an error in building location to allow an accessory structure, specifically a one-story detached garage, 14.8 feet in height, to remain 6.6 feet from the eastern side lot line and 11.8 feet from the rear lot line. A minimum side yard of 15 feet and a minimum rear yard of 14.8 feet were required. Therefore, a modification of 8.4 feet or 56 percent was requested for the side yard, and 3 feet or 20 percent was requested for the rear yard. The applicant was also requesting a variance to permit greater than 25 percent front yard coverage. The front yard surface area consisted of a concrete driveway, which measured 1,385 square feet or 48 percent of the front yard area.

In response to a question from Mr. Hart, Ms. Hedrick said the Department of Code Compliance had indicated that the outdoor storage area was not an issue.

Mr. Reyes presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He said the driveway was originally covered with gravel, but he wanted to cover it with concrete, since it would be easier to maintain. Mr. Reyes stated that the garden he installed made the area look better than it did previously. He installed the concrete driveway in 2004, and did not think the neighborhood would object to it.

In response to questions from Ms. Gibb, Ms. Hedrick stated that gravel is considered an impervious surface. The Ordinance changed in 2002—2003 to limit the amount of impervious surface allowed in a front yard.

Ms. Gibb and Mr. Reyes discussed the circular concrete driveway, with Mr. Reyes stating that he parked his vehicles there. He also noted that it was a dead end street.

Mr. Hart discussed the severe standards which had to be met before a variance could be issued, noting that he had not yet heard what characteristic on this property would make it eligible for a variance.

Mr. Reyes stated that he didn't understand English very well, and introduced his nephew, Horacio Prado, who would translate for him. Mr. Hart handed Mr. Prado a copy of the requirements which had to be met in order for the BZA to grant a variance, and asked if the subject property met them. Mr. Prado said that the neighboring properties looked like his, and they had circular driveways.

Mr. Hart noted that the proposed development conditions would require him to remove a portion of the concrete patio in the backyard. Mr. Prado said that it had already been removed.

Mr. Smith and Mr. Reyes discussed the driveway and garage issues. Mr. Reyes noted that when he bought the property in 1999, it had a gravel driveway. He paved it with concrete in 2004, after he built the garage. Mr. Reyes said he was a professional carpenter, and did the work himself. He stated there were two small sheds on the property which he took down and replaced with one larger shed on the west side near the fence. Mr. Reyes said the neighbors had a shed right across from his.

In response to a question from Mr. Smith, Mr. Reyes said he wanted the turnaround in his front yard, because the road ended without a cul-de-sac. Mr. Reyes said he had not received any complaints from his neighbors. Mr. Smith noted that the Board had received a letter of support from the property owner across the street.

In response to a question from Mr. Hart, Nancy Stallings, Inspector with the Department of Code Compliance, said it was unknown if gravel had been there before the concrete, since there were no aerial photographs prior to that time.

Mr. Hart, Ms. Stallings and Mr. Reyes discussed the history of the driveway and the replacement of gravel, with Mr. Reyes noting that he added one foot on each side of the circle when he replaced the gravel. Ms. Stallings stated that the violation came to the Board as an anonymous complaint.

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

Mr. Smith moved to defer decision on SP 2012-LE-053 and VC 2012-LE-004 to November 28, 2012. Ms. Gibb seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:00 A.M. BRIAN KEITH EDWARDS, SP 2012-SU-051 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing dwelling. Located at 13170 Rounding Run Ci., Herndon, 20171, on approx. 9,959 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((4)) (9) 81.

Chairman Ribble noted that SP 2012-SU-051 had been withdrawn.

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:00 A.M. HAI TRAN AND CHRISTINE TRAN, SP 2012-HM-054 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in a front yard. Located at 2403 Hunter Mill Rd., Vienna, 22181, on approx. 1.94 ac. of land zoned R-1. Hunter Mill District. Tax Map 37-2 ((1)) 28.

Chairman Ribble called the applicant to the podium.

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

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

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

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was seeking a special permit to allow a 6-foot high fence to be constructed in the front yard along Hunter Mill Road. The proposed fence would be an aluminum slatted fence. The Zoning Ordinance allows a fence up to 4.0 feet in height, therefore a modification of 2.0 feet was requested.

Mr. Smith stated his familiarity with this property, and noted that lot 21A had a similar fence to what the applicant was proposing. Ms. Horner noted that lot 21A was over two acres in size, and the fence was allowed by right.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicants did not want to have their children playing along Hunter Mill Road, since it was heavily traveled. Ms. Kelsey noted that there had been recent occurrences of cars driving onto the property from Hunter Mill Road, which was why a gate was constructed. She thought the application met all the criteria for a fence on this lot, noting the narrowness of the lot and natural tree cover. Ms. Kelsey said that although the fence would be aluminum, it would look like black wrought iron. She said there had been no opposition to the proposed fence.

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

Mr. Beard moved to approve SP 2012-HM-054 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAI TRAN AND CHRISTINE TRAN, SP 2012-HM-054 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit construction of fence greater than 4.0 ft. in height in a front yard. Located at 2403 Hunter Mill Rd., Vienna, 22181, on approx. 1.94 ac. of land zoned R-1. Hunter Mill District. Tax Map 37-2 ((1)) 28. Mr. Beard moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 2012; and

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

1. The applicants are the owners of the property.

2. The present zoning is R-1.
3. The area of the lot is 1.94 acres.
4. As testified by the owners' agent, the lot falls just short of 2.0 acres, which would entitle the applicants to a by-right fence greater than four feet in the front yard.
5. This is certainly aesthetically in keeping with the structure and the neighborhood.
6. There are no sight line issues here.
7. As this is a busy street, there definitely were security issues as well.

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

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

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

1. This special permit is approved for the location and maximum height of a 6.0 feet high open aluminum slatted fence, as shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated June 20, 2012, as sealed through August 3, 2012, submitted with this application and is not transferable to other land. The fence shall be located outside of the slope easement as depicted on the plat.
2. The fence shall be generally in conformance with the depictions included as Attachment 1.

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

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

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:30 A.M. GARY PISNER, A 2012-SP-012 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a junk yard and a storage yard and is permitting an accessory storage structure to remain on a lot which has no primary use, all on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 6439 Little Ox Rd., Fairfax Station, 22039, on approx. 2.452 ac. of land zoned R-1. Springfield District. Tax Map 77-3 ((1)) 32. (*Admin. moved from 9/26/12 at appl. req.*)

Chairman Ribble called the appellant to the podium.

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

Gary Pisner, 6439 Little Ox Road, Fairfax Station, Virginia, came forward.

Jill Cooper, Assistant Administrator for Appeals, Zoning Administration Division, presented staff's position as set forth in the staff report. This was an appeal of a determination that the appellant had established a junk yard and a storage yard, and was permitting an accessory storage structure to remain on a lot which had no primary or principal use, which was in violation of Zoning Ordinance provisions. No dwelling unit existed on the property. The property remains littered with materials, debris and junk associated with the construction that has been occurring on the property since 1987. On March 28, 2012, a Notice of Violation (NOV) was issued to the appellant.

The appellant had maintained that the property was not being used as a storage yard, and that the NOV was simply a continuation of a decision of the Virginia Court of Appeals. In fact, the condition of the property met the Zoning Ordinance definition of a junk yard and a storage yard. The property was littered with lumber, Styrofoam, ladders, scaffolding, deteriorated plywood and windows, appliances, tires, and various other

items. It was, therefore, the Zoning Administrator's position that the appellant had established a junk yard and a storage yard, and was permitting an accessory storage structure to remain on a lot which had no primary or principal use, all on property in the R-1 district in violation of Zoning Ordinance provisions. Staff recommended that the BZA uphold the determination of the Zoning Administrator, as set forth in the Notice of Violation dated March 28, 2012.

In response to a question from Mr. Hart, Paul Emerick, Assistant County Attorney, stated that the case had been remanded back to the circuit court from the court of appeals. The County had made one or two dissents to the existing statement of facts, however, the appellant did not file another brief. In August, the court of appeals dismissed the appeal and forwarded it to the Supreme Court of Virginia. Mr. Emerick said the Court Clerk had contacted the appellant, asking if he was going to request a hearing or if he would be filing a supplemental brief. He did not believe the appellant had responded to the Court yet.

Mr. Hart stated his concern that the Court determination might affect the Board proceedings, however, Mr. Emerick stated there was no overlap of procedures.

Mr. Hart and Ms. Cooper discussed the history of the property, with Ms. Cooper noting that the County had no way of determining when the shed was built. Victoria Dzerick, Inspector with the Department of Code Compliance, stated that she believed there was an old metal shed located on the property previously, and that the current shed was new. She referenced the older photographs which had been taken by the previous blight coordinator when the property was cited for violation of the Virginia Maintenance Code and the Blight Ordinance. Ms. Dzerick said the appellant then demolished the structure and left the debris.

Assuming the shed was legally established when there was a house on the property, Mr. Hart asked why it was not considered preexisting. Susan Langdon, Special Permit and Variance Branch Chief, said that once the prior use ceased on the property, no accessory use was allowed. Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, stated a homeowner would usually rebuild the house, applying for a building permit to show he was making progress.

Mr. Pisner presented the arguments forming the basis for the appeal. He said the case that was now before the Virginia Supreme Court was intimately tied in with the current issue. The issue that was dealt with previously, while going through the blight abatement, was whether he could retain any of the existing structures and build on them. He submitted numerous plans to the blight abatement review office, and they rejected every one of those plans. He was told they were rejected because they wanted everything removed from the property. No reason was given. He appealed the case to the circuit court, because what they had suggested was punitive in nature.

Mr. Pisner gave a brief history of his property. He had taken out a building permit in the early 1980s, and that permit had been active for many years. What triggered this was after a tree fell on the house, he came back in to build with the existing permit, and he said the county basically went ballistic, since he had maintained it for so many years. He was told that they considered it to be unacceptable. They disconnected the electricity to the house, and the blight abatement issue came up. He said his office was in that house, so the contention of blight abatement people that the house had been vacant was bogus. However, this issue never came up before the Board of Supervisors. He said he was not even allowed to raise that issue.

Mr. Pisner continued that what was key about the Supreme Court case and the odd coincidence behind this coming within 24 hours of the Court's issuance of its decision, is that he cannot apply for a building permit. He gave a building permit to the blight abatement people as a remediation of the problem, however, he was not permitted to renovate the house until he knew what he had left. He did not know whether the foundation has to be totally obliterated or not. He did not know if the material on the property, a lot of it very expensive lumber which cannot be purchased any longer, can be reused. Mr. Pisner said the Supreme Court issue was critical, because he would finally know what he could use to do the renovation.

Mr. Pisner has been at the property since 1975, and said the County was wrong about the time period. As far as the shed was concerned, it was part of the process of the demolition contractor. He was supposed to build the shed so he could move his personal belongings into the shed during the house demolition. This issue related to the foundation and to the material on the property, and was supposed to be resolved in a short period of time. It was totally bogged down in the Courts, and there was absolutely nothing he could do about it.

Mr. Pisner presented Exhibit F, which noted that a parallel procedure was going on in the circuit court. That particular case directly related to the issue in front of the BZA. He said the issues were almost exactly identical, with the exception of the shed. A decision would be made by the Supreme Court regarding what to get rid of and what to maintain. The major issue was that the decision of the Building Code Technical Review Board (BCTRB) was somewhat ambiguous as to what material he had to get rid of. Once that was clarified, he would remove the objectionable material, and retain the material he needed to build the house. He said that was currently before the court right now; the Scheduling Conference was to be held November 20, 2012. He said he had no intention of maintaining a storage yard. As soon as the issue was resolved, he intended to rebuild the house, but he could not consider rebuilding the house if the foundation could not be built upon. He said he was awaiting decisions by both the Board of Supervisors and the BCTRB. Until then, he was simply awaiting for some direction from the Court. Mr. Pisner said these procedures were put in place by the legislature and by the courts.

In response to a question from Mr. Beard, Mr. Pisner acknowledged that he was a practicing attorney.

Mr. Hart asked when the shed was built. Mr. Pisner said it went in at the time the contractor was contracted to do the demolition. The shed was in the contract itself. The house was in existence and the contractor's first task was to remove the contents of the house, place them in the shed, demolish the house, and then rebuild the house. He needed a place to store his personal affects during the renovation. In response to a question from Mr. Hart, he said the demolition was scheduled after a tree fell on the house.

Mr. Hart noted that Mr. Pisner had said in his presentation that his office was in the house. He asked if he was also living there too. Mr. Pisner replied that he was spending approximately 20 to 30 hours a week there.

Mr. Hart asked staff if Mr. Pisner had a Residential Use Permit (RUP) issued for the house, noting that it looked like just studs and sheeting in the photographs. It also did not appear to have electricity and barely had a roof. While staff was researching whether a RUP had been issued, Mr. Hart asked Mr. Pisner if it was a completed structure. Mr. Pisner replied that after the tree fell on it, the house degenerated very, very quickly. He stated that there was electricity and plumbing in the house. In response to a question from Mr. Hart, Ms. Stanfield said a RUP had not been issued for the new construction. Mr. Hart said it seemed that this project was going on for 25 years. Ms. Stanfield agreed. She acknowledged, however, that someone could live in the house during that time.

Mr. Hart asked if there was a permit for a home professional office in the file, to which Ms. Stanfield replied that there was no record of one. In response to a question from Mr. Hart, Mr. Pisner said he did have a county permit for a home professional office, however he could not recollect when he obtained it. Mr. Pisner said he started the business in 1984, and it was incorporated in 1985. He had gotten all the necessary documentation from the County. He also noted that he paid taxes at that address. Ms. Stanfield pointed out that a home office was allowed; a special permit is only required if customers or clients came to the house.

Mr. Hart commented on the amount of construction material remaining on the property. Mr. Pisner stated that he had sorted it into two piles, useful and non-useful material. Mr. Hart asked if the non-useful items, i.e., rotten plywood and broken items, could be removed. Mr. Pisner said it would have been helpful if he had received some direction from the BCTRB, however, they wanted him to remove everything, including material he intended to use in the reconstruction. Mr. Pisner said he had filed an appeal of that decision.

In response to a question from Mr. Hart, Mr. Pisner said he had a contractor working on the project after about 15 years. He stated that the contractor had used Drybit (fake stucco), which failed miserably, and everything had to be taken down. It was at that point that he used a portion of the house that had not been affected. He confirmed that he had not had a contractor working on the reconstruction for the entire 25 years, but that he had worked on it for various lengths of time. Mr. Hart asked if he had inspections during the 25 years. Mr. Pisner said he did for every six months, and then the County told him not to have inspections anymore.

Mr. Hart noted that the County had fenced off the property, and asked Mr. Pisner if he could get into and out of the property. Mr. Pisner said he could not, nor could he have a contractor come in and take away material to a dumpster due to the way the fence was configured, with the opening in the back of the property. His only access would be to tear down a portion of the fence. Mr. Pisner noted that the BCTRB had asked him to

place a very large fence around the property, which he resisted because the object of the exercise was to get access to the property so that his contractors come in and take away the material.

Mr. Hart asked if Mr. Pisner could have access to properly remove the junk. Ms. Dzerick said portions of the fence could be removed if he needed access to it, however, she said it was erected because the property was a safety hazard.

In his final comments, Mr. Emerick said he was involved in the Pisner appeal to the state Technical Review Board (TRB) which held a hearing in August of 2011. He said the TRB had admonished Mr. Pisner to remove the rubbish, noting that all the rubbish was in violation of the Virginia Maintenance Code, and to secure the foundation because it was a hazard and, at times, resembled a swimming pool filled with water. Mr. Emerick said Mr. Pisner replied that he had just built the shed so that he could house a pump in it, stating the he pumped out the foundation from time to time. He distributed copies of the TRB's decision to the Board, calling their attention to the middle of page 5, which stated that Mr. Pisner's excuse for not clearing the material from the property was because it would have been in violation of either the Migratory Bird Act or the Endangered Species Act. Mr. Pisner had said that there was a vulture nesting. The TRB found that the bird had since left from the property and there was no impediment. Mr. Emerick pointed out that Mr. Pisner's appeal had nothing to do with which material he could use. There were no technical issues before the TRB at all. He said prosecution of the appeal had languished since January.

Mr. Pisner said Exhibit F spoke for itself, and what Mr. Emerick just said was incorrect. He said Mr. Emerick has a copy of the contract between himself and the contractor to construct the shed. Mr. Pisner reiterated that the purpose of the shed was to store his personal effects.

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

Mr. Byers moved to uphold the determination of the Zoning Administrator. Mr. Beard seconded the motion.

Mr. Hart stated that he would support the motion. He initially had some doubts about the shed, but based on the testimony, it appeared that the shed in question was put in by the demolition contractor and was not the same shed from before. Mr. Hart said he would have some concern about a structure legally established somehow becoming a violation by virtue of a tree falling on the house, but it sounded like on the facts before the Board, that is not exactly what happened. He said at least to the extent that the shed was coming in after the fact by the demolition contractor, it was a different shed and the Zoning Administrator was correct. Mr. Hart thought there was abundant evidence in the record supporting the conclusion that the property was a junk yard or a storage yard, whether or not the appellant intended to use some of the materials later. Mr. Hart provided a portion of the definition in the Ordinance for a junk yard, "provided that the use of any space whether inside or outside a building for the storage keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof," etc. Mr. Hart said the space appeared to be used for piles of what looked like construction debris. He did not know if any of it was salvageable, but there really had not been anything presented to the Board to show that the Zoning Administrator was plainly wrong. Mr. Hart thought that the photographs confirmed that. He said the state TRB seemed to refer to it as rubbish, collectively. Mr. Hart continued that maybe with exposure to the elements, that everything was rubbish. He did not know, but said that it definitely fit the definition of a junk yard. He said it was difficult to tell what all of the equipment or parts of things would be, but he did not think the appellant had met his burden of showing that the Zoning Administrator was plainly wrong.

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

//

~ ~ ~ October 31, 2012, Scheduled case of:

9:30 A.M. CHARLES B. MOLSTER, III; SHARON B. MOLSTER, A 2012-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Riding/Boarding Stable on property in the R-E District without an approved special permit in violation of Zoning Ordinance provisions. Located 815 Blacks Hill Rd., Great Falls, 22066, on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26. (*Admin. moved from 10/24/12 at appl. req.*)

Chairman Ribble called the appellant to the podium.

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

Charles B. Molster, III, 815 Blacks Hill Road, Great Falls, Virginia, came forward. He said he recently obtained Grayson Hanes to represent him in this case, and respectfully requested a continuance of this matter so that he and Mr. Hanes could meet to discuss the staff report and review the special permit options. Mr. Molster felt there were important considerations presented by this appeal for the Board to consider and wanted to be able to have a thoughtful opportunity to respond. He said Hurricane Sandy substantially impacted his ability to do that. In addition, Mr. Molster stated he had requested that Supervisor Foust assist him in obtaining a waiver of the \$16,300 special permit application fee, relying in part on the Equine Task Force report to the Board of Supervisors that identified some of the issues related to equine activities in Fairfax County. Mr. Molster acknowledged some of his neighbors in the audience, stating that he did not want them to have to come back. He said he was fine with them giving their testimony today. However, Mr. Molster wanted the record to be left open and allow him to supplement it once he and Mr. Hanes had an opportunity to meet.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, Zoning Administration Division, said the staff supported the request for continuation of the public hearing.

Chairman Ribble asked for speakers.

Robert Levar, 829 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He said the appeal had been pending since June, which was adequate time for the Molsters to come up with a response. Mr. Levar said this hearing was previously scheduled for October 24, 2012 and was rescheduled until today. He felt it was unfair to the neighbors since they wanted to respond directly to anything the Molsters had to say in this appeal. Mr. Levar noted that he and his neighbors had been waiting almost three hours for this public hearing to begin.

Chairman Ribble pointed out that if the Board left the record open, they might want to return for the continuation of the public hearing.

Mr. Molster pointed out that it was staff that requested that the public hearing be deferred from October 24, 2012, due to the scheduled public hearing on the Gulf Reston appeal. Ms. Stanfield confirmed that staff had requested the earlier deferral.

Robert Buenzle, 1813 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He said he and his wife had filed written testimony on October 22, 2012, and then supplemental testimony on October 29, 2012. Mr. Buenzle reaffirmed his written testimony.

In response to a question from Chairman Ribble, Mr. Buenzle said he wanted the public hearing to be held today. Chairman Ribble asked if it was his intention to testify today and then come back for the continuation of the public hearing after Mr. Molster met with his counsel. Mr. Buenzle said he would prefer for the public hearing to be held today, and the Board render their decision today.

Mr. Byers noted that Mr. Molster wished to speak with counsel regarding special permit options. He asked if the neighbors' testimony would change if the appellants returned with that option. Mr. Byers said he did not oppose hearing their testimony today, but wanted to make sure that the special permit option would not change their position. Chairman Ribble noted that the Board normally grants a continuance when the appellant had just obtained counsel.

Mr. Hart stated that since the staff previously requested that the public hearing be deferred, the Board should let the citizens in attendance testify, if they so desired, but also allow a continuance so that the appellant could meet with counsel.

Mr. Smith said that previously when an appellant files a special permit, the Board would postpone the appeal, because it could be moot if a special permit were processed.

Chairman Ribble said he would not recommend that the appellant testify without the advice of counsel. He thought the public hearing should be deferred and, unfortunately, the speakers in attendance would have to come back. Chairman Ribble noted that a special permit could be filed by the appellant before the deferred public hearing.

Mr. Hart moved that the Board continue the public hearing but allow the speakers in attendance to speak if they wanted to or come back, either way would be fine.

Mr. Byers said if the Board keeps the record open and people testify today, they would be testifying basically against an appeal. If a special permit was filed, they would have to start over anyway.

Mr. Buenzle said the appellants had been operating this business for over two years, and people had been complaining about it for over two years, asking them to stop. The appellants had been on notice for quite a long time. He felt it was outrageous for the appellants to come in at the time of the hearing and then suddenly say that they would like to do something else. They had plenty of time to hire an attorney. They had the notice from the Board in front of our road. They knew this was coming. Mr. Buenzle said the only question before the Board today was whether the appellants were operating a horse/stable business without a permit and does it violate the Zoning Ordinance. He did not see why they should have to come back, certainly not to have a bifurcated hearing with some testimony today and some testimony later. It should happen all at one time and it should happen today.

Milton Downs, 837 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He did not believe it was fair for someone to come in at the last minute, say they might want to do something else, defer what is on the table today, so that if the special permit fails, they can continue to have recourse after the fact. They should not be able to have their cake and eat it too when they had a chance to get their act together beforehand. Mr. Downs said he did not support a deferral.

Mr. Levar reminded the Board that the Molsters were cited back in June, and have continued to run their business in violation of the Ordinance. He said if the Board postponed this case again, the appellants would continue to run it until they got a special permit. The appellants' running this business has come to the detriment of many of their neighbors.

In response to a question from Mr. Beard, Mr. Levar said he did not own property in the area. He was the caretaker of 829 Blacks Hill Road while the family was overseas.

Mr. Hart restated his motion that the Board continue the public hearing to an available date and allow the people in attendance to give their testimony today and/or come back.

Ms. Stanfield said she believed the appellants were agreeable to December 5, 2012.

Ms. Gibb asked if it was possible to continue the hearing to next week. Mr. Molster stated that it would not be enough time to meet with his attorney. He was agreeable to November 28, 2012 or December 5, 2012.

Mr. Molster said there were important issues raised by this appeal, including the zoning category that was in place regarding equestrian facilities in Fairfax County and whether or not he would come within this Ordinance. He felt he should be entitled to the right to effective assistance of counsel for this.

Ms. Stanfield said she did not have a strong feeling either way for the suggested dates; next week was fine. However, she pointed out that the appeal currently scheduled for December 5, 2012, was being administratively moved. Chairman Ribble asked how many other cases were scheduled for that date. Ms. Stanfield said there were five land use cases scheduled for December 5, 2012. She said there were seven land use cases on November 28, 2012.

Mr. Beard moved to continue the public hearing to next week with all testimony given at that hearing. Ms. Gibb seconded the motion.

Mr. Molster said he had business in New Jersey and New York next week. He respectfully requested that he be given more time. Mr. Molster noted that there was nothing happening on the property that would hurt anyone. The traffic consisted of eight cars a day, five days a week, with no activity on Thursdays or Fridays.

In response to a question from Chairman Ribble, Ms. Stanfield said the next available hearing date after next week was November 28, 2012, which had a number of cases already scheduled, which is why December 5, 2012, was suggested. Chairman Ribble and Mr. Hart both thought it was not enough time.

Mr. Hart felt the Board had to give the appellant additional time since he could not be at the November 7, 2012 meeting. Chairman Ribble said the circumstances were beyond the Board's, control since they did not meet the following two weeks due to the holidays.

Alan Osborne, 814 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He said the appellant was an attorney, and had known for some time that this hearing was going to take place. Mr. Osborne felt it was a rather shallow ploy to come in at the last minute and say he was not prepared.

Chairman Ribble called for the vote, which failed by a vote of 3-3. Chairman Ribble, Mr. Hart, and Mr. Smith voted against the motion. Mr. Hammack was absent from the meeting.

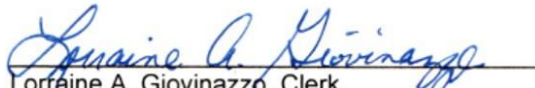
Mr. Hart moved to continue the public hearing until November 28, 2012, placing it first on the agenda. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.


//

As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

Minutes by: Suzanne Frazier

Approved on: February 6, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, November 7, 2012. 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.

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. THAD L. ANDERSON AND ANNETTE C. ANDERSON, SP 2012-HM-052 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.2 ft. from rear lot line. Located at 2456 Dakota Lakes Dr., Oak Hill, 20171, on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 82.

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.

Thad L. Anderson and Annette C. Anderson, 2456 Dakota Lakes Drive, Oak Hill, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-HM-052, subject to the proposed development conditions.

Mr. Anderson presented the special permit request as outlined in the statement of justification submitted with the application. He said he had nothing to add and was pleased with staff's recommendation.

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

Mr. Hammack moved to approve SP 2012-HM-052 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THAD L. ANDERSON AND ANNETTE C. ANDERSON SP 2012-HM-052 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 15.2 ft. from rear lot line. Located at 2456 Dakota Lakes Dr., Oak Hill 20171 on approx. 8500 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 82. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 7, 2012; and

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

1. The applicants are the owners of the land.
2. The Board has determined that the applicants have met the six required criteria set forth in Sect. 8-922.
3. The plat shows the actual removal of the existing deck and the construction of the new sunroom will reduce, for a very short space, the encroachment by a tenth of a foot.
4. This will not harm any of the existing development in the neighborhood or change things in any significant way.

5. The Board has a favorable staff recommendation.

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

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

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

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a sunroom addition (approximately 207 square feet), as shown on the plat prepared by Dominion Surveyors Inc., dated January 21, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (5,629 square feet existing + 8,538 square feet (150%) = 14,167 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053

Chairman Ribble noted that SPA 2004-LE-053 had been administratively moved to December 5, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, SPA 00-S-044-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for boarding and riding stables to permit modification of development conditions, building additions, and site modifications. Located at 6429 Clifton Rd., Clifton, 20124, on approx.

17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 36 and 66-4 ((1)) 15.

Chairman Ribble noted that SPA 00-S-044-02 had been administratively moved to November 28, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. 8921 PROPERTIES, L.L.C., A 2011-MV-030 (Admin. moved from 12/14/11 and 5/16/12 at appl. req.)

Chairman Ribble noted that A 2011-MV-030 had been administratively moved to February 27, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 7, 2012, Scheduled case of:

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

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to December 5, 2012, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. BLUE MOON THERAPY, A 2012-PR-021 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant has established a criminal enterprise on property in the I-5 District in violation of Non-Residential Use Permit 111170069 and Zoning Ordinance provisions. Located at 8453 I Tyco Rd., Vienna, 22182, on land zoned I-5. Providence District. Tax Map 29-1 ((8)) 9

Chairman Ribble noted that A 2012-PR-021 had been withdrawn.

//

~ ~ ~ November 7, 2012, Scheduled case of:

9:00 A.M. AFKHAMOLMOLOOK KHAMNEI, A 2012-PR-022 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a criminal enterprise on property in the I-5 District in violation of Non-Residential Use Permit 111170069 and Zoning Ordinance provisions. Located at 8453 I Tyco Rd., Vienna, 22182, on land zoned I-5. Providence District. Tax Map 29-1 ((8)) 9.

Chairman Ribble noted that A 2012-PR-022 had been withdrawn.

//

~ ~ ~ November 7, 2012, After Agenda Item:

Approval of December 5, 2006 Minutes

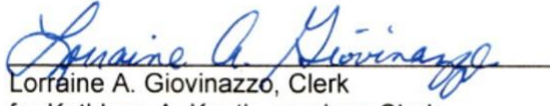
Mr. Byers moved to approve the Minutes. Mr. Beard seconded the motion, which carried by a vote of 7-0

//

As there was no other business to come before the Board, the meeting was adjourned at 9:07 a.m.

Minutes by: John W. Cooper

Approved on: January 28, 2015



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



John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, November 28, 2012. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; Nancy E. Gibb; James R. Hart; and Norman P. Byers. Absent from the meeting were V. Max Beard and Thomas W. Smith III.

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

~ ~ ~ November 28, 2012, Scheduled case of:

9:30 A.M. CHARLES B. MOLSTER, III; SHARON B. MOLSTER, A 2012-DR-019 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellants have established a Riding/Boarding Stable on property in the R-E District without an approved special permit in violation of Zoning Ordinance provisions. Located 815 Blacks Hill Rd., Great Falls, 22066, on approx. 5.47 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((1)) 26. (*Admin. moved from 10/24/12 at appl. req.*) (*Continued from 10/31/12.*)

Chairman Ribble called the applicants to the podium.

Mavis Stanfield, Deputy Zoning Administrator for Appeals, stated that the appellants had requested a deferral for a four-month period. She suggested April 3, 2013.

Grayson Hanes, the attorney representing the appellants, stated his appreciation for the continuance granted on October 31, 2012. Since then, he had reviewed the staff report, including the Notice of Violation (NOV), the staff's position, and staff's suggestion as to how to resolve the violation. Mr. Hanes noted that one of staff's resolutions was for the appellants to apply for and obtain approval of a special permit. He said an engineer and another consultant had been hired for the purpose of filing a special permit. Mr. Hanes stated that he was willing to do what the NOV requested, noting that the appellants had ceased operation of the stable as this date. He noted that there were only eight horses owned by the appellants at this time. This was why he requested the appeal application be deferred until April 3, 2013.

Ms. Gibb and Mr. Hanes discussed the horses currently on the property, with Mr. Hanes noting that there were no horses boarding on the property, just the eight which belonged to the appellants.

Mr. Hart noted that it could sometimes take upwards of 18 months for an application to be accepted by the County. He asked if staff was allowing adequate time for the permit to be processed. Ms. Stanfield responded that she was very comfortable with this time frame.

Mr. Byers stated that if the Board went ahead and heard the appeal today and upheld the determination of the Zoning Administrator, the appellants had the legal right to appeal the decision to the circuit court. He noted that the appellants could continue the stable operation until the appeal was heard in court. Ms. Stanfield agreed with Mr. Byers' conclusion. Mr. Byers commented that for the individuals who were opposed to the stable use, a deferral of the appeal might be beneficial.

Chairman Ribble called for speakers.

Shirley Johnson, 811 Blacks Hill Road, Great Falls, Virginia, came forward to speak. She stated her support for the deferral, describing the Molster property as bucolic.

Howard Clark, 817 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He also stated his support for the deferral, commenting that what the appellants do for children at the stables was wonderful.

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

There being no other speakers, Chairman Ribble called for a motion.

Mr. Hammack moved that appeal A 2012-DR-019 be continued until April 3, 2013, at 9:00 a.m., at the applicant's request.

Mr. Byers seconded the motion.

A member of the audience asked if he could address the Board, stating that he did not understand it was for speakers.

Having not been previously sworn in, the gentleman swore or affirmed that his testimony would be the truth.

Robert Buenzle, 813 Blacks Hill Road, Great Falls, Virginia, came forward to speak. He was opposed to deferring the public hearing, stating that the appellant should have filed for a special permit three years ago. Mr. Buenzle asked that the public hearing go forward today.

Mr. Hammack restated his motion, to defer the appeal to April 3, 2013, so that it could be heard along with the special permit. Mr. Byers seconded the motion. Mr. Hart suggested that the second part of the motion be removed since it was unknown when the special permit would be ready for hearing. Mr. Hammack and Mr. Byers agreed to the change.

Ms. Gibb said she would support the motion, noting that normally when an appeal gets to the circuit court level, the judge will refer it back to the BZA for a special permit hearing. She noted that the appellants could, in that case, continue operation of their business while the case was pending in court. Ms. Gibb felt it was a fair compromise to close the stables until the April 3, 2013 public hearing or until the special permit application was heard.

The motion passed by a vote of 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. JOHNNY LE, SP 2012-MA-045 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.7 ft. from side lot line and deck to remain 7.5 ft. from side lot line and to permit existing fence greater than 4.0 ft. in height to remain in front yard. Located at 6902 Columbia Pike, Annandale, 22003, on approx. 10,910 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((16)) (L) 1A. (*Decision deferred from 10/17/12.*)

Chairman Ribble called the case, reminding the Board that this matter was for decision only.

Mr. Byers moved to approve SP 2012-MA-045, subject to the conditions contained in the staff report. Mr. Hart seconded the motion.

Mr. Hart stated that he was uncomfortable with the fence pillars being in the easement, and suggested additional language which would address the possibility of the pillars having to be moved in the future.

Mr. Hammack said he could not support the motion based on the language in the Order from the Circuit Court, noting that the Order dealt with the garage only. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the fence and deck violations were only picked up when the special permit application was filed. Mr. Hammack still felt the BZA could not override the directive of the Order.

Robert Burke, Inspector, Department of Code Compliance, noted that the Corrective Work Order that was issued only addressed the building permit and had nothing to do with the Order by the Circuit Court.

Mr. Hart read from the Order, afterwards noting that the court only dealt with the garage, and was silent about the deck and fence violations. He did not feel the BZA could go forward without an explanation by the County Attorney's office as to the intent of the Order.

Mr. Byers moved to defer this matter until the County Attorney could examine the court proceedings, and advise the Board on how to proceed. Ms. Langdon suggested a hearing date of January 30, 2013. Mr. Hammack seconded the motion.

Mr. Byers, Mr. Hammack, and Peggy Delean, Inspector with the Department of Code Compliance, discussed the procedure for Notices of Violation, with Ms. Delean noting that the garage violation was written under the Building Code. She said the fence and deck violations were written under the Zoning Ordinance.

Mr. Hart said it would be helpful if the County Attorney could be present at the next hearing to help sort things out.

The motion passed by a vote of 5-0. Mr. Beard and Mr. Smith were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. LESLIE E. DOANE, SP 2012-PR-056 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. Located at 2903 Westcott St., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 60.

Chairman Ribble called the applicant to the podium.

Leslie E. Doane, 2903 Westcott Street, Falls Church, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-PR-056, subject to the proposed development conditions.

Ms. Doane 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 update a 65-year-old house that had no garage. Ms. Doane stated the garage would provide shelter for her vehicles and improve property values in the neighborhood. She had spoken to her neighbors, and they were all in favor of the project. No concerns were voiced.

In response to a question from Mr. Hart, Ms. Doane said she agreed to the proposed development conditions. She pointed out that, in addition, the shed was being removed, and she intended to hire a professional landscaper after the garage was constructed.

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

Mr. Hart moved to approve SP 2012-PR-056 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LESLIE E. DOANE, SP 2012-PR-056 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. Located at 2903 Westcott St., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((16)) 60. 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 28, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has a staff report recommending approval and adopts the rationale in the staff report.
3. This is a relatively modest structure in the back of the property.

4. It is consistent with what else is going on with detached garages or sheds in this neighborhood.
5. It appears to be an attractive structure compatible with the home and the neighborhood.
6. There would not be any significant negative impact on anyone based on the record before the Board.
7. The Board determined that the application meets all of the criteria in the 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 the Zoning Ordinance.

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

1. This special permit is approved for the location and size of an accessory structure (a garage), as shown on the plat prepared by Michael L. Flynn, Land Surveyor, dated May 2, 2012 as revised through August 15, 2011, as submitted with this application and is not transferable to other land.
2. Every effort shall be made to protect offsite trees during construction of the garage and driveway. If needed the applicant shall hire a certified arborist to assess and make recommendations on tree protection measures.
3. If required by the Virginia Department of Transportation (VDOT), an entrance permit shall be obtained for the reconstruction of the entrance apron from Westcott Street and all requirements of VDOT shall be met prior to approval of final inspections for the detached garage.
4. The garage shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

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

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

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. PAUL C. SKIBA, SP 2012-LE-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 (garage) to remain 2.8 ft. from side lot line and accessory storage structures to remain 2.6 ft. from side lot line and 1.2 ft. from rear lot line, 3.3 ft. from side lot line, and 3.7 ft. from side lot line. Located at 6421 Windham Ave., Alexandria, 22315, on approx. 22,000 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 77.

Chairman Ribble called the applicant to the podium.

Paul Skiba, 6421 Windham Ave., Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting to allow three error in building structures: a garage, and two sheds. Ms. Gumkowski noted

that, according to aerial photography, the garage was added between 2004 and 2007, and the sheds were built between 2009 and 2011.

Ms. Gumkowski and Mr. Hart discussed two of the plats, one showing that the Zoning Administrator, in 1977, had approved a request for the garage to be two feet from the property line. Mr. Hart said the second plat showed an approval for a two-story addition to be 3.8 feet from the property line. Ms. Gumkowski stated that it was a surveyor's notation on the plat, but noted that prior to 1978, if a wall was fire rated, it could have been as close as 3 feet from the property line.

Mr. Hart indicated his concern about the propane tanks located between the garage and the fence, and asked if there were fire code issues. Susan Langdon, Chief, Special Permit and Variance Branch, said there were specific guidelines that address flammable materials, and noted that the applicant would have to obtain all applicable permits.

In response to a question from Ms. Gibb, Ms. Langdon said that no violation was issued to the applicant, and that he applied for the special permit on his own volition.

Mr. Skiba presented the special permit request as outlined in the statement of justification submitted with the application. He stated that when an inspector came out to his property on another matter (the propane tank), he mentioned that there were setback problems on his property, which was when the applicant began the special permit process.

In response to a question from Mr. Byers, Ms. Gumkowski said an inspector from the fire department had looked at the location of the propane tank and approved it.

Mr. Hart and Mr. Skiba discussed the size of the garage, with Mr. Hart noting that the approved garage was only 20 feet by 24 feet. Mr. Skiba stated that he had constructed a 20-foot addition. In response to a question from Mr. Hart, Mr. Skiba said there was electrical service to the garage, but no plumbing. Mr. Hart asked why a building permit was not obtained, since the addition had been constructed by a contractor. Mr. Skiba replied that the contractor had indicated he would obtain a permit, but did not.

In response to a question from Mr. Hart, Mr. Skiba said it would be difficult to move the sheds away from the property lines. He said the older shed, which was present when he purchased the property, would probably disintegrate if he tried to move it. Mr. Skiba stated that the newer shed would also be problematic to move.

Mr. Hart asked Mr. Skiba if he had spoken with his neighbor on lot 76 about the setbacks. He replied that he had years when the addition was added, and that they had no problem with it.

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

Ms. Gibb moved to approve SP 2012-LE-060 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL C. SKIBA, SP 2012-LE-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 (garage) to remain 2.8 ft. from side lot line and accessory storage structures to remain 2.6 ft. from side lot line and 1.2 ft. from rear lot line, 3.3 ft. from side lot line, and 3.7 ft. from side lot line. Located at 6421 Windham Ave., Alexandria, 22315, on approx. 22,000 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 77. 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 November 28, 2012; and

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

1. The applicant is the owner of the property.
2. This is a lot of things on this lot, but they have been there a long time and seemingly without complaint.
3. There was testimony that despite the fact that the garage is only 2.8 feet from the side lot line and quite long, 48.8 feet, and it has a propane tank located next to it, that the location of the propane tank has been inspected and does not pose a fire hazard and can remain located there.
4. The Board has testimony that the neighbor on Lot 76 is okay with the impact of the garage, and, again, it has been there at least since 1997.
5. The three sheds, one of which cannot be moved without disintegrating, and the other two, which have also been there a long time, seem not to have much of an impact on the neighbors as well.
6. The Board determined that the applicant has met Standards A through G.

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

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

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

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

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

1. This special permit is approved only for the location of the existing vinyl garage and sheds as shown on the plat prepared by George M. O'Quinn, dated February 27, 2012 as revised through August 13, 2012, submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the garage and if required for the shed and shelter within 180 days of approval of this application.

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

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

//

9:00 A.M. JAIME REYES, SP 2012-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.6 ft. from side lot line and 11.8 ft. from rear lot line. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. (Concurrent with VC 2012-LE-004) (*Decision deferred from 10/31/12.*)

9:00 A.M. JAIME REYES, VC 2012-LE-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit front greater than 25 percent front yard coverage. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. Concurrent with SP 2012-LE-053) (*Decision deferred from 10/31/12.*)

Chairman Ribble called the applicant to the podium and noted that this matter was for decision only. He referenced the revised development conditions which had been submitted.

Deborah Hedrick, Staff Coordinator, commented that development conditions now address the revised plat submission and the new percentage of front yard paving from 48 percent to 37 percent.

In response to a question from Ms. Gibb, Ms. Hedrick stated that only a 5-foot extension of the patio was permitted. The applicant had previously committed to reducing the patio. The new plat showed the reduction.

Mr. Hart commented on the pictures of the circular driveway, which Ms. Hedrick said had been obtained from County records. Mr. Hart said he could not see the driveway on the pictures from 2004, however, it was clear in the 2007 photos. He asked if it was installed in 2004. Mr. Reyes said it was built in 2004, but was incomplete in the picture.

Ms. Gibb voiced her surprise that there was not a temporary turnaround in the applicant's yard, noting that there would normally be one or at least a cul-de-sac. Ms. Langdon stated that there was not even an easement on the applicant's property, however, this was the way streets used to be done.

Chairman Ribble called for a motion.

Mr. Hammack moved to approve SP 2012-LE-053 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAIME REYES, SP 2012-LE-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.6 ft. from side lot line and 11.8 ft. from rear lot line. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. (Concurrent with VC 2012-LE-004) (*Decision deferred from 10/31/12.*) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2012; and

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

1. The applicant is the owner of the property.
2. The Board has determined that the applicant has met the requirements set forth in Section A through G in that Code section.
3. In particular, the setbacks on this building are fairly reasonable.
4. The Board did not feel it had any impact on the value of neighboring property or will impair the purpose or intent of the Ordinance.

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

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

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an accessory structure (detached one-story garage) as shown on the plat prepared by Alexandria Surveys, LLC, dated June 25, 2012, as sealed on November 8, 2012, as submitted with this application and is not transferable to other land.
2. The applicant shall obtain all applicable building and trade permits for the accessory structure (one-story garage) within 180 days of approval of this special permit application.
3. As shown on the special permit plat, the applicant shall remove a portion of the concrete patio so that it is located a minimum of 10.0 feet from the western side lot line to meet Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

Mr. Hammack then moved to approve VC 2012-LE-004 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAIME REYES, VC 2012-LE-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 25 percent front yard coverage. Located at 3426 Spring Dr., Alexandria, 22306, on approx. 14,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 177. (Concurrent with SP 2012-LE-053) (Decision deferred from 10/31/12) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant has satisfied the standards set forth in Subsections 1 through 9 of the Ordinance.
3. In particular, there was testimony indicating that the configuration of the road in the vicinity results in a hazardous condition with vehicles associated with the property and other properties backing into and out of their property because of the narrowness and lack of a cul-de-sac.
4. The Board thought that qualifies as an extraordinary situation or condition in the use and development of the property that justifies the variance in this particular situation.
5. The applicant has reduced the amount of the coverage to an amount which is reasonable.
6. It is still a little higher than the maximum 25 percent, but the Board had some testimony that the coverage where there was a circular drive, although it seems like the jury is out on this. Whether it was there before 2002 when the Ordinance was enacted or not, it is still a little unclear, but apparently there was a circular drive used. Whether it was a nonporous surface entirely or not is a little unclear, but it is a close case, and there is support for the turnaround by the neighbors who recognize the situation involving parking and turning movements in that neighborhood that the Board thought justifies the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the maximum size of the driveway located in the front yard (37% impervious surface) as shown on the plat prepared by Alexandria Surveys, LLC, dated June 25, 2012, as sealed on November 8, 2012, as submitted with this application and is not transferable to other land.
2. As shown on the special permit plat, the applicant shall remove a portion of the concrete driveway along the western boundary of the front yard to reduce impervious surface to a maximum of 37%.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. THOMAS A. LOVE & LORA L. LOVE, SP 2012-MV-057 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 1.5 ft. from side lot line and modification to permit fence greater than 4.0 ft. in height to remain in the front yards of a corner lot. Located at 1901 Rollins Dr., Alexandria, 22307, on approx. 9,825 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (13) 19.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Thomas Love, 1901 Rollins Dr., Alexandria, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to allow reduction to the minimum yard requirements based on an error in building location to permit an existing at-grade patio to remain 1.5 feet from the western side lot line. A minimum side yard of 10 feet with a permitted 5-foot extension was allowed in the zoning district. A modification of 3.5 feet or 70 percent was requested. The applicants also sought approval to allow an existing wood fence greater than 4.0 feet in height to remain in the front yards of a corner lot. The fence ranged in height from 4.5 feet to 7.0 feet. If the application was approved, the applicants committed to reduce the 7.0 foot-high fence to a maximum of 6.0 feet in height. Ms. Hedrick noted that a copy of the signed, amended, final Order from the Circuit Court had been distributed to the Board.

Mr. Byers noted that the Order only addressed the fence issue. Ms. Hedrick stated that staff had noticed the patio violation while the special permit application was being reviewed for acceptance.

Mr. Byers asked how this matter ended up in Court since the applicant was on active military assignment in Afghanistan. Jim Ciampini, Supervisor with the Department of Code Compliance, said that over the course of two years numerous attempts were made to contact the applicants, noting that he had left his cards in the front door several times. He stated he had no other choice, and decided to file a civil action against them.

Mr. Hart said there was a portion of the Ordinance with regard to measuring sight distance on a corner lot. He asked if the fence came within the Ordinance provisions. Mr. Ciampini said he never measured the corner lot sight distance, but he was out there several times with his vehicle, and did not see a problem. Susan Langdon, Chief, Special Permit and Variance Branch, said one has to go back 30 feet on each side and take a measurement across that on both streets. She noted that it was not shown on the plat, but a development condition could be added stating that the applicants would have to meet the sight-distance requirements.

In response to a question from Mr. Hart, Ms. Langdon stated that the shed was not considered an accessory structure in a front yard because it had been there since the 1970s.

Mr. Love presented the special permit request as outlined in the statement of justification submitted with the application. He said he had no idea that his lot consisted of three front yards. Mr. Love said his property was slightly elevated from the street, so it was very difficult to get any privacy. He noted that the original lattice fence was dilapidated and in disrepair, so he removed it, replacing it with a 6-foot high fence. Mr. Love said the fence provided privacy and security for his wife, pointing out that he traveled a great deal. He felt the fence added to the value of the house, and noted that he had only received compliments on the fence. Regarding the patio, Mr. Love did not know that the brick pavers he installed would be considered a permanent structure, noting that it was not attached to the house. In closing, he said that he was not in Afghanistan, but was on active duty and traveling at the time the inspector came to the property. Shortly after receiving the Notice of Violation, he went to the County and was told by an inspector that the County does not prosecute active duty military in a time of war, so he assumed he had time to make the requested corrections.

In response to a question from Ms. Gibb, Mr. Love said the lattice fence existed on the property when he purchased it. He spent \$7,000 for the new fence, \$500 for two surveys, and \$982 for the permit application.

From a policy standpoint, Mr. Byers asked about the County's policy regarding prosecuting activity duty military in times of war. Mr. Ciampini said that the County normally does not prosecute active duty personnel, however, when he consulted with the County Attorney's office, he was told they would go ahead with the lawsuit, since they did not believe he was overseas or on active duty.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2012-MV-057 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS A. LOVE & LORA L. LOVE, SP 2012-MV-057 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 1.5 ft. from side lot line and modification to permit fence greater than 4.0 ft. in height to remain in the front yards of a corner lot. Located at 1901 Rollins Dr., Alexandria, 22307, on approx. 9,825 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((23)) (13) 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 November 28, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The applicants are in compliance with items A through G.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an at-grade patio and the location and maximum height of 6.0 feet of a wood fence, as shown on the plat prepared by SDE Suburban Development Engineering dated March 5, 1990 as revised and sealed through July 3, 2012, submitted with this application and is not transferable to other land.
2. Within 90 days of approval of this special permit, the applicant shall remove any portion of fence from the front yards at the intersection of Griffin Drive and Colgate Drive which encroaches into the minimum sight distance requirements per Zoning Ordinance Sect. 2-505 regulations.
3. The applicant shall assume all responsibility for repair and/or replacement of any portions of the fence which must be removed to accommodate repairs and/or maintenance within the right-of-way as shown on the special permit plat.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hart seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. MONIKA E. JEDROL, SP 2012-SP-059 Appl. under Sect(s). 8-305 and 8-914 of the Zoning Ordinance to permit a home child care facility and to permit modification to minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.6 ft. from side lot line. Located at 6117 Lundy Pl., Burke, 22015 on approx. 11,423 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((13)) 331.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Monika Jedrol, 6117 Lundy Pl., Burke, Virginia, introduced herself. Gina Florence, the applicant's agent, 5604 Sutherland Court, Burke, Virginia, reaffirmed the affidavit.

Deborah Hedrick, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting two special permit approvals, one was to permit reduction of minimum yard requirements based on an error in building location to allow an accessory storage structure to remain 2.6 feet from the eastern side lot line. This would require a modification of 5.4 feet or 68 percent was requested. The second request was to allow home child care facility for up to ten children on site daily with a possibility of increasing to twelve children if the Zoning Ordinance was amended to increase the number. Staff recommended approval of the application for the home child care facility with adoption of the proposed development conditions. Staff did not make recommendations on errors in building locations.

Ms. Gibb asked if two siblings arriving together would be allowed. Ms. Hendrick said staff only supported a total of nine children whether or not some traveled together. Further, she did not believe it would be enforceable if siblings came together. Susan Langdon, Chief, Special Permits and Variance Branch, said staff struggled with this application, even questioning whether there should be a child care center on such a narrow pipestem lot. Ms. Hedrick displayed a graphic showing the estimated traffic generated by the current enrollment.

Mr. Byers and Ms. Hedrick discussed the drop off area for children, with Ms. Hedrick stating that staff only supported drop off in the driveway, not in front of the house. Ms. Hedrick said staff had given the applicant 180 days after approval to decide which area to reduce on the driveway. Mr. Byers noted that when he drove to the property recently, children were in front of the house, not in the driveway, and this was before a portion of the driveway was removed.

Mr. Hart stated his concern regarding the size of the driveway after reduction, questioning if there would be any drop-off area remaining. Ms. Langdon stated that the easement was partially on the applicant's property, therefore, they had the right to use it and park on it. In response to a question from Mr. Hart, Ms. Hedrick confirmed that the easement could be used for access as well as parking. Mr. Byers felt the Board needed to know which area of the driveway was going to be removed, since it could present a problem. For example, the Board may need to stagger arrival and departure times. He also wanted to know if the neighbor who shared the easement had children, because the child care facility also could impact them. Mr. Byers commented it was very tight when he drove down the driveway to view the site.

Mr. Hammack stated his unease with the driveway reduction. Ms. Hedrick noted that she had recommended to the applicant that she apply for a variance to keep the current 58 percent impervious coverage, which she seemed to need for anticipated traffic.

Ms. Gibb asked how this application came to the Board. Ms. Langdon responded that this was an existing child care facility for which the Department of Code Compliance (DCC) had received a complaint. The applicant was subsequently issued a Notice of Violation.

In response to a question from Mr. Hart, Charles Fitzhugh, Inspector with the DCC, said the arrivals were currently staggered for the most part. A child would be dropped off in front of the garage, and the parent would back up into the pipestem to turn around. Mr. Fitzhugh said that he did not notice any neighborhood cars parked in the pipestem area.

Mr. Hammack asked where the applicant's employee's car was parked on the day of his visit. Mr. Fitzhugh said he did not know, but based on his discussion with the applicant, her assistant parked in the garage.

Mr. Byers asked about the nature of the complaint received by DCC. Mr. Fitzhugh said it concerned a child care facility being operated without approval. In response to a question from Ms. Gibb, Mr. Fitzhugh said it was an anonymous call, however, the caller stated they did not believe a day care center should be located in that neighborhood.

Ms. Florence presented the special permit request as outlined in the statement of justification submitted with the application, noting that both her children attended the applicant's facility, but she believed she was the only instance of two siblings coming to the applicant's home. She did not feel parking was a problem since drop-off and pick-up times were staggered. Ms. Florence said the parents of children attending the facility were always respectful to the neighbors. She noted that the applicant was licensed with the state, and believed it was just an oversight that a special permit had not been obtained.

In response to a question from Mr. Hart, Ms. Florence said that if the pavers were removed, it would go back to the way it was originally where it would be paved just in front of the garage. She noted that the pipestem extended back to an area where one full length car would fit in and then it capped off. It would be possible to back out into that space and turn around. Mr. Hart pointed out that the pavement may continue beyond the garage, but the easement did not. Ms. Florence said that the applicant was working with an engineer to determine the area which would remain after removal of the pavers.

Mr. Hart asked how many cars the applicant owned. Ms. Florence said that the applicant and her husband owned two cars, and her husband had a work truck, as he was a contractor. She said that the applicant's employee would normally park in front of the garage unless she parked on Lincoln Place.

In closing, Ms. Florence point out the numerous supporters of the application who were in the audience at the hearing. She asked that the applicant not be denied because of parking.

In response to a question from Mr. Hart, Ms. Langdon said she did not know if the state considered on-site parking when they issued day care licenses.

Mr. Hart and Mr. Hammack asked about the accessory structure. Ms. Florence said it was not very noticeable, stating that it contained only lawn equipment. Staff noted that a building permit was not necessary for its construction. It was only the location of the structure that was at issue.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to defer SP 2012-SP-059 until January 16, 2013. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. EKKLESIA USA, SP 2012-HM-058 Appl. under Sect(s). 6-302 and 6-303 of the Zoning Ordinance to permit an existing church to add a child care center. Located at 11979 N. Shore Dr., Reston, 20190, on approx. 3.6 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((15)) 36.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Ruth Soliz, the applicant's agent, 105 Plum Tree Court, Reston, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting permission to add a child care center to an existing 747-seat church. The center

would be operated from 6:30 am to 6:30 pm, Monday through Friday. A fenced playground area would be added on the existing church property. Ms. Horner noted that the child care center would require an additional nineteen parking spaces. Staff recommended approval of SP 2012-HM-058 subject to the proposed development conditions.

Ms. Gibb and Ms. Horner discussed the proposed fencing which would surround the playground. Ms. Horner stated that fence height was left up to the church's discretion, but it could be up to a maximum of 6 feet.

Ms. Soliz presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant planned to use the downstairs of the church for the day care center, noting that it was a large space which already had a kitchen area and bathrooms. Ms. Soliz pointed out there was no requirement to fence the playground area, but the applicant decided to fence it for the safety of the children.

In response to a question from Chairman Ribble, Ms. Soliz said the fence would be 4 to 5 feet in height.

Chairman Ribble called for speakers.

The following speakers came forward to speak in support of the application: Carla Rameriz, 10112 Calvary Drive, Fairfax, Virginia; Winston Fernandez, 3332 Breckenridge Court, Annandale, Virginia; Maurice Argandona, 13603 Ellendale Drive, Chantilly, Virginia; Uriz Rodriguez, 2936 Cedar Lane, Fairfax, Virginia; Gonzalo Ibanez, 2448 St. Carlos Drive, Fairfax, Virginia; and Jose Rameriz, 10112 Cavalier Drive, Fairfax, Virginia. Their main point was the day care center would be good for the community.

Willie Hudgins, 11301 Wedge Drive, Reston, Virginia, came forward to speak. He said his property adjoined the church property. Although he was not opposed to the day care facility, he was concerned with the proximity of the church's parking lot to the houses on Wedge Drive. Mr. Hudgins noted that the church was in a very densely populated area, and provided photographs for the Board to review. He asked that transitional screening be installed to minimize the impact of the church on the adjacent homes.

Ms. Gibb, Ms. Horner, and Susan Langdon, Chief, Special Permit and Variance Branch, discussed the proposed transitional screening. Mr. Hudgins indicated his concurrence with the revised development condition which addressed additional plantings.

Carlos Penaloza, 11979 N. Shore Drive, Reston, Virginia, came forward to speak, noting that he was the senior pastor of the church. He said the church wanted to be a good neighbor, and agreed to provide the requested screening.

Ms. Langdon, Ms. Gibb, and Mr. Hart discussed the area available for additional screening, with Ms. Gibb pointing out that there was only 21 feet between the neighboring homes on Wedge Drive and the church. Mr. Hart noted that a Transcontinental Gas easement further limited the available screening area. Ms. Langdon stated that large trees could not be placed on the easement, but shrubbery and smaller trees would be allowable with the agreement of the easement holder.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2012-HM-058 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EKKLESIA USA, SP 2012-HM-058 Appl. under Sect(s). 6-302 and 6-303 of the Zoning Ordinance to permit an existing church to add a child care center. Located at 11979 N. Shore Dr., Reston, 20190, on approx. 3.6 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((15)) 36. 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 November 28, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The Board has a favorable staff report recommending approval for an existing church to add a childcare center.

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, Ekklesia, USA, and is not transferable without further action of this Board, and is for the location indicated on the application, 11979 N. Shore Drive, consisting of 3.61 acres, and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Schools and Townsend, P.C., dated March 10, 2012, as revised through August 9, 2012 by Richard D. Townsend, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit amendment is subject to the provisions of Article 17, Site Plans. Any plan submitted to the Department of Public Works and Environmental Services (DPWES) pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.
5. The maximum number of seats in the sanctuary shall be 747 seats.
6. Upon issuance of a new Non-Residential Use Permit, the total maximum daily enrollment for the child care center shall be 99.
7. The hours of operation for the child care center shall not exceed 6:30 a.m. to 6:30 p.m., Monday through Friday.
8. Lighting shall be provided in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. The lights shall be turned off when the site is not in use, except as reasonably necessary for security purposes, including cleaning services.
9. Transitional screening and barrier requirements may be modified along all lot lines in favor of existing vegetation. Existing vegetation shall be maintained in good condition and dead, damaged and/or dying materials shall be replaced as necessary to provide screening.
10. Notwithstanding the existing landscape screening, to the extent space is available and not prohibited by the terms of the existing gas pipeline easement or other easements existing on the property, additional plantings shall be provided adjacent to residential properties to provide the full 25 feet of transitional screenings, or in the alternative, an appropriate barrier shall be provided within six

months of approval of the special permit. Plantings shall be provided in the open area along Wedge Drive to discourage the use of Wedge Drive for parking and for the safety of children.

11. If provided, playground equipment shall be installed within the area designated as a proposed playground on the special permit plat.
12. The playground area may be fenced with no higher than a 6' fence.
13. The applicant shall provide a copy of the playground fence design to neighbors adjacent to the proposed playground for their review prior to installation.
14. All signs shall be in conformance with Article 12 of the Zoning Ordinance.
15. The use of loudspeakers shall not be permitted outside the building.
16. Four parking spaces located adjacent to the building containing the child care center shall be reserved for the pick-up and drop off of children only, during the hours of operation of the child care center.
17. Based on the size of the playground area, a maximum of 19 children shall be permitted on the playground at any one time.

This approval, contingent on the above-noted conditions, shall not relieve the applicant for compliance with the provisions of any applicable ordinance, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

//

~ ~ ~ November 28, 2012, Scheduled case of:

- 9:00 A.M. NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, SPA 00-S-044-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for boarding and riding stables to permit modification of development conditions, building additions, and site modifications. Located at 6429 Clifton Rd., Clifton, 20124, on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 36 and 66-4 ((1)) 15. (*Admin. moved from 11/7/12 at appl. req.*)

Chairman Ribble noted that SPA 00-S-044-02 had been administratively moved to December 5, 2012, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ November 28, 2012, Scheduled case of:

- 9:00 A.M. HAJIMOHAMMAD REVOCABLE TRUST, MOHAMMAD HAJIMOHAMMAD, TRUSTEE AND FLORA HAJIMOHAMMAD, TRUSTEE, A 2012-LE-017 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the appellants are allowing a vehicle sale, rental and ancillary service establishment to operate on property in the C-6 District without Special Exception approval or a valid Non-Residential Use Permit, in violation of Zoning

Ordinance provisions. Located at 5630 South Van Dorn St., Alexandria, 22310, on approx. 32,210 sq. ft. of land zoned C-6. Lee District. Tax Map 81-2 ((3)) 8A. (*Admin. moved from 10/3/12 at appl. req.*)

Chairman Ribble noted that A 2012-LE-017 had been administratively moved to February 6, 2013, at 9:00 a.m., at the appellants' request.

//

~ ~ ~ November 28, 2012, Scheduled case of:

9:00 A.M. VIVA TEQUILA, INC. C/O GARCIA ARIAS, ZULMA, A 2012- LE-013 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing the operation of a commercial recreation use, which is not a permitted use, on property in the C-6 and H-C Districts in violation of Zoning Ordinance provisions. Located at 6141 Franconia Rd., Alexandria, 22310, on approx. 19,135 sq. ft. of land zoned C-6 and H-C. Lee District. Tax Map 81-3 ((5)) 4. (*Admin. moved from 9/26/12 at appl. req.*)

Chairman Ribble noted that A 2012-LE-017 had been administratively moved to February 6, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 28, 2012, After Agenda Item:

9:00 A.M. BERNADETTE M. KEANY, PROPERTY OWNER, A 2012-MV-010 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the removal of the first floor, footings and foundation of an existing dwelling is not in substantial conformance with approved Variance VC 2011-MV-010. Located at 5736 Mallow Tr., Lorton, 22079, on approx. 7,500 sq. ft. of land zoned R-E. Mount Vernon District. Tax Map 119-4 ((2)) (20) 15 and 17. (*Admin. moved from 10/17/12 at appl. req.*)

Chairman Ribble noted that A 2012-MV-010 had been administratively moved to January 9, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ November 28, 2012, After Agenda Item:

9:00 A.M. DAVAR VEISEH, A 2012-PR-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is operating an office, which is a use not permitted, on property in the R-1 District in violation of Zoning Ordinance provisions. Located at 2221 Chain Bridge Rd., Vienna, 22182, on approx. 48 ac. of land zoned R-1 and H-C. Providence District. Tax Map 39-1 ((4)) 5. (*Admin. moved from 10/17/12 at appl. req.*)

Chairman Ribble noted that A 2012-PR-018 had been withdrawn.

//

~ ~ ~ November 28, 2012, After Agenda Item:

Request for Reconsideration
Gary Pisner, A 2012-SP-012

No motion was made; therefore, the request for reconsideration was denied.

//

~ ~ ~ November 28, 2012, After Agenda Item:

Request for Additional Time
Robert J. Cunningham and Linda J. Cunningham, SP 2011-SP-095

Mr. Hammack moved to approve 90 days of additional time. Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting. The new expiration date was December 27, 2012.

//

~ ~ ~ November 28, 2012, After Agenda Item:

Approval of October 3, 2006 Minutes


Ms. Gibb moved to approve the Minutes. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

//

As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

Minutes by: Suzanne Frazier

Approved on: February 6, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, December 5, 2012. The following Board Members were present: Chairman John F. Ribble III; V. Max Beard; Thomas W. Smith III; Nancy E. Gibb; James R. Hart; Norman P. Byers; and Paul W. Hammack, Jr.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. HAO & HIEN TRAN, SP 2012-SU-061 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.1 ft. from a side lot line. Located at 6214 Point Circle, Centreville, 20120, on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (4) 75

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Hoa Tran, 6214 Point Circle, Centreville, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was seeking a special permit to permit for modification of certain yard requirements for R-C lots to allow construction of an attached screened porch to be located 16.1 feet from the eastern side lot line. The R-C District required a minimum side yard of 20 feet, so a modification of 3.9 feet or 19.5 percent is requested. The Pleasant Hill subdivision was originally developed under the R-2 Cluster regulations which required minimum side yards of 8 feet with total minimum side yards of 24 feet, which the proposed deck would meet.

Mr. Tran presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he wanted to build the screened porch on the existing deck of the house.

Chairman Ribble called for speakers.

James Daugherty, 6216 Point Circle, Centreville Virginia, stated that he lived next door to the applicant. He moved in about the same time as the applicant, approximately 21 years ago, and said that they were very nice people. He continued to describe what the applicant intended to do, further explaining that they were not extending beyond what had already existed and been approved.

Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-SU-061 for the reasons stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HAO & HIEN TRAN, SP 2012-SU-061 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 16.1 ft. from a side lot line. Located at 6214 Point Circle, Centreville, 20120, on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-1 ((3)) (4) 75. 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 5, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The property was originally developed under R-2 Cluster which had an error of setback lines and was later changed to R-C.
3. In reality, this proposed construction is on top of an existing deck which was in compliance at the time and was only really necessitated by the sharply converging lot lines to the rear of the property.
4. The applicants satisfied the five required standards set forth in the R-C lot Ordinance for approval of setbacks.

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 200 square feet) of the addition (screened porch), as shown on the site location survey prepared by Charles P. Johnson & Associates, P.C., as revised by Hao Tran, homeowner, on September 4, 2012, submitted with this application and is not transferable to other land.
2. All applicable permits shall be obtained prior to any construction, and approval of final inspections shall be obtained.
3. The deck shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. ELTON LAMAR SHORT, SP 2012-MV-064 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 8108 Frye Rd., Alexandria, 22309, on approx. 10,891 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((4)) 36.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Elton Short, 8108 Frye Road, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was seeking a special permit for a reduction to allow an existing fence greater than 4 feet in height to remain in the front yard of a corner lot. The 6.2-foot-high frame fence, with posts up to 6.5 feet, measured approximately 135 feet in length.

Mr. Hart asked whether there was a complaint. Ms. Gumkowski stated that there was a complaint.

Mr. Hart noted that in a statement in the staff report there was no problem with 2-205, and it was understandable in reference to the 6-foot fence. He continued that per the discussion at a previous meeting, he understood that on a corner lot, one would extend the lines of the two streets to a point until they intersected. It would then be measured back 30 feet on the two streets, assuming the lot had a 90-degree angle, which this appeared to be. A line would be drawn, and that would be the triangle. This lot was 80 feet by 80 feet, so it would have been a big chunk. The engineer had drawn a fence that was 3.9-feet high, which was clearly within the triangle. The height limit was 3.5 feet, so Mr. Hart questioned why there was no problem with another fence, even though it was not the fence of the subject of the application.

Susan Langdon, Branch Chief, Special Permit and Variance Branch, said that since you can see through the fence, as it was an open weave, then it was not obstructing the view. It was the same as if you had trees in the area as long as the limbs were up high enough to where you could see past them.

Mr. Short presented the special permit request as outlined in the statement of justification submitted with the application. He stated that he and his wife had lived in the house for about a year, and the iron fence was already in place when he moved in. He had the wooden fence installed by Long Fence, and at the time they said the 6-foot fence was fine, and there would be no issues with it. About a month later was when a zoning inspector came out and notified them of the violation. He continued that the fence did not block the line of sight if one approached from Frye Road. He was a firefighter for Fairfax County, and was usually away 36 hours at a time. He wanted the fence for added protection for his wife and his two small animals. He stated that his neighbors indicated that they liked the fence.

Chairman Ribble called for speakers.

James Patton, 8201 Frye Road, Alexandria, Virginia, came forward to show his support for the applicant. He stated that he lived two houses up, and he had no problem with the fence. It did not block his view, and it made the property look nice.

Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2012-MV-064 for the reasons stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELTON LAMAR SHORT, SP 2012-MV-064 Appl. under Sect(s). 8-923 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yard of a corner lot. Located at 8108 Frye Rd., Alexandria, 22309, on approx. 10,891 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-1 ((4)) 36. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The zoning is R-3.
3. The area of the lot is 10,891 square feet.
4. The Board has two letters of support in addition to the testimony in the Public Hearing.
5. The Board also has a letter from Long Fence, the residential manager, indicating that he is going to undertake the reduction of the fence in accordance with the zoning requirements at no cost to the applicant.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location of a wood fence, as shown on the plat titled "Plat, Showing House Location on Lot 36, Section 6, Woodlawn Terrace," prepared by Dominion Surveyors Inc., dated June 29, 2012.
2. Within 180 days of the special permit approval the height of the wood frame fence and fence posts shall be reduced to a maximum height of 6.0 feet.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. THUAN NGUYEN, SP 2012-HM-048 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building locaton to permit accessory storage structure to remain 2.9 ft. from side lot line and open deck to remain 9.0 ft. from side lot line and to permit reduction in certain yard requirements to permit construction of addition 28.3 ft. from front lot line. Located at 9938 Vale Rd., Vienna, 22181 on approx. 42,021 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 5. (*Deferred from 10/24/12 at appl. req.*)

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mylynn Nguyen, 9938 Vale Road, Vienna, Virginia, and Byron Woods, the applicant's agent, 500 N Washington Street, Suite 202, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed to construct a 778-square-foot-garage addition to the west of the existing dwelling. A new driveway will extend from the existing driveway to the proposed garage. The applicant also requested to allow an existing shed to remain 2.9 feet from the northern side lot line, and an existing open deck to remain 9.0 feet from the northern side lot line. The applicant wished for their child, currently residing in a rehabilitation center, to move back to the home. In order for this to be feasible, direct access to an ambulance was needed for transportation. This was proposed to be accomplished through the construction of a garage which would accommodate an ambulance. Staff recommended approval of SP 2012-HM-048, subject to the proposed development conditions.

Mr. Hart stated that he agreed with the conditions, but had a question about the side with the deck and the shed. He said it seemed like it was a front yard, and wanted to know that since there was an intervening out lot a few feet wide between the edge of the lot and the street, if that made it a front yard. Ms. Gumkowski stated that it did

Ms. Nguyen presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she needed the approval of the garage, so that her son would be able to spend the remainder of his years at home rather than at a treatment facility.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SP 2012-HM-048 for the reasons as stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THUAN NGUYEN, SP 2012-HM-048 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 2.9 ft. from side lot line and open deck to remain 9.0 ft. from side lot line and to permit reduction in certain yard requirements to permit construction of addition 28.3 ft. from front lot line. Located at 9938 Vale Rd., Vienna, 22181 on approx. 42,021 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 5. (Deferred from 10/24/12 at appl. req.) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2012; 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 with respect to the addition, the Sect. 8-922 reduction, and adopts the rationale in the staff report.
3. With respect to the shed and the deck, it is an unusual situation. Based on the record before the Board, there would not be any significant negative impact on anyone by allowing the two structures to remain.
4. Staff has confirmed that there has been a determination that it was a side yard rather than a front yard.
5. This is certainly consistent with other similar approvals the Board has done.
6. The deck is kind of tucked behind a corner of the house.
7. Even though the back corner of the deck is a little closer to the side, it does not project out any further.
8. The shed is far removed from Vale Road, and no one should be bothered by it.
9. The standards in the Sect. 8-922 resolution have been met.
10. The Board has determined that the standards in Sect. 8-914 have been met.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of an accessory storage structure, deck and an addition (778 square feet), as shown on the plat prepared by GeoEnv Engineers dated October 5, 2012, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,622 square feet existing + 3933 square feet = 6,655 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

9:00 A.M. TRUSTEES OF THE LIGHTHOUSE BAPTIST CHURCH, SPA 2004-LE-053 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 2004-LE-053 previously approved for church to permit the addition of a private school of general education, site modifications and building addition. Located at 5901 Wilton Rd., Alexandria, 22310, on approx. 2.0 ac. of land zoned R-2. Lee District. Tax Map 82-4 ((1)) 4C. (Admin. moved from 11/7/12 at appl. req.)

Chairman Ribble noted that SPA 2004-LE-053 had been administratively moved to January 16, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. PAUL WHITEBREAD & ANITA NOGUERA, SP 2012-MA-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction

of addition 13.4 ft. from rear lot line. Located at 4109 Chatelain Rd. Annandale, 22003, on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((17)) 14.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Paul Whitebread, 4109 Chatelain Road, Annandale, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was seeking approval of a special permit to permit reduction of certain yard requirements for construction of an addition 13.4 ft. from the eastern rear lot line. The addition would be a sunroom for indoor recreation, hobby, dining, and multi-purpose space. Staff recommended approval of SP 2012-MA-062, subject to the proposed development conditions.

Mr. Whitebread presented the special permit request as outlined in the statement of justification submitted with the application. He said he had planned to reduce the current coverage by replacing some stonework with mulch. He stated that he and his wife had been in the area for almost 30 years, and absolutely enjoyed the neighborhood. They were committed to the area. He continued that the size of the lot and the nature and configuration of the home did limit him on what could be done to the property. The home had no basement or garage and limited attic space, so he felt that the addition of a tasteful sunroom would augment the capabilities for indoor activities such as entertaining guests.

As there were no speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 2012-MA-062 for the reasons as stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL WHITEBREAD & ANITA NOGUERA, SP 2012-MA-062 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction in certain yard requirements to permit construction of addition 13.4 ft. from rear lot line. Located at 4109 Chatelain Rd., Annandale, 22003, on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((17)) 14. 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 5, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Staff has recommended approval.
3. The Board notes that the sunroom is going to be built on the existing deck.
4. The applicants are removing some of the impervious cover of the backyard to be in compliance with the Zoning Ordinance as part of the application.
5. It is consistent with the standards of the Ordinance as found by the staff.
6. The Board has determined that the applicant has met Standards 1 through 6.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. 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 208 square feet) of the addition, as shown on the plat prepared by Scartz Surveys, dated 02/02/2012 as revised through August 15, 2012 and signed by Larry N. Scartz, Land Surveyor, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,260 square feet existing + 3,390 square feet (150%) = 5,650 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 minimum required rear yard coverage shall be reduced to comply with Sect. 10-103 Par. 3 of the Zoning Ordinance to be no more than 30%, prior to receiving a final inspection for the home addition.
5. The addition shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Smith seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. ANASTASIA ROUSSOS, TRACY L. DEBELLIS & PETER DEBELLIS, SP 2012-DR-063
Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing detached structure. Located at 268 Golden Woods Ct., Great Falls, 22066, on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((16)) 1.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Anastasia Roussos, 268 Golden Woods Court, Great Falls, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to establish a new accessory dwelling unit within an existing detached structure. The detached structure was the original dwelling on the property constructed in 1950. In 1998 a new primary dwelling was constructed adjacent to the original homestead. The applicants recently purchased the property to allow Anastasia Roussos, who is the mother of the occupant of the primary dwelling and over the age of 55, to live in the detached structure in order to help care for her grandchildren and live close to her

daughter and son-in-law. The accessory dwelling unit was proposed to contain a living room, kitchen, two bathrooms, two bedrooms, a study and a cellar for a total of 1,435 square feet of living space. The primary dwelling unit contains 4,468 square foot of living space, so that the proposed accessory dwelling unit is 32 percent of the gross floor area of the primary dwelling unit which was below the maximum limit of 35 percent. Staff recommended approval of SP 2012-DR-063, subject to the proposed development conditions.

Ms. Roussos presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she purchased the property with her daughter and her son-in-law an attempt to be proactive for her later years, be next to her family, and to be of service to them with regard to the grandchildren.

Chairman Ribble called for speakers.

Ying Lee (phonetic), 9030 Jeffery Road, Great Falls, Virginia, came forward to ask whether the applicant would continue to use Golden Woods Court for driving or if they would use the easement.

Ms. Horner stated that the diagram on the overhead depicted the plat which showed the boundaries of the property. As far as staff was aware, the applicant would continue to use Golden Woods Court for access.

Ms. Roussos, stated that there would be no changes to the traffic pattern. She stated that sometime in the 1990s all of those easements were granted.

Chairman Ribble closed the public hearing.

Mr. Smith moved to approve SP 2012-DR-063 for the reasons as stated in the resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANASTASIA ROUSSOS, TRACY L. DEBELLIS & PETER DEBELLIS, SP 2012-DR-063 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit within an existing detached structure. Located at 268 Golden Woods Ct., Great Falls, 22066, on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((16)) 1. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is five acres.
4. This is a large lot of five acres, so it is okay to have a freestanding unit for a use like this.
5. Staff has recommended approval, and the Board adopts the rationale of staff in the staff report.
6. It meets the requirements of Sects. 8-006, 8-903 and 8-918.
7. There is a letter of support from an adjoining property owner in the file.
8. This certainly seems like the type of use that was contemplated by Sect. 8-918.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, Anastasia Roussos, Tracy L. DeBellis and/or Peter V. DeBellis, and is not transferable without further action of this Board, and is for the location indicated on the application, 268 Golden Woods Court, (5 acres), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Schools & Townsend., dated August 20, 2012, revised through September 12, 2012, as signed and sealed by Richard D. Townsend, Land Surveyor, and approved with this application, as qualified by these development conditions.
4. A copy of this special permit **SHALL BE POSTED in a conspicuous place in the accessory dwelling unit** and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
6. The accessory dwelling unit shall contain a maximum of 1,435 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions, and shall contain a maximum of two bedrooms.
7. All applicable trade permits and final inspections shall be obtained for the kitchen components of the accessory dwelling unit.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
9. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
10. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
11. All parking shall be provided on site as shown on the special permit plat.
12. All play equipment shall be subject to the use limitations of Sect. 10-103 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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 5, 2012, Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, SPA 00-S-044-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for boarding and riding stables to permit modification of development conditions, building additions, and site modifications. Located at 6429 Clifton Rd., Clifton, 20124, on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 36 and 66-4((1)) 15. (*Admin. moved from 11/7/12 and 11/28/12 at appl. req.*)

Chairman Ribble called the applicants to the podium.

Mr. Byers recused himself from the case.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Meredith Hartley, the applicant's agent, Reed Smith LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, reaffirmed the affidavit.

Rebecca Horner, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested to amend a special permit previously approved for a riding and boarding stable to permit modification of development conditions, building additions, and site modifications. The applicant proposed to continue the existing riding and boarding stables and riding school use, as well as erect several new structures, increase ridership, increase the number of horses, increase the hours of operation, increase time of the outdoor lighting of the outdoor ring, and create a larger, paved, 50-stall parking lot. The proposed facilities are detailed on page four of the special permit plat, and to phase construction. Staff recommended approval of SPA 00-S-044-02, subject to the proposed development conditions.

Mr. Beard asked whether this application was in the Springfield district. Ms. Horner stated that it was.

Mr. Hart asked what had changed in the new development conditions presented prior to the hearing. Ms. Horner stated that it was the date of the lighting plan was the only change.

Mr. Hart asked about the landscape plan. He said it looked like the only difference between what they would have to do and what they were proposing to do with respects to the eastern side of the property towards lot 17, was in doing the whole 35 feet, which was required, included the rail fence. Ms. Horner stated that was true, and the fence was being allowed to be counted towards the barrier requirements, which was a continuation of a modification from the previous permit. Susan Langdon, Branch Chief, Special Permit and Variance Branch, stated that it was like a modification to the normal requirements to a barrier just that the style of fence was different.

Mr. Hart and staff discussed the landscaping requirements. He then questioned a memo from Angela Rodehaever, Department of Transportation, which stated the issues that were brought up had been resolved.

Ms. Rodehaever stated that the issues were with the right of way along Popes Head and Clifton Road, and also the access into the sight. She said that in the previous request this had always been a concern as to get the horse trailers out of the sight. The applicant had corrected not only that, but the onsite access so that two vehicles/horse trailers could pass safely.

Ms. Hartley presented the special permit request as outlined in the statement of justification submitted with the application. She said the application was submitted to expand the current program. She was pleased with staff's recommendation, and thanked them for their hard work. She stated that she accepted the conditions in the staff report, and respectfully asked the Board to accept staff's recommendation to approve the amendments.

Mr. Hart asked whether the shifting of the driveway was picked up in the development conditions, and whether it was enforceable. Ms. Horner stated that staff had not seen the proposal until the morning of the hearing, but there was a condition which required full screening, and also allowed minor modifications to the site plan. Staff believed the development conditions would fully address the plans.

Mr. Beard asked whether the applicant had seen the letter of objection. Ms. Hartley stated that she had just received the letter, and had not had a chance to discuss it with those who objected. Mr. Beard asked whether this had been the only objection. Ms. Horner stated that it was the only one.

Chairman Ribble called for speakers.

Mitchell Martin, 6709 Briercroft Street, Clifton, Virginia, came forward and stated that he was in favor of the application, as he is both the chairman of the Board, and his daughter who has cerebral palsy, was one of the riders using the facility as rehabilitation and therapy. He detailed the effectiveness this therapy has had on his daughter emotionally and physically.

Mr. Beard asked whether the speaker lived in the proximity of the facility. Mr. Martin stated that he lived through the woods about a half mile away.

Paul Wexler, 9308 Saint Marks Place, Fairfax, Virginia, came forward to speak in support of the application, stating that he was the executive director for service source rehabilitation services. He said that his organization and the applicants had a great relationship.

Martha Prine, 8218 Crusade Drive, Clifton, Virginia, came forward to speak in support. She noted that she had volunteered for the applicant since 2001, and she served as a sign language interpreter. She expressed her enjoyment in volunteering for the riding program and explained that this was the only activity that some people with disabilities were able to participate in and feel accomplished. She also explained the benefit of the program for the teenage volunteers who have the opportunity to gain work experience, as well interact with participants and develop compassion.

At the direction of the Chairman, Greg Budnik, P.O. Box 1214, Newington, Virginia, swore or affirmed that his testimony would be the truth. Mr. Budnik spoke in representation for Tai J. Chiao, resident of 6617 Briarcroft Street, Clifton, Virginia. He explained that Mr. Chiao supported the work the organization had done, and had no arguments with the expansions or any of the contents of the application. Mr. Chiao did want to comment on the County notice system, as he was upset that he was not made aware of the project until the notice was sent because he would have liked the opportunity to be more involved and informed. Mr. Budnik noted the applicant had taken measures to address concerns which Mr. Chiao had discussed with them, such as screening and pole height.

In response to Board questions, Mr. Budnik explained that the issues raised by Mr. Chiao had been satisfactorily addressed, which included Mr. Chiao's concerns with the lights, the time it would take for planned screening to be effective, and the impact of topographic considerations.

There was discussion regarding the position Mr. Chiao's property relevant to the subject property, the proposed lighting plan, and modifications which could be made to the lighting plan which would still meet all requirements.

Matt Tauscher, Bowman Consulting Group, 14020 Thunderbolt Place, Suite 300, Chantilly, Virginia, engineer to the applicant, came forward to respond to Board questions. He explained the lighting design and requirements, that Mr. Chiao would not be able to see the light bulbs from his property given the proposed design, and that the light must illuminate only within the property lines.

There was discussion regarding a previous case with more explicit development conditions regulating the lighting on the property. Staff explained the previous case was approved prior to the Zoning Ordinance amendment for lighting for which the current case is subject to.

Ms. Hartley came forward to offer her rebuttal. She noted the lights would be turned off at 7:00 p.m., there would only be lighting during the winter months, the proposed lighting design was done according to code, and that the applicant had made efforts to accommodate the requests made by Mr. Chiao.

As there were no further speakers, Chairman Ribble closed the public hearing.

Mr. Beard moved to approve SPA 00-S-044-02 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, SPA 00-S-044-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 00-S-044 previously approved for boarding and riding stables to permit modification of development conditions, building additions, and site modifications. Located at 6429 Clifton Rd., Clifton, 20124, on approx. 17.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 36 and 66-4((1)) 15. (Admin. moved from 11/7/12 and 11/28/12 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 December 5, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. This is R-C and WS zoning.
3. The lot size is 17 acres.
4. Staff recommends approval.
5. This conforms to the guidelines of the Comprehensive Plan.
6. All major issues to the concern of the Board have certainly been addressed.
7. Notwithstanding all the wonderful eleemosynary activities that take place there, it is heartwarming, but that really is not what this is about. This is about meeting the requirements of the Ordinance, which this most certainly dies, and the Board is comfortable with that

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, Northern Virginia Therapeutic Riding Program (NVTRP), and is for the location indicated on the application, 6429 Clifton Road (17 acres), and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bowman Consulting Group, Ltd., dated July 16, 2012, as revised through November 7, 2012, with revised sheet 11, photometric plan, as revised through December 4, 2012, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit and the Non-Residential Use Permit shall be posted in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. This special permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Pa. 4 of Sect. 8-004 of the Zoning Ordinance.
5. Upon issuance of a new Non-RUP, there shall be a maximum number of 150 students per week with a maximum of twenty-one (21) students per day Monday through Friday; thirty (30) students per day on Saturday and fifteen (15) students per day on Sunday.

6. The maximum hours of operation for the riding school shall be limited to Monday through Friday from 8:00 a.m. to 9:00 p.m., and Saturday and Sunday from 8:30 a.m. to 8:00 p.m.
7. Parking shall be provided as shown on the special permit plat. All parking shall be provided concurrent with Phase One of the development.
8. The maximum number of horses on site at any one time shall be 25.
9. Summer camp activities may be permitted from June through August, between 9:00 a.m. and 1:00 p.m., Monday through Friday.
10. Vaulting workshops, with a maximum of three hour sessions and four to eight participants, shall be permitted during the hours in which the regular riding instruction is not given, which is within the maximum proposed hours of operation.
11. There shall be no shows or special events on site.
12. There shall be no loudspeakers or amplified music on site.
13. The existing house on the site shall be used as a residence for the owner or caretaker of the subject property and/or as office space for the staff of NVTRP.
14. The dwelling (caretakers residence) on the property shall maintain the appearance of a residence.
15. A conservation plan outlining Best Management Practices (BMPs) for the operation shall be updated and implemented, prior to approval of a new Non-Residential Use Permit, in coordination with the Northern Virginia Soil and Water Conservation District. The conservation plan shall include management techniques for the operation, including pasture management, animal waste management, composting and nutrient management. No animal waste shall be permitted to decay in place or to be washed into the natural drainage from the site.
16. All lighting shall be in conformance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance.
17. The covered training ring and dressage ring shall not be lighted.
18. All outdoor ring lights shall be turned off by 7:30 pm Monday through Friday and by 7:00 pm Saturday and Sunday, and parking lot lighting shall be turned off when the site is not in use, except for security lighting.
19. The Transitional Screening shall be provided as shown on the special permit plat, subject to review and approval by the Forest Conservation Branch from DPWES and shall be deemed to meet transitional screening requirements. Existing fences shall be deemed to satisfy the barrier requirements. All transitional screening requirements shall be provided with Phase One.
20. Landscaping shall be provided as shown on the special permit plat, but shall not be less than 10% of the overall site area. Non-invasive species and locally common native species shall be used to the greatest extent possible as determined in coordination with the Forest Conservation Branch from DPWES.
21. Limits of clearing and grading shall be the minimum possible and shall be no greater than shown on the special permit plat as may be qualified by these development conditions.
22. Notwithstanding what is shown on the special permit plat, run-in sheds shall be located no closer than 40 feet to any property line.
23. Right-of-way to 35 feet from centerline along the frontage of Clifton Road shall be reserved for future dedication. Such dedication shall be upon demand by Fairfax NORTHERN County at such time as there is a roadway project in this area. Right-of-way to 30 feet from centerline along the frontage of Popes Head Road shall be reserved for future dedication. Such dedication shall be upon demand by Fairfax County at such time as there is a roadway project in this area.
24. The site entrance shall meet Virginia Department of Transportation (VDOT) requirements, unless waived or modified by VDOT.
25. The indoor riding ring, administrative office and stable building shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
26. The Applicant shall install Energy Star appliances and equipment for all refrigerators, dishwashers, water heaters, computers, monitors, televisions, vending machines, water coolers, and other appliances and office equipment (if available). The Applicant shall provide proof of installation, installation locations, and manufacturers' product data, including the Energy Star energy guide. Prior

to issuance of the Non-Residential Use Permit, the applicant will submit to DPWES a letter from a registered architect or professional engineer certifying compliance with this commitment.

- 27. Storm water detention shall be provided such that the peak discharge rate in a two-year and 10-year 24-hour storm event be less than or equal to the peak discharge rate that would be discharged if the site was in a good forested condition.
- 28. A septic system shall be approved by the Health Department prior to construction of the new facilities.

This approval, contingent on the above-noted conditions, shall not relieve the Applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently pursued. Establishment of Phase One shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Byers recused himself from the hearing.

//

9:00 A.M. SANJEEV KAPOOR, A 2010-HM-015 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is allowing a use not permitted (a truck rental establishment) to operate on property in the PRC District without a valid Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 11410 North Shore Dr. on approx. 37,096 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 17-2 ((1)) 7. (Admin. moved from 3/2/11, 9/14/11, 12/14/11, 4/18/12, 9/12/12, and 11/7/12 at appl. req.)

Chairman Ribble noted that A 2010-HM-015 had been administratively moved to February 27, 2013, at 9:00 a.m., at the appellant's request.

//

~ ~ ~ December 5, 2012, After Agenda Item:

Approval of November 7, 2006 Minutes


Mr. Hammack moved to approve the Minutes. Ms. Gibb seconded the motion, which carried by a vote of 7-0.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:44 a.m.

Minutes by: John W. Cooper/Emily J. Armstrong

Approved on: May 22, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, December 12, 2012. The following Board Members were present: Chairman John F. Ribble III; Paul W. Hammack, Jr.; V. Max Beard; Thomas Smith; Nancy E. Gibb; James R. Hart; and Norman P. Byers.

Chairman Ribble called the meeting to order at 9:00 a.m. He discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board, and Chairman Ribble called for the first scheduled case.

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. ROGER L. LEMIEUX, SP 2012-BR-066 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 12.6 ft. from rear lot line and 9.0 ft. from side lot line. Located at 5503 Kathleen Pl., Springfield, 22151, on approx. 10,890 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (14) 39.

Chairman Ribble noted that SP 2012-BR-066 had been administratively moved to January 30, 2013, at 9:00 a.m. for ads.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. GEORGE I. DIFFENBAUCHER & KATHLEEN A. DODSON, SP 2012-MV-067 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 9.4 ft. from side lot line. Located at 8141 Stacey Rd., Alexandria, 22308, on approx. 21,853 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((8)) 4.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

George I. Diffenbaucher, 8141 Stacey Road, Alexandria, Virginia, reaffirmed the affidavit.

Laura Gumkowski, Staff Coordinator, made staff's presentation as contained in the staff report.

Mr. Hart noted that the patio was closer to the house than the deck, and asked why the patio was not included in the special permit request. Ms. Gumkowski stated that the patio was vested, since it had been there for 15 years. The deck was built on top of it. Mr. Hart commented that the house looked to be approximately two years old. Ms. Gumkowski said the applicant did not change the patio when the new house was constructed.

Mr. Diffenbaucher presented the special permit request as outlined in the statement of justification submitted with the application. He said when he purchased the house in April 2011, it was a new home which had replaced one that had been torn down. The concrete slab/patio was part of the original house.

Mr. Diffenbaucher said that once he was notified by from the Department of Code Compliance in June 2012 that the deck did not have a permit, he applied for one.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 2012-MV-067 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE I. DIFFENBAUCHER & KATHLEEN A. DODSON, SP 2012-MV-067 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit deck to remain 9.4 ft. from side lot line. Located at 8141 Stacey Rd., Alexandria, 22308, on approx. 21,853 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((8)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The applicants satisfy the specific standards set forth in subsections A through G in Sect. 8-914.
3. In particular, the testimony is that the applicant bought the property, the deck was already constructed by the builder, who actually tore down an existing house and constructed a new dwelling based on the foundation of the old house.
4. It appears from the plat that there is a very small encroachment beyond what would be allowed, perhaps three feet.
5. The Board did not feel it would be detrimental to the use and enjoyment of other property in the neighborhood.
6. It otherwise satisfies the requirements under the subsection.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved only for the location of the existing deck as shown on the plat prepared by George M. O'Quinn, dated June 29, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the deck within 180 days of approval of this application.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Byers seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. THE PARKLAWN RECREATION ASSOCIATION, INC., & NEW CINGULAR WIRELESS PCS, LLC, SPA 76-M-088 (amend SP to permit telecom facility) (Indefinitely deferred from 4/14/10 at appl. req.) (Reactivated on 5/11/12) (Admin. moved from 10/17/12 at appl. req.)

The following is a verbatim transcript of the proceedings had in this matter:

CHAIRMAN RIBBLE: The next case is The Parklawn Recreation Association, Inc., and New Cingular Wireless PCS, LLC, SPA 76-M-088. This has been administratively moved to January 16th, 2013.

SUSAN LANGDON: That's correct.

CHAIRMAN RIBBLE: Thank you.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. KIMBERLY SCHOPPA, SP 2012-LE-065 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory storage structure 6.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 5903 Amelia St., Springfield, 22150, on approx. 10,625 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (48) 19.

Chairman Ribble called the applicant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Kimberly Schoppa, 5903 Amelia Street, Springfield, Virginia, reaffirmed the affidavit.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SP 2012-LE-065, subject to the proposed development conditions.

Ms. Schoppa presented the special permit request as outlined in the statement of justification submitted with the application. She said the addition would be in harmony with other homes in the Crestwood neighborhood that have detached garages. Ms. Schoppa stated that the existing house would be re-shingled and re-sided to match the new detached garage. She noted that the proposed driveway extension on the south side of the property would ease ingress and egress.

In response to a question from Mr. Hart, Ms. Schoppa said the concrete pad underneath the current shed will be removed.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Byers moved to approve SP 2012-LE-065 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIMBERLY SCHOPPA, SP 2012-LE-065 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of accessory storage structure 6.0 ft. from side lot line and 7.0 ft. from rear lot line. Located at 5903 Amelia St., Springfield, 22150, on approx. 10,625 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (48) 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 December 12, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The Board determined that the application meets all the submission requirements as set forth in Sect. 8-922.
3. The staff recommended approval, and the Board adopted its rationale.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This special permit is approved for the location and size (approximately 484 square feet) of the accessory structure (garage), as shown on the plat prepared by Patrick A. Eckert, Land Surveyor, dated July 19, 2012, as revised through August 20, 2012, submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the accessory structure.
3. The accessory storage structure shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Hammack seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. LORAN & ROBERT AIKEN, TRUSTEES OF THE ROBERT AIKEN TRUST, SPA 2007-MV-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2007-MA-047 to permit reduction of certain yard requirements to permit construction of roofed deck 16.5 ft. from front lot line and addition 16.8 ft. from rear lot line. Located at 2106 Belle Haven Rd., Alexandria, 22307, on approx. 11,400 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (20) 15.

Chairman Ribble called the applicants to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Chairman Ribble and Mr. Beard made disclosures, but indicated they did not believe their ability to participate in the case would be affected.

Brian Dofflemyer, the applicants' agent, 730 South Washington Street, Alexandria, Virginia, reaffirmed the affidavit.

Robert Aiken, 2106 Belle Haven Road, Alexandria, Virginia, identified himself to the Board.

Rebecca Horner, Staff Coordinator, made staff's presentation as contained in the staff report. Staff recommended approval of SPA 2007-MV-047, subject to the proposed development conditions.

Mr. Beard asked about the two different square footage computations on the plat. Ms. Horner did not know, and deferred to the applicant's agent. Susan Langdon, Chief, Special Permit and Variance Branch, said it sometimes referred to what was recorded in the Land Records in Fairfax County versus the current survey showed.

Mr. Aiken presented the special permit request as outlined in the statement of justification submitted with the application. He said the application and affidavit, which both he and his wife signed, contained the full intent and purpose of the addition. Mr. Aiken said he would be happy to answer any questions the Board might have.

As there were no speakers, Chairman Ribble closed the public hearing.

Mr. Hart moved to approve SPA 2007-MV-047 for the reasons stated in the Resolution.

//

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LORAN & ROBERT AIKEN, TRUSTEES OF THE ROBERT AIKEN TRUST, SPA 2007-MV-047 Appl. under Sect(s). 8-922 of the Zoning Ordinance to amend SP 2007-MV-047 to permit reduction of certain yard requirements to permit construction of roofed deck 16.5 ft. from front lot line and addition 16.8 ft. from rear lot line. Located at 2106 Belle Haven Rd., Alexandria, 22307, on approx. 11,400 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (20) 15. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 2012; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the property.
2. The staff recommended approval, and the Board adopted the rationale in the staff report.
3. These are three relatively modest requests.
4. With respect to the front porch, Mr. Hart said he made the motion several years ago, and the request today was for a little fancier front porch than what the Board approved originally.
5. It certainly is in keeping with the rest of the house and the neighborhood.
6. The Board did not think there would be any negative impact on anyone.
7. Based on the drawings, it would be very attractive.
8. With respect to the two additions at the rear of the house, the second floor addition is an enclosure of a porch that is already there. The impact of that would be negligible.
9. The one-story addition is just another little extension of what is already there. It is tucked behind the house.
10. Compared to what is there now, the Board did not think there would be any significant difference or any negative impact on the neighbors.
11. This also is a strange lot. It is sort of a trapezoid with a very shallow backyard, and particularly at the right-hand side of the house.
12. For whatever reason, there seems to have been some sort of arithmetic error back in the 1930s or whenever this lot was recorded. Whoever did the arithmetic about the lot size was way off.
13. The lot is significantly smaller than what the plat said.
14. If you are going to be adding on this house, tucked into a back corner, kind of in an indentation in the house, that seems to be the place to do it.
15. Because of the configuration of the lot, it is closer to the back line than otherwise would be allowed.
16. With the development conditions incorporating the drawings, this will be a very attractive structure.
17. The Board did not think there would be any significant negative impact.
18. The Board has determined that all of the criteria in the Section 8-922 motion have been satisfied.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 201 square feet) of the additions and the roofed deck (porch), as shown on the plat prepared by Ronald J. Keller, Land Surveyor, dated July 19, 2012, as revised through September 17, 2012, submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,626 square feet existing + 6,942 square feet (150%) = 11,570 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 additions shall generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. ALFONS MASSOUD, SP 2012-SP-026 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 12415 Braddock Rd., Fairfax, 22030, on approx. 2.33 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-2 ((1)) 22. (*Admin. moved from 8/1/12 and 10/3/12 at appl. req.*)

Chairman Ribble noted that SP 2012-SP-026 had been indefinitely deferred at the applicant's request.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. RP MRP TYSONS, LLC, A 2010-PR-011 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that monetary compensation for residual damages resulting from land dedication would preclude the receipt of density credit for the area of land being dedicated. Located at 7950 Jones Branch Dr., McLean, 22102, on approx. 17.34 ac. of land zoned C-3. Providence District. Tax Map 29-2 (915) C1. (*Admin. moved from 11/3/10, 2/2/11, 5/4/11, 7/27/11, 11/2/11, and 3/7/12 at appl. req.*)

Chairman Ribble noted that A 2010-PR-011 had been withdrawn.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:00 A.M. SUBWAY, A 2012-LE-016 (*Admin. moved from 12/12/12 at appl. req.*)

Chairman Ribble noted that A 2012-LE-016 had been administratively moved to March 20, 2013, at 9:00 a.m., at the applicant's request.

//

~ ~ ~ December 12, 2012, Scheduled case of:

9:30 A.M. ROBERT L. ULLRICH, A 2012-PR-023 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that the development conditions of Special Permit SP 2005-PR-032 have been satisfied. Located at 7604 Maydan Ln., Falls Church, 22043 on approx. 26,927 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((9)) 15.

Chairman Ribble called the appellant to the podium.

At the direction of the Chairman, the participants in the hearing swore or affirmed that their testimony would be the truth, and the public hearing was opened.

Mr. Hart made a disclosure, but indicated he did not believe his ability to participate in the case would be affected.

Mike Vanderpool, attorney with Vanderpool, Frostick, and Nishanian, the appellant's agent, 9200 Church Street, Manassas, Virginia, came forward and identified himself.

Matt Mertz, Staff Coordinator, Zoning Administration Division, presented staff's position as set forth in the staff report. This was an appeal of a determination that Development Conditions 3, 4 and 5 of Special Permit SP 2005-PR-032, related to the screening of a shed and outdoor storage behind the shed, had been satisfied. On July 31, 2007, the BZA approved SP 2005-PR-032 to allow a shed to remain 5.3 feet from the side lot line. The special permit was approved with development conditions. Condition 2 required that a building permit and final inspection be obtained for the shed. Condition 3 prohibited the storage of any items, except firewood, behind the shed. Condition 4 required the owners to coordinate with the County Arborist (now Urban Forester) and plant trees to screen the shed. Condition 5 required the maintenance of the planted trees in a state of good health.

On October 17, 2007, the shed passed final approval. The applicant contacted Urban Forestry staff by email and the Urban Forester did an inspection in late August of 2007. During the inspection, staff determined that the high tree canopy above the narrow planting strip would significantly limit the tree selection, as the trees would have to survive with limited sunlight and space to grow. About six weeks after the site visit, the applicant and the Urban Forester agreed that Nellie Stevens holly trees were suitable. The applicant subsequently planted three Nellie Stevens holly trees.

On July 12, 2010, following a complaint that the trees were not adequately screening the shed, the Department of Code Compliance (DCC) staff inspected the property. The inspector found the trees to be healthy and, after consultation with the Urban Forester, deemed the development conditions were satisfied, and the DCC case file was closed.

On July 18, 2012, the appellant wrote a letter to the Zoning Administrator and requested a determination as to whether the Development Conditions of SP 2005-PR-035 were satisfied. Following an inspection of the property by staff from the Zoning Inspection Branch (ZIB) on August 6, 2012, the Zoning Administration Division made a determination that Conditions 2, 4, and 5 were satisfied. As the site visit found that canoes had been stored on a rack between the shed and the rear lot line, Condition 3 was deemed to not be satisfied. The canoes were subsequently removed.

With regard to Condition 4, the appellant contended that the three trees planted were not adequate to screen the shed and that three and a half years was more than enough time to allow the trees to provide screening. The appellant also asserted that staff erred by relying on the Urban Forester to determine whether the condition was satisfied, and argued that Condition 4 did not give the Urban Forester the authority to deem the screening adequate. The appellant insisted that the applicants had not properly implemented the development conditions as directed by the BZA based on the appellant's perceived noncompliance with Condition 4 and the storage of items behind the shed. The appellant also stated that the shed should be removed.

It was the position of the Zoning Administrator that the Development Conditions of SP 2005-PR-032 were satisfied. Development Condition 4 stated that the applicants were to plant trees in coordination with the County Arborist. The Urban Forestry staff confirms this took place prior to the planting of three trees and therefore, Condition 4 was satisfied. Mr. Mertz noted that from a zoning standpoint, screening is intended to lessen impact, not entirely eliminate it. Additionally, he said that Urban Forestry's expertise was critical because the constraints of the site significantly limited the tree selection process. Since the trees remain in a state of good health, Condition 5 was satisfied. Finally, an inspection of the property by DCC staff on November 26, 2012, found no violations of the development conditions.

It was therefore staff's position that the Development Conditions of SP 2005-PR-032 had been satisfied. Staff therefore recommended that the BZA uphold the determination of the Zoning Administrator dated August 6, 2012.

In response to a question from Mr. Hart, Mr. Mertz stated that the number of trees had been determined by the Urban Forester.

Todd Nelson, the Urban Forester, said the number of trees was based on the size of the shed and conditions of the tree plant area. He also selected the species to be planted, the aforementioned holly trees, which grow to be 6 to 8 feet tall at maturity. Mr. Nelson pointed out that any tree in a heavily-shaded environment would not grow to the maximum height. He said the trees were viable and should continue to grow becoming larger than they are now.

Mr. Vanderpool presented the arguments forming the basis for the appeal. He said the appeal was more than just about screening and noted that the homeowner had built the shed without permission, then applied for the special permit. Although the appellant objected to the placement of the shed, the Board approved it, and three small trees were planted at the back of the shed. Mr. Vanderpool displayed photographs showing that one side of the shed was visible from the appellant's home, and even after seven years, it was still visible. Mr. Vanderpool said the condition language did not say to screen the rear of the shed, but to screen the shed, noting that the most prominent side to the appellant had not been screened. He stated that the appellant should not have to wait a decade for the area to be properly screened.

Ms. Gibb noted the number of times that determinations that had been made by the Zoning Administrator regarding the screening and felt this issue had a lot to do about just a tree or two. Mr. Vanderpool felt the issue was simple; the area was supposed to be adequately screened and was not. He said it was a very personal issue to the appellant. The appellant was asked to obey the law, but the applicant was not.

In response to a question from Mr. Hart, Mr. Vanderpool acknowledged that the applicant had complied with the Board conditions, but the Urban Forester had not. Mr. Hart asked Mr. Nelson if he believed the applicant had complied with the development conditions. He said absolutely.

Mr. Beard, Mr. Byers, and Mr. Vanderpool discussed different types of screening for shaded areas. Mr. Byers noted that if the applicant had placed the shed in the middle of his backyard, it would not have required any screening at all, and would be in plain sight of the appellant. Mr. Nelson commented that the holly trees were recommended, because evergreens provided year round screening. Mr. Vanderpool stated that the appellant only wanted what was promised in the development conditions.

Mr. Hammack asked if Mr. Ullrich, the appellant, had seen an arborist on his own. Mr. Vanderpool said the burden of finding adequate screening was not the appellant's.

Mr. Hart and Mr. Vanderpool discussed the definition of adequate screening, with Mr. Hart stating that some common sense was necessary. Mavis Stanfield, Assistant Zoning Administrator, displayed a photo showing the appellant's line of sight. Mr. Hart commented that it looked like a brick wall from the appellant's viewpoint. Robert Ullrich, the appellant, came forward at Chairman Ribble's request. He said the shed was on much higher ground than his house and, according to experts he checked with, it would be impossible to screen from his property. Mr. Hart and Mr. Ullrich discussed the appellant's line of sight. Ms. Stanfield estimated that the appellant's home was located 50 feet from the property line.

In response to a question from Chairman Ribble, Ms. Stanfield said there was very little discussion by the Board at the previous public hearing. However, there had been input by Jane Kelsey and the appellant's representative.

Chairman Ribble called for speakers

Robert Ullrich, 2247 Providence Street, Falls Church, Virginia, came forward to speak. He gave a brief history on the purchase of his home, noting that he bought the home 44 years ago. As the county grew, Mr. Ullrich said he expected County ordinances to be enforced to preserve the atmosphere of the area. Over the last decade, the owners of the house next door initiated a series of county-documented code violations exacerbated by failing to obtain the required permits, all of which detracted from his enjoyment and solitude. One of the violations was the construction of an oversized shed too close to his property line and in direct violation of County ordinances. Mr. Ullrich fully trusted that once he brought the violation to the County's attention that he could be confident enforcement action would be taken, but it was not. When the issue eventually came before the Board, the unsightliness seemed to be grasped by all parties, and the owners were directed to plant a screening to obscure the violating shed so that it would not have to be removed. He

remained patient for years, but the plantings provided no effective screening. Mr. Ullrich said he checked several sources to see if he could visually buffer the shed on his property, but was told it was impossible. He said the shed was highly visible from his property when looking out his windows or walking in his backyard. Mr. Ullrich asked that the BZA enforce full vegetative screening of the shed or require the shed to be removed.

Richard Renfield, 2327 Senseney Lane, Falls Church, Virginia, came forward to speak. He wanted to know if he could depend on the County to enforce its own rules in all cases, noting that it could affect him in the future.

Raj Rajendiran, 2316 Providence Street, Falls Church, Virginia, came forward to speak. He felt the arborist had done a good job.

Mark Christmas, 7604 Maydan Lane, Falls Church, Virginia, came forward to speak. He said he was the homeowner of the property at issue. He expressed his appreciation to the Urban Forester for suggesting the holly trees, which survived three seasons of extreme heat, drought, and flooding. Mr. Christmas stated he had done everything the County asked of him.

As there were no other speakers, Chairman Ribble closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator. She did not recall having a case appealing development conditions and whether they have been met. It forced her to think back about this case and think about the definition of screening because, in this case, the development condition with respect to screening was the one in contention. The appellant said the condition was not met, and that three sides should have been screened, and that the one side that was screened was not done satisfactorily. The appellant contended that the Urban Forester did not offer correct guidance to the homeowner when he said that it was satisfactory. Ms. Gibb said when she thought of screening, she did think of what was on the neighboring property and what was trying to be screened. If you have a forest next door, you are not really worried about the impact next to that forest. Ms. Gibb said it was relevant to her when making the decision to consider what was next door and what they are looking at. She did not think of screening as something that blocks entirely, because that usually would be impossible with greenery, but something that mitigated the effect of a wall, that made it less offensive, made it blend in some, and allowed for some time for growth. Ms. Gibb said that unless the Zoning Administrator was clearly wrong that she should be upheld. She thought this was a somewhat subjective determination. Ms. Gibb felt the Board could rely on the Urban Forester. The Board members were not landscaping experts nor were members of the staff, so it was entirely appropriate to have the Urban Forester make that decision. At the time that the screening went up, if it was not satisfactory to the appellant, maybe he should have spoken then. Therefore, Ms. Gibb was going to uphold the Zoning Administrator.

Mr. Smith seconded the motion.

Mr. Beard felt it was very simple, which was determining if the SP conditions been met. Mr. Beard said he had sympathy for the appellant. He did not believe the condition was met, and said he would not support the motion.

In response to a question from Mr. Byers, Mr. Nelson said depending on the planting location, the holly trees planted three years ago could grow to a height of 30 feet tall and 5 feet wide. However, he noted that this was not an ideal planting location. As far as a time frame for reaching maturity, the County generally looks at 10 to 15 years in ideal conditions.

Mr. Hart said he would support the motion. He did not believe the issue before the Board was whether or not the shed was fully screened. When the Board puts in a condition that anticipates further interaction with County staff, particularly on a technical issue like what plants would grow or what plants were appropriate in a given setting, it is not an exact science. The question was, did the applicant do what he was supposed to do, not whether the shed was fully screened. As Mr. Hart understood the testimony in the record in front of the Board, the applicant did what he was supposed to do.

Mr. Hammack said the Board placed screening conditions in almost all special permits to some degree or another, but do not expect whatever was supposed to be screened, to be screened absolutely initially. The Board put in the provision to have the Urban Forester coordinate, and that was done to assure that

appropriate vegetation was planted. This takes the decision away from the homeowner who could possibly put in almost anything. He said the Board often puts in provisions that required the screening to be maintained. In this way if something died, it would have to be replaced. Mr. Hammack said he would support the motion.

Chairman Ribble said he would also uphold the Zoning Administrator on this narrow issue, but knowing what he knows now, he would not have voted for the shed to remain.


Chairman Ribble called for the vote. The motion carried by a vote of 6-1. Mr. Beard voted against the motion.

//

As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Suzanne Frazier

Approved on: April 3, 2019


Lorraine A. Giovinazzo, Clerk
Board of Zoning Appeals


John F. Ribble III, Chairman
Board of Zoning Appeals